The Parliamentary Ombudsman Norway

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The Parliamentary Ombudsman
Annual Report 2010
Summary in English

The Ombudsman can investigate complaints concerning mistakes and personal injustice done by the public administration against the individual citizen.

Government administration and the administrations of Counties and Municipalities are all encompassed by the Ombudsman's authority.

Beside working to prevent injustice and help to ensure that human rights are respected, the Ombudsman's activities are also aimed at helping to improve the way the public administration process cases, and strengthening the citizens confidence in the administration. Most of the time the Ombudsman's investigations are initiated by complaints from private citizens, but the Ombudsman can also investigate cases on his own initiative.

Content

I. Activities in 2010

1. The work of the Ombudsman

As Ombudsman, it is my responsibility to investigate whether the public authorities, in their dealings with the general public, have made errors or treated people unjustly, and to issue legal opinions on such matters. Almost all public bodies and most parts of the public administration may be checked and reviewed. Checks also focus on whether the public authorities have respected and safeguarded human rights, and whether cases have been processed in accordance with good administrative practice.

My investigations are primarily launched in response to complaints by individuals, organisations and other legal persons. I am also authorised to launch investigations on my own initiative, i.e. without anyone submitting a complaint (see section 5 below with regard to such cases in 2010). As Ombudsman, I may issue opinions on the cases I investigate, but I cannot made legally binding decisions. However, the authorities tend to comply with statements of the Ombudsman.

Investigations and reviews may cover not only decisions of the administrative sector, but also the actions of the authorities, their omissions and other matters linked to the activities of the public administration. When the public administration fails to reply to written enquiries, when the processing of a case takes a long time, or when public administrative officials are impolite or insulting, the general public may complain to the Ombudsman. Making a complaint to the Ombudsman is a practical and cheap way of securing a neutral, objective legal investigation and assessment of one's case, or of the problem the member of the public has with the public authorities. My investigations can be a useful, practical alternative to the courts. In addition, it is important that individuals can complain to the Ombudsman at their own initiative, without having to seek expert help, for example from a lawyer.

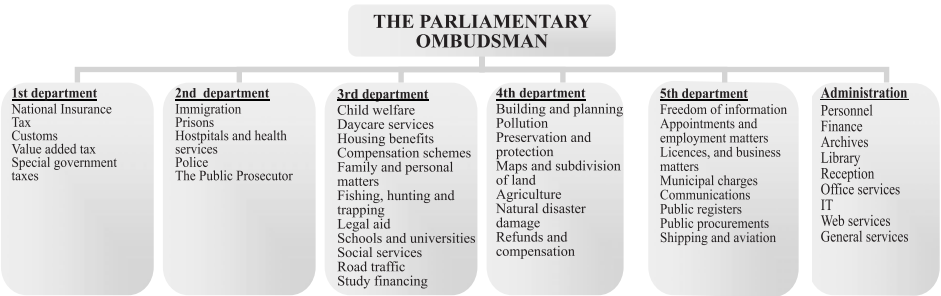
My office comprises 34 lawyers and 12 administrative support staff. The office is divided into five departments, each of which is responsible for particular subject areas. This division into specialist departments allows my heads of department and me to maintain an overview of current cases, and gives us a good basis for prioritising and rationalising our processing of cases.

I review the complaints we receive, and issue opinions all cases that are raised with the public administration. Depending on the circumstances, I also issue opinions in cases which are closed without further investigation.

Photo: Jo Michael

Norwegian Parliamentary Ombudsman Arne Fliflet

Figure 1.1 Overview of departments and specialist areas



2. Complaints in 2010 – the processing of complaints and the results of complaints-processing

In 2010, 2,959 complaints were received. This represents an increase of 264 complaints on 2009, and 490 complaints more than in 2008.

Of the received complaints, 1,462 were dismissed on formal grounds. These dismissals include complaints against bodies, institutions and other independent legal persons that are not part of the public administration and therefore fall outside the Ombudsman system. Another common reason for dismissal is if an appeal or complaint mechanism available through the public administration has not been used, or if the complaint has not been otherwise raised with the public administration earlier. The reason for this is that the Ombudsman's checks are intended to be retrospective, i.e. the administrative sector must first be given an opportunity to process and make a decision on the issue to which the complaint relates. Complaints will also generally be dismissed if they arrive after the deadline for submitting a complaint to the Ombudsman. Complaints must be submitted, at the latest, within one year of the date on which the official act or the matter complained about took place or ceased.

If a complaint can be processed, the first step is to obtain the case documents from the public body in question. The complaint, the case documents submitted by the complainant and the administration's case documents are then reviewed. The purpose of this initial phase is to find out whether there are any indications that errors may have been made or that the complainant has been treated unjustly. It is therefore true to say that all complaints are investigated. However, the content of the complaint and the case documents determines the scope of the investigation and the further processing of the case. Consideration is also given to whether there are sufficient grounds for processing the complaint. Even if an error is identified, it must be sufficiently serious to justify taking the matter further.

Of the cases that were investigated more closely in 2010, 1,079 were closed after a review of the complaint and the case documents submitted by the public administration, and the cases were not otherwise presented to or raised with the administration. In 740 cases, the review of the com-

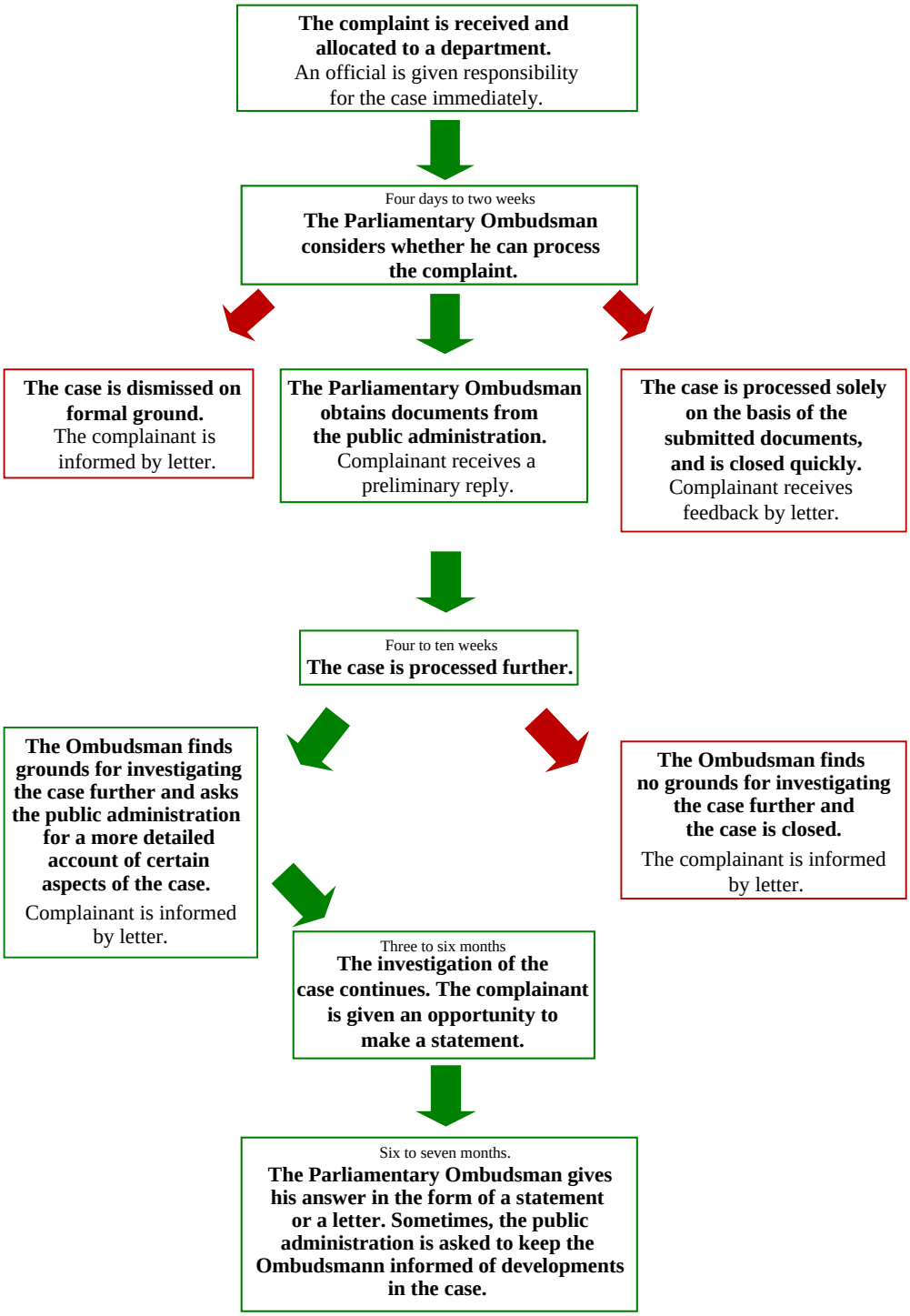
plaint and case documents revealed that the complaint clearly had no chance of succeeding. In the other 339 cases, a telephone call to the public administration was sufficient to settle the matter. These cases primarily concerned long case-processing times or the administration's failure to reply.

Some 155 of the received complaints resulted in some form of criticism or request of the public administration. This number represents a fall from 2009, when 212 cases resulted in criticism or a request of the public administration. Section 10, first paragraph, of the Ombudsman Act states that the Ombudsman "may state his opinion about the case". The Ombudsman may point out that errors have been made in the processing of a case or the application of the law, and state that a decision must be regarded as invalid, clearly unreasonable or in contravention of good administrative practice. Moreover, the Ombudsman may state that compensation should be paid, if the public administration has made errors for which this would be appropriate. It is also important that the Ombudsman can point out when doubt attaches to matters that are important for the decisions which are appealed. Such doubt can relate to both factual and legal matters.

When I believe that errors have been made or an injustice has been committed, I normally ask the public administration to assess or process the matter again. Experience shows that the administrative sector complies with these requests. In addition, the administration normally accepts the views I express. My impression is that the public administration generally complies loyally with the requests of the Ombudsman. When the administrative sector fails to comply with a request, the Ombudsman may advise the member of the public concerned to submit the matter to the courts. The consequences of such a recommendation is that the member of the public becomes entitled to free legal representation; see section 16, first paragraph, sub-paragraph 3, of the Legal Aid Act of 13 June 1980 No. 35. There was one case during the year in which I found reason to recommend legal proceedings.

Chapter IV contains a discussion of cases and topics of general interest taken from my work in 2010. An overview and summaries of all statements published on the internet are included as chapter V of this report. Full versions of the individual statements can be read on www.sivilombudsmannen.no and www.lovdata.no (in Norwegian only).

Figure 2.1 Overview of case processing by the Ombudsman and standard case-processing times.



3. The Ombudsman's access to the case documents of the public administration

The Ombudsman's processing of cases is undertaken in writing, and his investigations are largely based on a review of the public administration's case documents. It is therefore crucial for real, effective checking of the administrative sector that the Ombudsman has access to all relevant case documents. For this reason, the Storting has authorised the Ombudsman, in section 7, first paragraph, of the Ombudsman Act, to obtain from the public administration the documents and information "he requires to carry out his commission". The provision is key to the Ombudsman's activities.

However, access to the administrative sector's documents is limited by the second parargraph of section 7. A reference to chapter 22 of the Dispute Act limits the Ombudsman's right to access the case documents of the public administration under rules which are largely identical to the court rules relating to the exclusion and exemption of evidence. If the Act is read literally, information which is subject to a statutory duty of confidentiality is generally exempt from disclosure to the Ombudsman. The same applies to documents which are classified under the Security Act or the Act of 17 March 1972 No. 3352 relating to the protection of sensitive information (the Protection Decree). Moreover, it is also unclear from the wording of the Act alone to what extent the Ombudsman is unconditionally allowed to access the administration's internal case documents.

A material part of the Ombudsman's work depends on the Ombudsman and his staff being granted access to confidential information in the possession of the public administration. This is largely unproblematic in the case of a duty of confidentiality under the Public Administration Act, as section 13 b, first paragraph, sub-paragraph 4, of the Act states that a duty of confidentiality will not prevent information from being used in connection with "control of the public administration". However, corresponding exceptions are not always found in the confidentiality provisions of specialist legislation, nor for classified documents. The reference to the Dispute Act in section 7, second paragraph, of the Ombudsman Act (and the earlier reference to sections 204–209 of the Civil Procedure Act), have in reality always been more limited in scope and importance than the wording alone might indicate. Naturally enough, this is linked to the obvious differences between the activities of the courts and the Ombudsman (see also the comments in this regard below). However, it is unfortunate that the Ombudsman Act is unclear about the right of the Ombudsman to delivery of documents from the public administration, and at times this creates problems in the Ombudsman's processing of cases.

One example is a case which has previously been discussed in a special report to the Storting (Document No. 4:2 (2008–2009)), concerning a case document held by the Ministry of Petroleum and Energy. In this case, the ministry refused to release a document it had received from the Office of the Attorney General, among other things by reference to the fact that communication with legal representatives may not be submitted as evidence. The wording of the complaint made it impossible for the Ombudsman's office to deal with it without reviewing the document in question. It was only once I had briefed the Storting on the case through the special report that I was granted access to the document. About one year passed from the time my office received the complaint until I gained access to the document in question.

Another example is a case from 2010 involving Innovation Norway (case 2010/

1745), in which I asked for copies of case documents which were confidential under section 27 of the Innovation Norway Act. The Act contains no explicit reference to the exceptions in section 13 b of the Public Administration Act. Innovation Norway referred to the duty of confidentiality and section 7, second paragraph, of the Ombudsman Act, and asserted that the relevant documents could not be released. The Ombudsman argued that the confidential information had to be released, but Innovation Norway nevertheless considered it necessay to obtain the consent of the Ministry of Trade and Industry before releasing the documents in question.

Finally, I have had a case involving the Ministry of the Environment (case 2010/1728) concerning documents classified under the Security Act. By reference to the limitation in section 7, second paragraph, of the Ombudsman Act, the ministry concluded that it could not release the documents in question. In this case too, it was only after several letters passed between the Ombudsman and the ministry, and after the Ministry of the Environment had obtained the consent of the Ministry of Justice and the Police and the Ministry of Defence, that the document could be sent to my office.

As the above examples show, thus far the Ombudsman has generally gained access to the documents he has considered necessary for his processing of complaints. However, this has only happened after a complicated process that has delayed the complaints procedure considerably. In my view, this is a problem from a rule-of-law perspective, and undermines trust in the control exercised by the Ombudsman. There is reason to question as a matter of principle whether the inclusion in the Ombudsman Act of a reference to the grounds for prohibiting and exempting evidence that apply to the courts is justified, given that the court's activities are so different from those of the Ombudsman.

The most important difference in this context is that documentary evidence which is submitted to the ordinary courts in civil cases is normally submitted during an open hearing to which the public has access. Public court proceedings are an important principle in Norway's legal tradition, and strict rules apply to the hearing of cases behind closed doors. Normally, therefore, the public can easily acquaint itself with the documents which are submitted as evidence at a civil hearing. This in turn means that there is a legitimate, objective reason for strict rules regarding when and how confidential information may be submitted to a court.

The administrative documents sent to the Ombudsman are not made available to the public. The Ombudsman's processing of cases is not public in the way that legal proceedings are. The case documents sent by the public administration are not considered to be the Ombudsman's case documents, and are therefore not sent to the complainant or otherwise disclosed without the consent of the public administration. Moreover, the Ombudsman and his staff are subject to a comprehensive duty of confidentiality regarding information which they receive in the course of their duties; see section 9, second paragraph, of the Ombudsman Act. This duty of confidentiality applies not only with regard to the public, but also with regard to the Storting.

It is precisely in cases in which the public administration works in closed rooms, i.e. the cases in which the public has no right of access, that the control exercised by the Ombudsman is particularly important. From this perspective, the legal rules that currently apply to the Ombudsman's entitlement to administrative documents are rather unsatisfactory. I would also like to point out that the Danish Ombudsman legislation, which was the subject of a thorough, comprehensive review as recently as in the 1990s, does not contain any corresponding limitations on the right of the Ombudsman to demand the release

of information by the public administration.

Accordingly, I believe that it would be appropriate to review the wording of section 7 of the Ombudsman Act, and particularly the reference to the Dispute Act in the second paragraph of the section. I have raised this issue on a couple of previous occasions, among other things during the 2006 consultation round connected to the implementation of the Dispute Act. At that time, it was not deemed necessary to revoke the limitation in section 7, second paragraph, of the Ombudsman Act as I proposed, but this conclusion seemed to be based primarily on the argument that such an amendment fell outside the scope of the work on implementing the new Dispute Act.

4. Case-processing times

The time the Ombudsman takes to process cases varies according to the subject matter of the case, the size of the case, and the kinds of investigations that are deemed necessary to secure sufficient case information.

A complainant normally receives a preliminary reply within one week of a complaint being received by the Ombudsman. If the complaint has to be dismissed on formal grounds, this is generally also clarified within a short period of time. If there are reasons for investigating the case in more detail and for raising it with the public administration, some time may pass before the case is closed. This is because the relevant administrative body must be given an opportunity to set out its views on the complaint. The reply of the administration is then sent to the complainant for comments, which the administrative body is then invited to comment on. The processing times of such cases can be long, due both to the need to provide opportunities for both sides to present arguments and to the need to ensure the greatest possible clarity in the case. However, processing times are shorter in cases concerning access to case documents in the possession of the public administration.

In 2010, the Ombudsman's office has introduced a new electronic tool for calculating the average case-processing time for complaints to the Ombudsman. The calculation is based on the total number of cases in the different case categories, and shows the following case-processing times.

Table 1.2 Average case-processing times at the Ombudsman's office

	2010	2009	2008
Dismissed cases	15 days	18 days	17 days
Cases closed *without* being raised with the public administration	39 days	41 days	39 days
Cases closed *after* being raised with the public administration	170 days	197 days	203 days

The table above shows a small drop in case-processing times in 2010, for all three case categories. It is unlikely that the complainants notice the fluctuations, whether positive or negative, in case-processing times expressed by the average figures above. Nevertheless, I am pleased that case-processing times appear unaffected by the increased number of complaints in 2010.

When the electronically calculated figures for 2010 are compared with older, manually calculated figures, there appears to be a marked increase in the time my office takes to process cases. The difference between the manually calculated

case-processing time and the real average must be considered in the context of the two different calculation methods. The figures reported for 2008 and 2009 were based on a limited number of *typical* cases, while the electronically calculated average figure is based on *all* cases.

I expect additional tools for calculating case-processing times to be introduced during the course of 2011. These tools will take into account, for example, that some cases may have a significant effect on the average, and thereby provide a more realistic picture of the case-processing times complainants normally face when dealing with my office. Moreover, we plan to differentiate further between case categories, as "Cases closed *without* being raised with the public administration" are not a uniform group. My office also intends to introduce an electronic tool that is able to show the different case-processing times within each category based on the total number of cases, adjusted for standard deviations.

5. Cases I have taken up on my own initiative

In addition to dealing with complaints by members of the public, the Ombudsman is authorised to take up cases on his own initiative. All cases which are taken up without a preceding complaint are referred to as "ET" cases. My reason for taking up a case on my own initiative is usually that I have become aware, while processing a complaint, of a matter relating to the public administration which may need to be addressed separately. Moreover, if several complaints are received that relate to similar circumstances, it may be more practical to raise the matter with the public administration on a general basis, rather than pursuing each case individually. Information provided by the public, or matters discussed in the media, may also provide reasons for taking up a matter independently without a specific complaint being received. Visits and inspections are classed as matters I take up on my own initiative. During the reporting year 2010, I took up 34 new matters independently. This represents an increase on previous years. Nine of these cases were visits to various administrative bodies which did not result in any further investigation or follow-up. In total, 39 ET cases were closed in 2010. The following ET cases that were closed in 2010 were also published on the internet as cases of general interest, and a summary of these cases has therefore been included in chapter V of this report. At this point, I will only list the case numbers and titles.

Case 2007/2224:	Investigation of the INFOFLYT system used by the Norwegian Correctional Services
Case 2007/2439:	Responsibility for police use of force in connection with arrests, particularly relating to use of the prone position
Case 2008/1966:	Visit to the police's internment facility for foreign nationals in the autumn of 2008
Case 2009/2829:	Work assessment allowance and the introduction of a duty to report
Case 2009/2897:	The rules governing development agreements – the effects of breaches of section 17-4, fifth paragraph, of the 2008 Planning and Building Act
Case 2010/489:	Property tax in Elverum municipality – question whether the valuation of holiday homes in the municipality contravened the applicable valuation provisions and the equality principle of administrative law
Case 2010/632:	Appeals body for universities and university colleges in cases concerning access to documents under the Freedom of Information Act
Case 2010/868:	Closure of schools – municipalities' processing of cases in connection with the decisions and relationship with the rules in the Public Administration Act concerning regulations
Case 2010/946:	The right of users to talk with Norwegian Labour and Welfare Service (NAV) officials

Case 2010/949:	Strand municipality's processing of appeals in cases concerning start-up loans
Case 2010/1516	Recommendation to Halden municipality concerning investigation of possible irregularities
Case 2010/1682:	Case-processing times within the Norwegian Civil Affairs Authority and the police in cases concerning compensation following criminal prosecution
Case 2010/1911:	The Norwegian Labour and Welfare Service's processing time in connection with sending case documents to parties and their representatives

6. Consultation submissions

In 2010, the Ombudsman received 101 requests for comments from the public administration concerning proposals for new or amended regulations. The starting point for the Ombudsman's investigations is the current law, and checking the assessments made by legislators falls outside the Ombudsman's mandate. With the exception of cases which directly concern the Ombudsman institution or matters which the Ombudsman has previously considered, the Ombudsman has therefore as a matter of principle been careful about making consultation submissions relating to legislative proposals. I made three such submissions in 2010.

One of the submissions was made in connection with the recommendations of a working group on the development of legal studies at the University of Oslo, which included a proposal to introduce a module on conflict management and alternative dispute resolution. I wanted to discuss the potential role of the Ombudsman in any new subject of this kind. In my view, the Ombudsman system has a place in this kind of subject, even though private disputes can be resolved through negotiations and amicable solutions much more easily than disputes between private persons and public bodies. I pointed out that the Ombudsman has a wider range of options available to him than the courts, and that complaints-processing by the Ombudsman can be more flexible and smoother than court proceedings. In addition, the Ombudsman's involvement can secure an apology or an explanation by the public administration that satisfies the complainant. I emphasised that, although I believe that the Ombudsman should be included in the new subject, his role should be modest.

The second submission concerned proposed changes to the Compensation for Victims of Violent Crime Act. *First*, the Ministry of Justice and the Police had proposed that the Norwegian Civil Affairs Authority should take over from the Criminal Injuries Compensation Board as the appeals body for cases concerning criminal injuries compensation. The involvement of the board was resulting in somewhat longer case-processing times, and a transfer of decision-making authority to the Norwegian Civil Affairs Authority, which thus far had functioned only as the board's secretariat, would in the ministry's view lead to shorter processing times. I had no objections to the Norwegian Civil Affairs Authority taking over as the appeals body, provided that the Norwegian Civil Affairs Authority had sufficient resources to ensure satisfactory case-processing times and that the new decision-making authority would not result in longer case-processing times in other areas. Several complaints made to the Ombudsman had raised uncertainty in this regard, and I referred to a letter to the Ministry of Justice and the Police concerning case-processing times in cases relating to compensation following criminal prosecution (Ombudsman case 2010/1682). *Second*, in the consultation paper, the ministry had advocated better adaptation of the Compensation for Victims of Violent Crime Act to the "presumption of innocence" in Article 6(2) of the European Convention on Human Rights, to make it easier for the criminal injuries compensation authority to give grounds

for its decisions in a good, suitable manner. I agreed with the proposal, and stated that it was entirely consistent with my recommendations in previous consultation submissions from 2000 and 2005 that the rules relating to criminal injuries compensation should be formulated so that, in cases without a conviction, the public administration is not required to assess whether the harmful act was punishable.

The third submission related to proposed amendments of the Archives Regulations. The consultation paper stated that the proposed amendments were the result of, among other things, my statement included on page 177 of my 2009 annual report (Somb-2009-41). I had made several comments on the proposal that information transmitted by text message should be dealt with in the same way as information communicated in a telephone conversation. The consultation paper stated that the interpretation of the applicable law which I had adopted in my submission "would be difficult to apply in practice". Moreover, it was pointed out that the difficulties associated with organising and complying with such a scheme argued against a duty to archive text messages, These difficulties included the assessment of whether or not each individual SMS is a "case document" that must be archived. The paper also pointed out that distinguishing between text messages that are related to a case in such a manner that they must be archived and text messages that are of no direct relevance to the case and thus do not need to be archived would introduce wide-ranging discretion and challenges with regard to consistent practice. Given the ministry's proposal that text messages should generally be treated as telephone conversations, and the reasons given for this proposal, I saw reason to recall to mind the substance of my earlier statement, included on page 177 of my 2009 annual report (Somb-2009-41). In my statement, I maintained that it is more natural to compare text messages with emails than with telephone conversations, not least because text messages are also written, in contrast to telephone conversations. I also asked whether it was expedient to propose that text messages that are recorded in writing need not be written down word-for-word. Given that an SMS is a written text that both the sender and the recipient have read and acted on, it is important, in order to be able to establish the relevant facts that any written version should be literal, and include any necessary explanatory comments. I also pointed out the importance of archiving in upholding a real, effective principle of freedom of information. Finally, I pointed out that even if the assessment regarding whether or not a text message is a case document can present practical challenges, corresponding assessments are currently made extensively in relation to email correspondence, and that I therefore found it difficult to agree that it would be "almost impossible in practical terms" to undertake corresponding assessments in relation to text messages.

7. Work on international issues and human rights

The Ombudsman's work on human rights and international issues was further strengthened by the appointment of an adviser to provide specialist assistance to the Ombudsman and the Ombudsman staff in this field.

In August 2010, the Ministry of Foreign Affairs appointed a team to review the National Institution for Human Rights at the Norwegian Centre for Human Rights (University of Oslo). The team was tasked with reviewing the function and organisation of the institution, proposing means of strengthening it, and ensuring that the institution complies with the mandate as set out in the "Paris principles". The Ombudsman participated in the review as a member of the National Institution's advisory committee, and had a meeting with the team on 9 December

2010. The team's report will be delivered to the Ministry of Foreign Affairs in 2011.

Participation in the International Ombudsman Institute (IOI) and other international networks

The Ombudsman participates actively in several international networks, including the International Ombudsman Institute (IOI). The IOI was established in 1978, and is a global organisation for cooperation and the exchange of information between Ombudsman institutions. The organisation is based in Vienna, Austria, and has 150 members from 75 different countries.

At the general meeting of the European group of Ombudsman institutions on 5 October 2010, I was elected a member of the board. The general meeting took place during a conference in Barcelona arranged by the Catalan Ombudsman, under the heading, "Europe as an Open Society: A Global and Inclusive Vision of the Migration Phenomenon within our Countries". I participated in a board meeting of the organisation from 16 to 20 October, and hosted a meeting of the European board members in Oslo from 28 to 29 November 2010.

On Tuesday 30 November, the Parliamentary Ombudsman was visited by the Northern Ireland Ombudsman, Dr Tom Frawley (left).

In September 2010, I participated in a seminar in Brussels on "Transparency at the EU level and in the member states", arranged by the European Ombudsman and Transparency International.

I am participating in a cooperation project run by the Council of Europe Commissioner for Human Rights and national human rights structures, i.e. ombudsmen and national human rights institutions. The project is called The Peer-to-Peer Project. The aims of the project include strengthening the national implementation of human rights.

At the invitation of the International Association of Anti-Corruption Authorities (IAACA), one of my staff participated in the 4th IAACA Annual Conference & General Meeting in Macao in November 2010. IAACA was established in 2006, with China as its most important supporter, with the aim of strengthening the implementation of the UN Convention against Corruption, which Norway has ratified. The conference topic was "International Cooperation". In total, some 725 representatives from 140 countries, including Norway and Denmark, attended the conference. The attendees also included 10 international organisations, the Organisation for Economic Co-operation and Development (OECD), the United Nations Office on Drugs and Crime (UNODC) and Transparency International.

The public administration's follow-up of international orders and decisions

Under section 3 of the Ombudsman Act, the Ombudsman's responsibilities include monitoring and checking that the public administration "respects and protects human rights". One aspect of this work is monitoring the public administration's follow-up of judgments against Norway by the European Court of Human Rights (the European Court). This is particularly

relevant in cases where the European Court's decision means that Norwegian legislation or administrative practice has to be amended to prevent similar infringements of the European Convention on Human Rights (ECHR) in future.

In 2010, the European Court gave a judgment in one case against Norway, *Aune v. Norway.* No infringement of the ECHR was found in the case.

Statements of the Ombudsman concerning international human rights norms

Under section 2 of the Human Rights Act, the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention on the Rights of the Child (CRC) apply as Norwegian law. Under section 3, these legal instruments are given priority over other legislation in the event of a conflict. In 2010, I made several statements which touched on Norway's human rights obligations.

Responsibility for the police's use of force in connection with arrests (16 February 2010, case 2007/2439)

Under Article 1 of the ECHR, states are obliged to protect human rights. The right to life is protected by Article 2 of the ECHR and Article 6 of the ICCPR.

Eugene Ejike Obiora died after being arrested by the police in Trondheim on 7 September 2006. I initiated an investigation of the case on my own initiative, with a particular focus on issues relating to responsibility for the police's procedures for using force in connection with arrests and the use of the prone position. Among others, I asked the Ministry of Justice and the Police to state its view as to whether Norway had complied with its obligations under the ECHR with regard to the use of the prone position during arrest, and its obligation to ensure adequate, safe training of Norwegian police officers. At the end of my investigation, I criticised the justice and police authorities for their lack of knowledge about the safety- and health-related risk factors associated with the use of the prone position. Article 2 of the ECHR lays down that the right to life must be protected by law. In my view, the failure to regulate by law the use of the prone position in connection with arrest, and the failure to provide training on the dangers of placing detainees in the prone position, constituted a breach of Norway's human rights obligations. Subsequent to Mr Obiora's death, the Directorate of Police has issued detailed guidelines for the police's use of the prone position, etc., in circular 2007/011, "Neck holds and the prone position in connection with the arrest/taking into custody and transportation of detainees, etc." In addition, a new textbook has been published for use in the police's arrest-techniques training programme, and a project has been started that will study the health risks associated with the police's use of force.

Visit to the police's internment facility for foreign nationals at Trandum (26 March 2010, case 2008/1966)

Article 1 of the ECHR and Article 2 of the ICCPR require states to ensure that all persons who are under a state's jurisdiction are granted the same rights under the conventions. Article 3 of the ECHR and Articles 7 and 10(1) of the ICCPR grant all persons an unalterable right not to be subjected to torture or inhuman or degrading treatment or punishment. This right is elaborated on in the UN Convention Against Torture and the European Convention for the Prevention of Torture.

In 2007, a special report was made to the Storting on circumstances related to the operation of the police's internment facility for foreign nationals at Trandum, based on a visit in 2006. The matter was followed up on by means of a further visit

in October 2008. The visit and the review of the written information obtained provided grounds for further investigations of the following topics: standard of the facilities, system for visits, temporary confiscation of personal property, alternatives to the activity centre and the monitoring routines of the security department. The investigation was completed in 2010. I noted that the equipment and, in particular, the storage facilities, contravened Article 8 of the ECHR relating to the right to respect for a private life. In my statement, I concluded that the physical conditions and the legal safeguards for the internees had been considerably improved since the 2006 visit. However, at the time of the new visit, work remained to be done on achieving full agreement between section 37d of the Immigration Act (section 107 of the current Immigration Act), and the Foreign-national Internment Regulations on the one hand and internal rules and regulations on the other. If the legal guarantees laid down in the legislation are to achieve their purpose, the internal rules and routines at the internment facility must comply with the legislation and its intentions. My impression was that, in some areas, considerations of control and security had outweighed the internees' need for privacy within the constraints of internment. I pointed out that the legislators' expectation that case-by-case assessments will be undertaken cannot be set aside by means of rigid routines and rules in the body of instructions. I asked to be kept informed of the follow-up of my comments by the Police Immigration Service.

Period spent in police cells (14 May 2010, case 2008/1775)

Human rights protection against arbitrary detention is laid down in Article 5 of the ECHR and Article 9 of the ICCPR.

The main rule regarding time spent in police cells is that the arrested person must be transferred from the police cell to prison within 48 hours of being arrested. Exceptions may only be made if this is not practically possible. However, the use of police cells in Norway is not always consistent with these rules, which are set out in the Police Cell Regulations.[1] I have investigated the conditions in police cells on several occasions, and in 2008 I launched a new investigation focused on the time spent in police cells. I completed my investigation in the spring of 2010. I asked the Ministry of Justice and the Police, among other things, to present its views regarding whether the time spent in police cells complies with the rules in the Police Cell Regulations, and whether the system for registering the time spent in police cells is good enough. In my statement at the end of the investigation, I stated that the statistics available on the time inmates spend in police cells were unsatisfactory. Even so, the figures which I have obtained show that the 48-hour deadline for transferring detainees to prison is breached disquietingly often. I stated that I expect the responsible authorities to make active efforts to reduce the number of breaches, and that particular attention will be paid to the total time spent in police cells in this context.

Calculation of additional charge – effect of the presumption of innocence in the ECHR (15 April 2010, case 2008/2261)

The right to a fair trial is protected by Article 6 of the ECHR and Article 14 of the ICCPR. In criminal cases, a number of minimum guarantees have to be satisfied. These include the right to be deemed innocent until the opposite is proven.

In 2010, I dealt with a case which concerned how an additional charge should be calculated when a company had incorrectly deducted input value added tax too early, i.e. before it actually had the right

[1] Section 3-1 of the Regulations of 30 June 2006 No. 749 concerning the use of police cells.

to make the deduction, and the error was discovered by the tax authorities during an audit before the company had had an opportunity to correct the error voluntarily. Additional charges are regarded as penalties for the purposes of the ECHR. I concluded that it was wrong of the tax authorities automatically to calculate the additional charge on the basis of the entire amount which was incorrectly deducted, and that it would instead be most consistent with the presumption of innocence in the ECHR and general proportionality considerations to give the company an opportunity to prove that the error would have been corrected in any event, before it was decided whether to impose an additional charge and, if so, on what basis. I asked the Directorate of Taxes to reconsider the matter.

Citizenship for children – the question of uncertain identity (26 April 2010, case 2009/345)

The rights of children are laid down in the UN Convention on the Rights of the Child. In addition, children have the same rights as adults under the other human rights conventions.

Four Iraqi children were refused Norwegian citizenship, even though their mother had become a Norwegian citizen and two of the children were born in Norway. The reason given was that their identity was regarded as uncertain because of uncertainty about the identity of their father. The question was whether this uncertainty also attached to the children in a manner such that Norwegian citizenship could be refused.

Written warning following publication of an opinion piece (15 April 2010, case 2009/2770)

On 26 April 2010, I stated that the practice of refusing Norwegian citizenship to children where there is doubt about the identity of one of the parents is strict, and can lead to unreasonable outcomes, particularly when the other parent has become a Norwegian citizen. In my view, this practice and the regulations should be amended, and it was therefore positive that the ministry had initiated a legislative review focused on these issues. There were insufficient legal grounds for criticising the result in the four cases covered by the complaint. However, I was in doubt about my assessment in this regard. I stated that a child's best interests must be evaluated in this context in accordance with Article 3 of the UN Convention on the Rights of the Child as in other contexts, and that the evaluation should be highlighted in the statement of reasons. The Immigration Appeals Board has stated that, in response to the Ombudsman's statement, it will amend its practice with regard to giving reasons, and will in future "assess the situation of the child by reference to the Convention on the Rights of the Child in other kinds of cases in which, to date, this has not been practised consistently, including in cases concerning decisions about permanent work or residence permits".

Article 19 of the ICCPR and Article 10 of the ECHR establish the freedom of all persons to state their opinions without interference, and the freedom of expression.

On 15 April 2010, I issued a statement concerning whether an employer was legally entitled to give an employee (A) a written warning based on the fact that he had written an opinion piece and had it published in a newspaper. In my view, there was no doubt that both the efforts made to prevent the publication of A's article in the newspaper and the subsequent written warning infringed A's freedom of expression under Article 100 of the Constitution and Article 10 of the ECHR. The question in the case was whether the infringements were justified, i.e. whether there was a legal basis for limiting A's right to have the article pub-

lished as a newspaper opinion piece. Following a detailed assessment, I concluded that there was no legal basis. Neither the non-statutory duty of loyalty nor any other basis justified an employment-law sanction in the case. Accordingly, there was no need to consider in more detail the balancing of the duty of loyalty on the one hand and A's freedom of expression on the other. The employer was asked to reconsider the matter. After a new assessment, the employer withdrew the warning.

Efforts to strengthen human rights in China

The Ombudsman again made a member of the legal staff with specialist knowledge of the Chinese language and Chinese society available to the Ministry of Foreign Affairs in 2010, in connection with Norwegian efforts to strengthen human rights and the rule of law in China. In addition to acting as liaison between the Chinese and Norwegian authorities, the lawyer in question has a special mandate to work on strengthening the rights of prisoners and detainees. The Ombudsman's office has welcomed several delegations from China in this context.

A delegation from the Supreme People's Procuratorate (SPP) – the Chinese public prosecutor's office – visited Norway on a study trip in April. The topics for the visit were the rights of prisoners and detainees, fundamental human rights under Norwegian and international standards, and the Norwegian Ombudsman system. The trip included a number of visits to and meetings with representatives from Norway's justice sector.

During an official visit from Mr He Guoqiang, Member of the Standing Committee of the Political Bureau/Secretary of the CPC (Communist Party of China) Central Commission for Discipline Inspections, a meeting took place between the Ombudsman and Mr He's representative, Mr Gan Yisheng, the Vice Secretary of the CPC Central Commission for Discipline Inspection. Anti-corruption efforts and various supervisory mechanisms were the main topics of the meeting. After the meeting, the Ombudsman was invited by Mrs Ma Wen, Minister of Supervision, to visit China in 2011 to explore the possibilities for cooperation in the field of anti-corruption efforts in the public sector.

In June, my China specialist had a meeting with China's Prosecutor General, Mr Cao Jianming, Head of the Supreme People's Procuratorate (SPP), and his eight-man delegation. The cooperation between the SPP and the Ombudsman concerning the strengthening of the rights of prisoners/detainees and further developments in this area were key topics at the meeting. Also in June, the Ombudsman hosted a delegation from the Central Institute for Correctional Police (CICP) in China. The CICP has a direct organisational link with the Chinese Ministry of Justice, and is the only university to offer the most advanced training for students who wish to work in the prison service.

In October, the Ombudsman's office welcomed a delegation of journalists, professors and a representative of an NGO. The Nordic welfare model and the Ombudsman's supervisory function were topics during the visit. A short briefing was given on the institution of the Ombudsman, focusing on how the Ombudsman seeks to protect the rights of the public in the national insurance, social and health sectors by processing complaints and initiating independent investigations. There was also more detailed discussion of the principle of freedom of information as an effective means of combating corruption and strengthening good governance. The Ombudsman's office also welcomed three other delegations during 2010, consisting of Chinese lawyers, public prosecutors and other official representatives.

Also in 2010, the Ombudsman and the SPP arranged a joint seminar on the protection of the rights of detainees, including their human rights in the administration of criminal law in China. The backdrop to the seminar was China's ongoing revision of the country's penal code and criminal procedure act. Attention was focused on the independence of courts, judges, the prosecuting authority and defence lawyers, with particular reference being made to the fact that one of the most fundamental rights of detainees is the right to independent and fair legal proceedings (see the ICCPR). China signed the ICCPR in 1998, but has not yet ratified the convention. A presentation was also given on the work done by the Norwegian Ombudsman to protect and strengthen the rights of detainees. The debate was clearly marked by the fact that there are major differences between the Chinese and Norwegian legal systems. In particular, information about the independence and irremovability of judges in Norway triggered many questions from Chinese participants. In total, 125 people attended the seminar.

In cooperation with the Chinese public prosecutor's office, the Ombudsman arranged a seminar on the rights of detainees. The seminar gathered 125 people in Louyang, China from 6 to 9 September 2010.

In addition, this year, the Ombudsman's office again participated in the Norwegian-Chinese human rights dialogue hosted by the Ministry of Foreign Affairs. The topic for this year's working group on the rights of prisoners and detainees was how to protect detainees and prisoners against torture and inhuman or degrading treatment. The working group agreed that the following factors are important for the prevention of torture: 1) inmates' contact with the outside world must be maintained, 2) a confession must not be sufficient to establish guilt in a criminal case, 3) independent bodies must be established that are tasked with supervising police stations and prisons, 4) all allegations of torture must be investigated, 5) those who commit torture must be prosecuted, 6) victims of torture are entitled to compensation, and 7) access should be granted to international supervisory systems.

8. Meetings, visits and lectures

During the 2010 reporting year, my staff and I held meetings with various organisations and public agencies. These meetings allow exchanges of opinions and information, and provide useful insights into the work of the public administration and a better basis for processing the complaints we receive.

My engagements in 2010 included three visits to closed institutions, four visits to other administrative bodies and 11 lecture appointments. I also attended 12 different representational functions outside Norway, and welcomed as many delegations to my office. A summary of my meetings, visits, lectures and trips in 2010 is included as Annex 3 to this report.

On 26 August 2010, the Ombudsman received a Japanese delegation of six members of the Japanese parliament's control committee, led by Japan's ambassador to Norway, Hisao Yamaguchi.

On Wednesday, 15 September 2010, the Ombudsman was visited by the Indian Minister of Rural Development & Minister of Panchayati Raj (local self-governance), Dr Chandra Prakash Joshi, Dr Hemlata Joshi and India's ambassador to Norway, Banbit A. Roy.

9. Organisation and personnel

As at 31 December 2010, the Ombudsman's office encompassed 46 full-time equivalent posts, including the Ombudsman, six heads of department and one head of administration. In the office, 27 full-time equivalent posts were occupied by legal advisers, while the administrative department accounted for 11 posts. In addition, one post is financed by the Ministry of Foreign Affairs, although the person in question is employed by the Ombudsman. The lawyer in question works on Chinese human rights issues, and has been especially tasked with promoting prisoners' rights and acting as a liaison between the Chinese and Norwegian authorities.

The office is divided into five departments. Each department is led by a head of department. Since February 2002, the heads of department have been authorised to close complaints cases that clearly have no chance of succeeding. This is discussed in more detail in the 2002 and 2003 annual reports. This delegation of responsibility has proven to be sensible, and has helped to make the processing of cases more efficient. Procedures have been established that enable me to monitor such cases in order to safeguard the intended personal element of the Ombudsman system. Further, it must be said that the heads of department have been given additional legitimacy in the parliamentary control of the public administration, given that they are appointed by the Storting's Presidium.

This delegation gives the heads of department greater specialist responsibility. They were also given expanded and clearer management responsibility through the reorganisation implemented in the autumn of 2002, when the office was divided into specialist departments. This gave the heads of department more management tasks, both specialist and administrative. I hold regular weekly management meetings with the heads of department and the head of administration. The heads of department are thus involved in all key matters and issues concerning the activities of the Ombudsman's office.

The distribution of the Ombudsman's legal staff across the five specialist departments may also be seen in the staff overview in Annex 2. The overview also shows the composition of the administrative staff and their tasks.

The aim is that the annual case- and workloads of the specialist departments should be as equal as possible from one year to the next. In 2010, some departments had heavier caseloads than normal, due to a large increase in the number of complaints and, in particular, the number of complaints about a lack of answers from an agency. The increased number of cases has made the Ombudsman's office particularly vulnerable in connection with staff illness, transfers to other posts and new appointments. This means that individual employees may at time have excessive caseloads. This affects case-processing times and the scope for engaging in-depth with large, important cases. Vulnerability in connection with staff absence is equally strong in the administrative department, which since 2002 has grown by only one full-time equivalent post, while the legal staff has increased by nine full-time equivalent posts.

The Ombudsman's office updated and professionalised its intranet in 2010. Since 1 October 2010, the case processing and archiving functions of the Ombudsman's office are almost fully electronic. Moreover, updated brochures on the Ombudsman system in Bokmål, Nynorsk, Sami and English can be downloaded from www.sivilombudsmannen.no.

10. Gender equality and anti-discrimination efforts

Annex 2 to the report contains a schematic overview detailing the gender-equality situation in the Ombudsman's office.

Pay

The Ombudsman's office has an appointments structure and applies a pay policy that ensures equal opportunities for all staff members with regard to pay rises and advancement. The legal staff comprises 10 senior advisers (two men and eight women), 12 advisers (six men and six women) and three higher executive officers (two men and one woman).
The administrative staff comprises one senior adviser, three advisers, one head of archives, two higher executive officers and six senior executive officers.

Working hours

The Ombudsman's office has no standardised part-time positions, but reduced working hours are distributed as follows:

	Full-time	Reduced working hours
Legal advisers:		
Women:	11	4
Men:	10	0
Administrative department:		
Women:	9	3
Men:	1	0

	Number of overtime hours
Total	287
Legal advisers:	
Women:	80
Men:	207
Administrative department:	0

Implemented measures

The Ombudsman's office applies a uniform pay policy and appointments structure. An equal gender balance is sought in recruitment. All employees have equal opportunities to expand their expertise. The working-hour rules and their application are designed to allow flexible working by both women and men. This also applies to the availability of leaves of absence for care purposes and career development opportunities.

Ethnicity and disability

Ethnicity and disability pose no barriers in the Ombudsman's office, provided that an applicant holds the correct qualifications.

Planned measures

The Ombudsman's office seeks to take account of gender composition in its recruitment and personnel policies, and to facilitate the recruitment of employees from different backgrounds and employees with disabilities.

II. Statistics

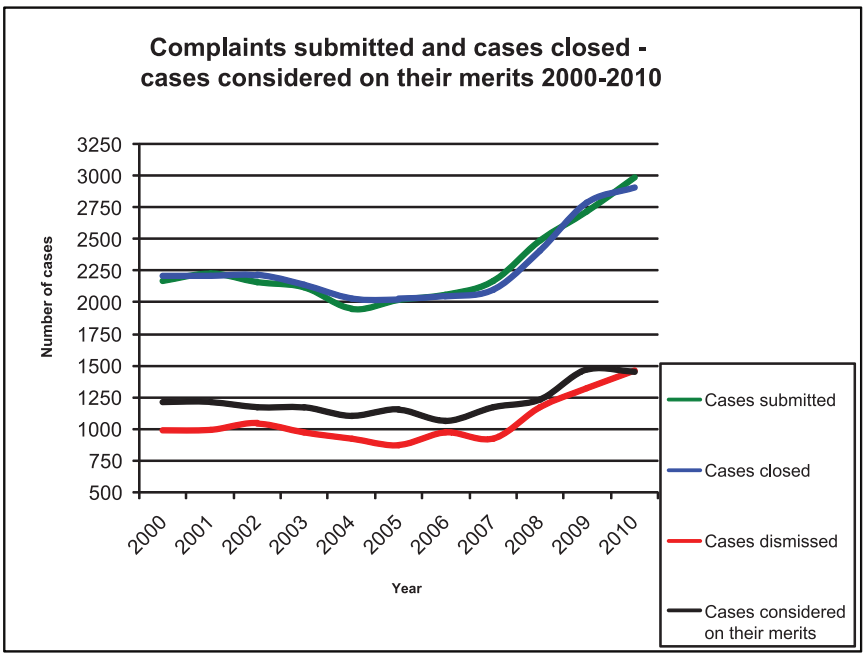
1. Introduction

This chapter presents information on the cases processed by the Ombudsman's office in 2010. The chapter provides an overview of complaints submitted during the year, cases that have been closed, cases still being processed at the end of the year, the outcome of the cases, and the distribution of the cases by location, public agency and subject area.

Figure 1.1 provides an overview of complaints submitted and cases closed, cases dismissed and cases considered on their merits over the last ten years. The statistics on which the diagram is based will be discussed in greater detail later in this chapter.

In addition to the statistics presented in this chapter, 21,517 documents were registered in 2010. Of these, 9,512 were incoming documents and 12,005 were outgoing documents. In addition, approximately 2,040 general telephone enquiries were received. Furthermore, a total of 2,187 requests for access to information were received. Full access was granted in 803 cases and partial access in 128 cases, while 1,256 requests were refused.

Figure 1.1 Complaints submitted and cases closed – cases dismissed and cases considered on their merits 2000-2010



2. Cases dealt with in 2010

The work of the Ombudsman is primarily based on complaints by members of the public. However, the Ombudsman can also take up matters on his own initiative; see section 5 of the Ombudsman Act. Table 2.1 shows the number of complaints received by the Ombudsman in 2010 and the number of cases he took up on his own initiative. The table also shows developments in cases since 2009. Table 2.2 shows the number of cases ((that were)) closed in 2010 and the number of cases still being processed at the end of the year, compared to 2009.

Table 2.1 Total number and type of cases

	2009	2010
Complaints and enquiries	2,695	2,959
Cases taken up on own initiative	25	35
Total	2,720	2,994

Table 2.2 Cases closed and cases still being processed

	2009	2010
Cases closed in 2010	2,788	2,911
Cases still being processed at year-end	430	513

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 their merits. In 2010, around 50% of the complaints to the Ombudsman were dismissed and 50% were considered on their merits.

All cases that are not dismissed on formal grounds are deemed to be considered on their merits. In other words, the Ombudsman has expressed an opinion in the case. Cases in which the complainant's problem has been solved are also registered as cases considered on their merits, as are cases in which the processing has been limited to a preliminary investigation of whether there are "sufficient grounds" for processing the complaint; see section 6, fourth paragraph, of the Ombudsman Act. In these cases, the purpose of the processing will normally only have been to find out whether there is a basis for undertaking further investigations. In such cases, only limited consideration will have been given to the facts of the administrative matter which the complaint concerns. In many cases, investigations are limited to the public administration's processing of the case. Many people complain that public agencies do not reply to their enquiries, or that case processing takes too long. In these cases, a telephone call to the agency concerned is often sufficient.

Table 3.1 shows the relationship between cases dismissed and cases considered on their merits in 2010, compared with the figures for 2009. With regard to cases considered on their merits, the table shows the result of the Ombudsman's involvement in the case. It is impossible to provide a complete overview of the final outcomes of the Ombudsman's processing in terms of the number of complainants for whom an amended decision or compensation, etc. was secured, not least because revised decisions in cases that are re-examined by public agencies are frequently not announced until after the end of the statistical year. However, such information is updated

and published on a continuous basis on the Ombudsman's website (www.sivilombudsmannen.no).

Figure 3.2 shows the reasons for dismissing cases and the percentage-wise distribution of these reasons among the dismissed cases. Figure 3.3 shows the percentage-wise outcome of the cases considered on their merits. Figure 3.4 shows in more detail what the Ombudsman criticised or recommended.

Table 3.1 Distribution of cases dismissed and cases considered on their merits

		2009	2010
	Cases dismissed	1,319	1,462
	Cases considered on their merits	1,469	1,449
1.	Unnecessary to obtain a written statement from the public agency		
	a) Case settled by a telephone call	347	339
	b) The letter of complaint, possibly supplemented by case documents, showed that the complaint could not succeed	710	740
2.	Written statement obtained from the public agency		
	a) Case settled without it being necessary for the Ombudsman to issue a final opinion	74	87
	b) Case closed without criticism or recommendation, i.e. the complaint did not succeed	126	128
	c) Case closed with criticism or a recommendation to reconsider the case and, if relevant, to remedy harmful effects	212	155

Figure 3.2 Cases dismissed (50%)

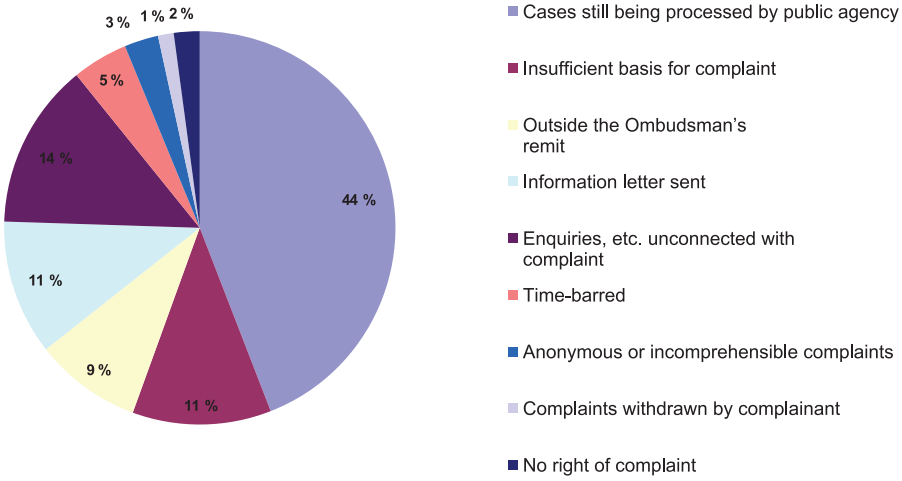


Figure 3.3 Cases considered on their merits (50 %)

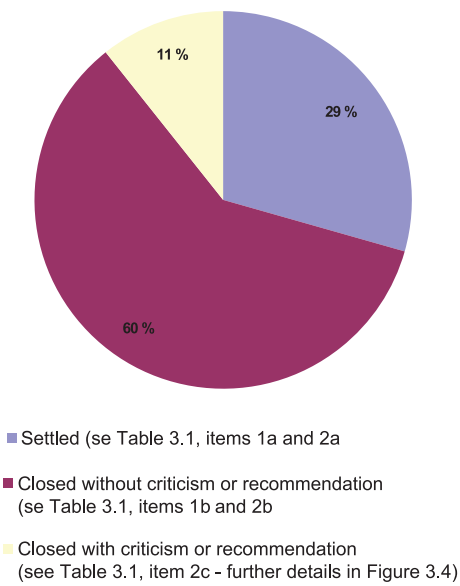
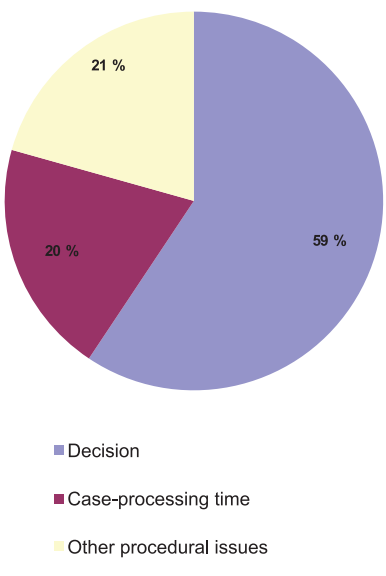


Figure 3.4 Further details of cases closed with criticism or recommendation (11%)



4. Case-processing time

In 2010, the Ombudsman's office introduced an electronic tool for calculating the average case-processing time for complaints submitted to the Ombudsman. The calculation is based on all cases in the different case categories:

– Dismissed cases	15 days
– Cases closed *without* having being taken up with the public agency	39 days
– Cases closed *after* being taken up with the public agency	170 days

5. Distribution of cases based on location, public agency and subject area

Table 5.1 shows the geographical distribution of cases. The vast majority of complaints are submitted by Norwegian citizens living in Norway. However, some complaints are received from Norwegian citizens living abroad or in institutions, such as prisons or psychiatric institutions. Other complaints may be anonymous, or received in the form of an e-mail showing only the e-mail address. These complaints are grouped under "Other" in the table. Tables 5.2 and 5.3 show cases closed in 2010, broken down by public agency and subject area. As can be seen in the tables, the complaints concern agencies at every level of the public administration, i.e. the central government, county and municipal levels. The complaints also encompass many different subject areas and types of case.

Table 5.1 Geographical distribution of complaints

County	Number of complaints	Percentage of complaints	Percentage of total population 01.01.2010
Østfold	152	6.1	5.6
Akershus	269	10.8	11
Oslo	460	18.5	12.1
Hedmark	72	2.9	3.9
Oppland	50	2	3.8
Buskerud	105	4.2	5.3
Vestfold	114	4.6	4.8
Telemark	60	2.4	3.5
Aust-Agder	70	2.8	2.2
Vest-Agder	97	3.9	3.5
Rogaland	166	6.7	8.8
Hordaland	259	10.4	9.8
Sogn og Fjordane	38	1.5	2.2
Møre og Romsdal	84	3.4	5.2
Sør-Trøndelag	138	5.6	6.0

County	Number of complaints	Percentage of complaints	Percentage of total population 01.01.2010
Nord-Trøndelag	43	1.7	2.7
Nordland	128	5.2	4.9
Troms Romsa	110	4.4	3.2
Finnmark Finnmárku	70	2,8	1.5
Svalbard	0	0	0
	2,485	100	100
Others	509		
Total	2,994		

Table 5.2 Distribution of cases by public agency

	Total	Dismissed	Processed
The Office of the Prime Minister	2	2	-
The Ministry of Labour	7	2	5
The Norwegian Labour and Welfare Service (NAV)	548	273	275
The Norwegian Labour Inspection Authority	8	5	3
The Norwegian Public Service Pension Fund	10	3	7
The National Insurance Court	29	11	18
Kommunal landspensjonskasse Mutual Insurance Company	6	3	3
The Norwegian Pension Insurance for Seamen	2	2	-
The Petroleum Safety Authority Norway	1	1	-
The Ministry of Children, Equality and Social Inclusion	2	1	1
The Norwegian Directorate for Children, Youth and Family Affairs	11	3	8
The County Social Welfare Boards	1	1	-
The Consumer Dispute Commission	5	4	1
The Equality and Anti-Discrimination Ombud/Tribunal	1	-	1
The Directorate of Integration and Diversity	1	-	1
The Ministry of Finance	19	8	11
The Financial Supervisory Authority	4	2	2
The Tax Administration (population registers)	144	68	76
The Customs and Excise Authorities	23	11	12
The Norwegian National Collection Agency	9	9	-

	Total	Dismissed	Processed
The Ministry of Fisheries and Coastal Affairs	3	3	-
The Directorate of Fisheries	4	1	3
The Norwegian National Coastal Administration	3	2	1
The Ministry of Government Administration, Reform and Church Affairs	8	4	4
Statsbygg	2	2	-
The Church of Norway	5	2	3
The Ministry of Defence	8	1	7
The Norwegian Armed Forces	6	4	2
The Ministry of Health and Care Services	7	1	6
Control Commissions	5	1	4
The Norwegian System of Compensation to Patients (NPE)/The Patient Injury Compensation Board	17	10	7
The Norwegian Directorate of Health	21	3	18
The Norwegian Board of Health Supervision/county offices	42	11	31
Hospitals and health institutions	35	24	11
Regional Healthcare Enterprises	2	1	1
The Norwegian Government Appeal Board regarding Medical Treatment Abroad	2	1	1
The Norwegian Appeal Board for Health Personnel	3	1	2
HELFO The Norwegian Health Economic Administration	14	5	9
The Norwegian Registration Authority for Health Personnel	3	-	3
The Norwegian Radiation Protection Authority	1	1	-
The Ministry of Justice and the Police	24	10	14
The National Police Directorate	19	9	10
The Norwegian Directorate of Immigration	83	38	45
The Immigration Appeals Board	123	27	96
The Norwegian Correctional Services	91	55	36
The Police and Public Prosecuting Authorities	86	54	32
Law enforcement offices	13	13	-
Courts of law	24	23	1

	Total	Dismissed	Processed
The Secretariat for the Storting's Ex-Gratia Payment Panels	2	2	-
The Norwegian Civil Affairs Authority	18	5	13
The Norwegian Criminal Cases Review Commission	4	1	3
The Supervisory Council for Legal Practice	4	4	-
The Compensation Board for Victims of Violent Crime/ Norwegian Criminal Injuries Compensation Authority	3	2	1
The Directorate for Civil Protection and Emergency Planning	1	1	-
The Ministry of Local Government and Regional Development	6	-	6
The Norwegian State Housing Bank	7	5	2
The Ministry of Culture	6	4	2
The Norwegian Broadcasting Corporation	1	1	-
The Norwegian Gaming and Foundation Authority	3	1	2
The Language Council of Norway	1	1	-
The National Archives of Norway	1	1	-
The Ministry of Education and Research	10	4	6
The Research Council of Norway	1	-	1
The Norwegian State Educational Loan Fund	24	8	16
Universities and university colleges	48	14	34
The Norwegian Directorate for Education and Training	2	2	-
The Ministry of Agriculture and Food	10	3	7
The County Agricultural Boards	14	4	10
The Norwegian Agricultural Authority	7	6	1
The Food Safety Authority/The Animal Welfare Board	16	10	6
The Norwegian Reindeer Husbandry Administration	5	3	2
Statskog SF	1	1	-
The Complaints Board for Milk Quotas	1	-	1
The Ministry of the Environment	17	5	12
The Norwegian Directorate for Nature Management	8	6	2
The Norwegian Climate and Pollution Agency	4	1	3
The Norwegian Mapping Authority	3	2	1
The Directorate for Cultural Heritage	2	2	-

	Total	Dismissed	Processed
The Ministry of Trade and Industry	6	-	6
Innovation Norway	6	4	2
The Norwegian Maritime Directorate	3	1	2
The Brønnøysund Register Centre	5	5	-
The Ministry of Petroleum and Energy	24	7	17
The Norwegian Water Resources and Energy Directorate	10	6	4
The Ministry of Transport and Communications	11	8	3
Jernbaneverket (the Norwegian National Rail Administration)	1	-	1
The NSB Group	1	-	1
The Norwegian Public Roads Administration	31	20	11
The Norwegian Post and Telecommunications Authority	1	-	1
The Civil Aviation Authority – Norway	1	-	1
Avinor	2	1	1
The Ministry of Foreign Affairs	16	13	3
The County Governors	383	135	248
The county administration	37	20	17
The municipal administration	519	300	219
	137	127	10
Total	2,911	1,462	1,449

Table 5.3 Distribution of cases by subject area

	Total	Dismissed	Processed
Working life, education, research, culture, lotteries, copyright, language in the civil service			
Isolated case-processing issues:			
Case-processing time, failure to reply	30	11	19
Freedom of information, duty of confidentiality, access to documents	21	8	13
Legal costs, compensation	3	1	2
Appointments	126	39	87
Employment and service matters	49	24	25
Working environment, safety provisions	12	10	2
Pay guarantee	1	-	1
Other employment matters	9	6	3
Primary schools	33	17	16
Upper secondary education in schools	23	16	17
Upper secondary education in businesses	5	3	2
University colleges and universities	36	14	22
Public certification of professionals	17	8	9
Financing of studies	26	10	16
Education, other	3	2	1
Research	1	-	1
Language in the civil service	3	3	-
Other employment matters, etc.	13	6	7
Health and social services, national insurance, family and personal matters			
Isolated case-processing issues:			
Case-processing time, failure to reply	240	81	159
Freedom of information, duty of confidentiality, access to documents	33	14	19
Legal costs, compensation	7	3	4
The Ombudsman (complaints about)	1	1	-
Approval of offers	5	3	2
Treatment, compulsory measures, complaints about personnel, patient injury	86	47	39

	Total	Dismissed	Processed
Medical records, etc.	12	4	8
Payment for board and lodging, refunds, patient funds	19	9	10
Financial assistance	77	51	26
Social services outside institutions	50	27	23
Health and social services, other	31	23	8
Membership of the National Insurance Scheme	2	1	1
Benefits related to childbirth, adoption and support of children	36	18	18
Unemployment benefits	45	26	19
Sickness benefits	268	107	161
Retirement pension, survivor's pension	37	21	16
War service pension	2	1	1
National insurance, other	44	26	18
Child maintenance, maintenance of spouse	92	45	47
Adoption	7	1	6
Child welfare, care of children	66	49	17
Daycare facilities	8	6	2
Guardianship, provisional guardian	13	8	5
Marriage, separation, divorce	9	6	3
Name-related matters	3	1	2
Family and personal affairs, other	13	10	3
Other	14	8	6
Resource and environmental management, planning and building, expropriation, outdoor recreation			
Isolated case-processing issues:			
Case-processing time, failure to reply	79	25	54
Freedom of information, duty of confidentiality, access to documents	23	11	12
Legal costs, compensation	9	3	6
Energy	29	15	14
Environmental protection	47	24	23
Waste collection, street sweeping	18	6	12
Water supply and drains	23	8	15
Resource and environmental management, other	2	-	2

	Total	Dismissed	Processed
Maps and subdivision	12	8	4
Planning matters	96	54	42
Exemption from plans, shoreline zones	83	27	56
Other building matters	182	77	105
Processing fees	8	3	5
Planning and building, other	23	15	8
Expropriation	8	4	4
Outdoor recreation	2	2	-
Other	9	6	3
Business and industry, communications, regional development fund, the Norwegian State Housing Bank, competition, prices			
Isolated case-processing issues:			
Case-processing time, failure to reply	32	12	20
Freedom of information, duty of confidentiality, access to documents	29	10	19
Fishing, trapping, hunting	19	11	8
Agriculture, forestry, reindeer husbandry	64	33	31
Industry, crafts, trade	7	4	3
Shipping, aviation	11	7	4
Tourism, hotels and restaurants, licensing	4	3	1
Transport licences, motorised transport in uncultivated terrain	8	4	4
Business and industry, other	4	4	-
Transport (roads, railway, ports, airports)	54	30	24
Postal services	4	3	1
Telephone, broadcasting	10	6	4
Road traffic (driver’s licence, parking permits, etc.)	39	23	16
Public transport	2	-	2
Regional development	4	3	1
The Norwegian State Housing Bank, etc.	11	5	6
Competition, prices	4	2	2
Other	13	10	3

	Total	Dismissed	Processed
Taxes, indirect taxes			
Isolated case-processing issues:			
Case-processing time, failure to reply	43	12	31
Freedom of information, duty of confidentiality, access to documents	8	5	3
Assessment of taxable income	77	28	49
Tax remission, tax relief	9	3	6
Taxes, other	93	50	43
Customs and excise	10	4	6
Value added tax, investment tax	20	6	14
Special taxes	18	8	10
Direct and indirect taxes, other	5	3	2
Administration of justice, foundations, immigration matters			
Isolated case-processing issues:			
Case-processing time, failure to reply	105	42	63
Freedom of information, duty of confidentiality, access to documents	20	10	10
Legal costs, compensation	8	2	6
The courts	22	20	2
The prosecuting authority and the police	93	57	36
The Norwegian Correctional Services	94	58	36
Legal aid	26	12	14
Enforcement, debt repayment schemes	20	17	3
Official registration	2	2	-
Public compensation schemes	18	10	8
Administration of justice, other	7	5	2
Foundations	1	1	-
Asylum cases	93	29	64
Visas	4	1	3
Residence and work permits	68	24	44
Expulsion, rejection	14	8	6

	Total	Dismissed	Processed
Citizenship	22	2	20
Immigration, other	15	10	5
Administration of justice, foundations, immigration, other	2	2	-
Public registers, public procurements, public property, the Armed Forces, foreign affairs			
Isolated case-processing issues:			
Case-processing time, failure to reply	8	5	3
Freedom of information, duty of confidentiality, access to documents	21	4	17
Legal costs, compensation	1	1	-
Public registers	16	10	6
Public procurements	3	2	1
Public property	19	12	7
The Armed Forces	6	1	5
Foreign affairs	12	8	4
Other	20	15	5

III. Cases in which the Ombudsman has alerted the public administration to deficiencies in laws, regulations or practice

During my work on complaints and matters which I have taken up on my own initiative, I become aware of deficiencies in laws, regulations and administrative practices. Under section 11 of the Ombudsman Act, I am authorised to inform the public administration of such matters. The intention is for the administrative sector to take action to remedy the matters . Such cases must be detailed in my annual report to the Storting; see section 12, second paragraph, of the directive to the Ombudsman.

A defect in a law or regulation may, for example, be that an individual rule or set of rules contravenes a legal rule at a higher level of legal authority. For example, all laws must be consistent with the Constitution and with Norway's human rights obligations, while regulations must not exceed the bounds set out in the acts adopted by the Storting (the Norwegian Parliament). The Ombudsman may also notify the public administration if provisions at the same level of legal authority do not harmonise well, or if provisions are unclear, for example from a linguistic, legal or content-related perspective.

However, most commonly, I come across cases in which administrative practice and circulars are thought to conflict with applicable legal rules, or in which regulations are applied differently in different branches of the public administration.

The power to give notice of such deficiencies is one example of the Ombudsman's ability to act not only as an investigator of individual cases, but also as a controller of the administrative system. I use the term "system control" to describe the checks I undertake to see whether there are general aspects of the administrative sector that breach standard principles of administrative law and that cause the public administration to fail repeatedly in their interaction with the public, or that present a risk of such failures. In addition to notifying deficiencies under section 11 of the Ombudsman Act, I also exercise my function as system controller through a combination of my powers to take up cases on my own initiative, to conduct systematic investigations, and to notify the Storting of common recurring problems in the public administration.

The systematic, general supervision of the administrative sector is primarily the responsibility of the public administration's own supervisory bodies. (These include municipal supervisory boards, the county governors' supervision of various municipal functions, county and municipal audits, and the centralised specialist supervisory agencies that focus on the activities of public bodies.) Moreover, the Office of the Auditor General of Norway undertakes administrative audits, which include systematic reviews of public administrative matters. The administrative sector is also subject to the Storting's parliamentary control.

The Ombudsman's intended role as a system controller is stated explicitly in Article 75(l) of the Constitution, which states that the Ombudsman shall "assure that no injustice is done" against individual citizens. The wording of the provision indicates that the Ombudsman has a role to play in preventing future injustices against individuals. This was also clearly stated in Recommendation to the Odelsting No. 15 (1979–1980):

> "The committee wishes to emphasise that the Ombudsman has a special function in his position of trust as the Storting's Ombudsman for the public administration. This means that his task, to protect citizens in administrative cases, does not merely mean raising complaints about injustices that may have been committed, but also that he should seek to remedy matters through which injustices may be committed in future. In the committee's view, this will give the Storting better opportunities to exercise control over the activities of the public administration."

During the course of 2010, there were 35 cases in which I asked an administrative body to consider changes or additions to laws or regulations, or to amend an administrative practice. Of these, 26 cases have been published on www.sivilombudsmannen.no/uttalelser.

Below, a summary is provided of all cases in 2010 in which I have pointed out deficiencies in laws, regulations or practice.

Deficiencies in laws

Partial repayment of national insurance benefits paid in arrears in respect of previously paid social benefits

(Case 2009/2874)

In the processing of a complaint regarding the repayment of overpaid national insurance benefits in respect of previously paid social benefits, some general comments were made on the system in closing. The repayment rules under section 5-9 of the Social Welfare Act (now section 26 of the Act relating to social services in NAV), and section 22-7 of the National Insurance Act raise difficult, unresolved questions. Special rules have been adopted on when and how public authorities may demand repayment of national insurance benefits. In several cases considered by the Ombudsman, the public administration has been found not to have followed the procedural rules for such cases. Particular reference was made to Ombudsman case 2007/555, included on page 370 of the 2008 annual report (Somb-2008-95) and Ombudsman case 2008/713. The Norwegian Labour and Welfare Administration was therefore asked to evaluate the regulations with the aim of creating greater clarity with regard both to the formal procedures and to the material consequences if the rules are not followed; see Ombudsman case 2007/555.

The rules governing development agreements – the effects of breaches of section 17-4, fifth paragraph, of the 2008 Planning and Building Act

(Case 2009/2897)

The case concerned the rules governing development agreements. Under section 17-4, fifth paragraph, of the Planning and Building Act of 27 June 2008 No. 71, a municipality may not conclude a binding development agreement relating to an area before the adoption of the land-use part of the municipal master plan relating to the area. The Ombudsman asked the Ministry of Local Government and Regional Development to evaluate what legal effects section 17-4, fifth paragraph, should have, in order to assess the wording of the provision. In the interests of predictability, it might be advisable to indicate more clearly the possible legal effects of the provision.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Wording of section 48, third paragraph, of the Health Personnel Act, relating to the authorisation of health personnel

(Case 2010/102)

Under section 48, third paragraph, of the Health Personnel Act, authorisation is

granted to, among others, health personnel with a foreign qualification which is recognised as being equal to the corresponding Norwegian qualification (sub-paragraph a)), or a foreign qualification which is recognised under an agreement relating to mutual recognition in accordance with section 52 (sub-paragraph b)). Qualifications from EEA countries fall under this alternative. It is clear from the preparatory works to the Act that in the case of applicants with foreign qualifications, the conditions for authorisation are set out in the second paragraph of the Act, "sub-paragraphs b)–d), and the third paragraph"; see page 2 of the ministry's request for comments dated 18 October 2006. However, the Act has not been drafted in a way that states this clearly. From a linguistic perspective, the alternatives in the third paragraph appear to be exhaustive conditions for authorisation. This was pointed out by the Ombudsman in a letter to the Ministry of Health and Care Services.

In its letter in reply, the ministry stated that consideration would be given "to making a technical adjustment to section 48, second and third paragraphs, of the Health Personnel Act in connection with other future legislative work". The ministry stated that the text of the Act should "provide the most comprehensive guidance possible, so as to reduce the need to consult the preparatory works".

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Extended entitlement to upper secondary education of pupils at private schools

(Case 2010/338)

On pages 14–15 of a consultation paper dated 4 November 2008 relating to proposed amendments to the Education Act and the Private Schools Act, and in section 5 of Proposition to the Odelsting No. 55 (2008–2009), the Ministry of Education and Research stated that pupils at private upper secondary schools are not entitled to extended education at a private school. According to the complaint to the Ombudsman, this constituted a change in practice, as such pupils had previously been free to choose whether they wanted to use their entitlement at a state school or at a private school. The Ombudsman concluded that the Ministry of Education and Research's interpretation of section 3-6 of the Private Schools Act (see also section 3-1 of the Education Act), could be questioned, and asked the ministry to reconsider the matter. The ministry was asked in any event to take the initiative to ensure clarification of the law. In a consultation paper dated 19 October 2010, the ministry proposed enshrining the entitlement to an extended period of upper secondary education in the Private Schools Act, thus allowing pupils to make use of the entitlement at a private school and entitling them to the same public subsidy as is paid in the case of state schools.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Deficiencies in regulations

Complaint against refuse collection charges

(Case 2010/385)

Ibestad municipality's waste management regulations applied only to "registered land". The basic principle under the Pollution Control Act is that the municipal waste management scheme must apply to the entire municipality. The scope defined for Ibestad municipality's regulations meant that they could not be enforced in respect of unregistered land.

Decisions by the Norwegian Board of Health Supervision in Oslo and Akershus not to initiate review proceedings – question of the right of appeal

(Cases 2007/1974 and 2007/2102)

Two separate complaints raised the issue of whether a decision by the Norwegian Board of Health Supervision in Oslo and Akershus not to initiate review proceedings amounted to a dismissal within the meaning of section 2, third paragraph, of the Public Administration Act, which could be appealed under section 28 of the same Act. The reason for this was that several complaints had revealed that practice varied with regard to providing information about the right to appeal against such decisions and actually processing appeals. This was unfortunate in view of the objective of ensuring equal treatment and predictable conditions for the public.

The Norwegian Board of Health Supervision in Oslo and Akershus acknowledged that practice had varied somewhat, and wrote that the question "has been the object of discussion within the agency for several years, and the pendulum has swung back and forth somewhat". However, the Norwegian Board of Health Supervision argued that the question of the right to appeal had to be considered resolved by section 2.3 of the Board's 2009 case-processing guidelines. Section 2.3, which contains instructions for the simplified processing of enquiries regarding matters that can be regarded as "trifling" and "clearly baseless", states explicitly that there is no right of appeal "in respect of any of these decisions because these decisions are not individual decisions".

The Ombudsman pointed out that it was unfortunate that the practice of the Norwegian Board of Health Supervision had been inconsistent with regard to the right to appeal against decisions not to initiate review proceedings. In addition, he stated in a letter to the Board that the guidelines did not appear to clarify the issue of the right to appeal in cases in which there are other reasons why a county's board of health supervision does not take an enquiry further, for example because the matter is regarded as "time-barred". In the Ombudsman's view, there might be reason to consider whether the guidelines should be clarified on this point, to ensure consistent practice by the various local boards.

The INFOFLYT system used by the Norwegian Correctional Services

(Case 2007/2274)

The case concerned INFOFLYT, a system for the exchange of information between the Norwegian Correctional Services and the police/prosecuting authority at a central level in cases which are particularly serious and involve a particularly high degree of risk. The system supplements the central computer-based information system "Kompis" (*Kriminalomsorgens produktivitetsfremmende informasjonssystem*), in which a range of information is registered about prisoners who are the responsibility of the Norwegian Correctional Services. The Norwegian Correctional Services undertakes expanded registration in respect of some inmates within the framework of INFOFLYT, primarily to improve security assessments in individual cases. In addition, the police obtain information about inmates. INFOFLYT was established in 2005, and a central, electronic INFOFLYT register has been established which is managed by the central administration of the Norwegian Correctional Services (KSF). The scheme is discussed in circular G-3/2005 of the Ministry of Justice and the Police and KSF circular 2/2005.

The Ombudsman criticised the Ministry of Justice and the Police and the KSF

for having introduced the INFOFLYT system before the privacy-related challenges had been resolved. In a letter of 9 November 2005, the Data Inspectorate stated that the legality of the registrations was doubtful, and requested a number of clarifications. In the Ombudsman's view, it was dramatic that personal data had been processed in INFOFLYT after this point in time without the processing regulations being changed. It took over three years for the Data Inspectorate's letter to be answered, and over four years before a committee was appointed to evaluate INFOFLYT. In addition, the ministry (and the KSF) had already been informed in January 2008 of the Data Inspectorate's conclusion that there was no legal basis for the processing of personal data in Kompis, and that this processing required a licence under the Personal Data Act of 14 April 2000 No. 31. Despite this, it appeared that no changes had been made to INFOFLYT, which is more intrusive in relation to the registered persons.

The committee appointed to evaluate and report on INFOFLYT by the end of 2010 was given a relatively wide mandate. The Ombudsman closed his case in view of the ongoing review.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Death in connection with arrest – responsibility for the police's use of force, particularly use of the prone position

(Case 2007/2439)

No satisfactory procedures had been introduced for the police's use of force in connection with arrests, particularly the use of the prone position. The Ombudsman criticised the justice and police authorities, primarily the National Police Directorate and the Norwegian Police University College, for having had deficient knowledge about the safety- and health-related risk factors associated with the use of the prone position. The use of the prone position during arrest, including the health risks and possibility of resulting death, could and should have been regulated legally. The Ombudsman concluded that the routines for gathering medical and other information related to the techniques used by the police when applying force had to be improved. In the Ombudsman's view, the failure to introduce satisfactory regulations and to ensure satisfactory training of Norwegian police officers amounted to a breach of Norway's human rights obligations.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Requirement for a waste management plan in connection with the construction of buildings in Oslo municipality – decision to impose a coercive fine

(Case 2008/998)

A municipality had adopted the practice of imposing a coercive fine under section 73 of the Pollution Control Act in advance, at the same time as the waste management plan was approved. It was simultaneously stated that the enforcement penalty would not fall due for payment before the final report was submitted. As the municipality took the view that the appeal deadline in respect of the decision to impose a coercive fine began to run when the decision was made, and not when the duty to pay arose, there was no opportunity to appeal against the decision when a payment demand was received. The Ombudsman concluded that the municipality's practice of routinely imposing a coercive fine in advance, before the building works were started, was not consistent with the purpose of the Pollution Control Act, and that the deadline for appealing against the decision should only begin to run when the demand for payment of the coercive fine was received.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Period spent in police cells – general rule regarding transfer to prison within 48 hours, etc.

(Case 2008/1775)

The Ombudsman followed up on earlier investigations concerning the time spent in police cells by detainees (see section 3-1 of the Police Cell Regulations). The provision states that transfer shall occur within 48 hours, unless impossible for practical reasons. The Ombudsman stated that the number of breaches of the deadline nationally remained alarmingly high, and that the available figures were unsatisfactory.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Visit to the police's internment facility for foreign nationals in the autumn of 2008

(Case 2008/1966)

At the time of the Ombudsman's visit to the police's internment facility for foreign nationals at Trandum in the autumn of 2008, there was no full agreement between section 37 d of the Immigration Act of 24 June 1988 No. 64 (section 107 of the Immigration Act of 15 May 2008 No. 35), and the Foreign-national Internment Regulations on the one hand and the internal rules and routines on the other hand. This applied to the rigid visitor controls and protection of the right to privacy, particularly in the case of foreign nationals interned for longer periods. The Ombudsman stated that it remained doubtful whether all of the routines were acceptable from a legal perspective.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Calculation of additional charge – effect of the presumption of innocence in the European Convention on Human Rights

(Case 2008/2261)

The case concerned an additional charge relating to value added tax. The internal guidelines of the Directorate of Taxes stated that if a person liable to pay tax provided information about withheld amounts voluntarily, without his circumstances being investigated and without him having reason to expect that his circumstances would be discovered in any event, the additional charge should be reduced by half, and in special cases be waived entirely, i.e. that the tax authorities' power would not be used. The same guidelines stated that admissions during tax audits, when the tax audit was notified in advance or when the person liable to pay tax had other reasons to expect to be discovered, could generally not be regarded as mitigating circumstances. The Ombudsman queried whether this practice, whereby a notice of inspection was regarded as an absolute deadline which blocked any consideration of how the person liable to pay tax would have acted without the notice, could be continued in view of the presumption of innocence in Article 6(2) of the European Convention on Human Rights.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Residence requirement for stateless persons in the Norwegian Nationality Act

(Case 2008/2790)

Read the full statement on www.sivilombudsmannen.no/uttalelser.The case concerned the immigration authorities' application of the residence requirement relating to stateless persons when considering applications for Norwegian citizenship (see section 16, third sentence, of the Norwegian Nationality Act of 10

June 2005 No. 51). The immigration authorities appeared to apply too strict a standard in assuming that the Act's requirement of residence in the realm with work or residence permits of at least one year's duration for "the last three years" meant that it was impossible to accept any periods without permits (slip-ups) during the three-year period. In closing the case, the Ombudsman pointed out the unfortunate consequences of the practice, and briefed the Ministry of Children, Equality and Social Inclusion about the case.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Citizenship for children – the question of uncertain identity

(Case 2009/345)

Four Iraqi children applied for Norwegian citizenship, but were refused because their father's identity was uncertain. The Ombudsman found that there were insufficient legal grounds for criticising the refusals. However, in the cases, and in several similar complaints, the Immigration Appeals Board had failed expressly to evaluate the applications by reference to the provision in the UN Convention on the Rights of the Child stating that the child's best interests shall be a fundamental consideration. The Ombudsman stated that such an evaluation must be undertaken in this context just like in any other, and that the evaluation should be highlighted in the statement of reasons.

The Immigration Appeals Board subsequently stated that it would in future assess the child's situation by reference to the Convention on the Rights of the Child in cases concerning citizenship and in other cases "in which, to date, this has not been done consistently, including in cases concerning decisions about permanent residence permits".

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Complaint regarding amendment of the AutoPass agreement

(Case 2009/385)

The Ministry of Transport and Communications assumed in a particular case that the price of passing the toll ring in Oslo was "agreed" between Fjellinjen AS and each motorist. In the Ombudsman's view, this was inappropriate, as the price per trip through the toll ring was set by the Storting, and had to be regarded as an rule. The fundamental fact that the Storting sets the prices which apply at any given time should have been pointed out to motorists. Fjellinjen AS is not free to set the price in agreements it concludes with motorists, and it is therefore unfortunate that, in the AutoPass agreement, the price appears to be a contractual term just like any other.

The question of the duty of confidentiality in respect of criminal offences and access to documents

(Case 2009/544)

The case concerned a complaint about a breach of the duty of confidentiality. There was no documentation to show how animal welfare committees processed requests for access to documents, and this hindered the Ombudsman's checks. The Ombudsman stated that an administrative body must have systems in place for retrieving information about the processing of an application for access, including which documents have been released, to whom the documents have been released, and whether the documents were censored (and how, if relevant). The Norwegian Food Safety Authority stated that all enquiries regarding access to documents would now be registered by the district offices of the Norwegian Food Safety Authority, which function as the secretariats for the animal welfare committees, and that all material released in censored form would be archived.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Lack of reply from the Norwegian Directorate of Immigration – application for Norwegian citizenship

(Case 2009/869)

The case concerned the very long time taken to process an application for Norwegian citizenship (over three years at the time of the complaint). The Ombudsman criticised the Norwegian Directorate of Immigration for the lack of information regarding the delay and the failure to reply to the applicant's enquiries. The problem appeared to be a failure in the directorate's procedures for cases requiring various kinds of further clarification (see the discussion of similar cases in the annual report for 2008, from page 220 onwards). The directorate was asked to consider reviewing the portfolio of such cases.

Order to clean up waste – question of a requirement of guilt

(Case 2009/1104)

In a case relating to the cleaning up of waste on a property, the Ombudsman pointed out to the Ministry of the Environment that the wording of guidelines issued by the Climate and Pollution Agency (formerly the SFT) to municipalities regarding "Litter and clean-up of waste" (SFT report 1713/2000), could be misleading when it stated:

> "A landowner who permits waste to remain on his property stores waste, and can be ordered to remove it. Consideration must of course be given to whether he can be blamed for the waste ending up there."

The wording could indicate that a requirement of guilt applied in relation to ordering a clean-up under section 37 of the Pollution Control Act (see also section 28). In a letter to the Ombudsman, the ministry had assumed that such a requirement could *not* be imposed. The Ombudsman asked the ministry to clarify with the Climate and Pollution Agency whether its views differed from those of the ministry on this issue, and whether there was a need to make changes to or clarify the guidelines.

Scope of the Freedom of Information Act – Karmsund Havnevesen IKS (Karmsund Port Authority)

(Case 2009/1203)

The county governor, acting as an appeals body, dismissed a demand for access to the post logbook of Karmsund Port Authority, stating that the port authority was not covered by the Freedom of Information Act of 19 May 2006 No. 16. Given the purpose of the company, and taking into account that the tasks relating to management and the exercise of authority comprised a considerable part of the port authority's activities, the Ombudsman concluded that the port authority was covered by the Freedom of Information Act.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Requirement of real double hearing – case concerning a turn-off from a classified road

(Case 2009/1233)

The Norwegian Public Roads Administration as the road authority and the municipality as the planning authority disagreed about which body should decide an application for a turn-off from a classified road under section 40, second paragraph, of the Roads Act, and numerous letters were exchanged between the Public Roads Administration, the municipality, the county governor and the applicant's lawyer. The county governor took the view that the applicant had to seek both the approval of the road authorities and an exemption or plan alteration under the Planning and

Building Act, and the Ombudsman agreed. The Ombudsman pointed out that in cases in which it is unclear which authority should make a decision, it is important for the authorities to confer and agree on the correct procedure. Those who contact the public administration must be spared being shunted from one agency to another.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Zoning plan – the interests of children and young people

(Case 2009/2016)

The Ombudsman pointed out deficiencies in a municipality's and a county governor's procedures for dealing with cases concerning zoning issues, in the context of safeguarding the interests of children and young people.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

The case is also discussed in chapter IV.

Demand for repayment of incorrectly paid salary

(Case 2009/2194)

The complaint concerned Trondheim municipality's demand for repayment of incorrectly paid salary under the non-statutory principle of *condictio indebiti*. The municipality's processing of the case was poorly documented, and it appeared that no concrete, overall assessment had been carried out in which the arguments for and against repayment were assessed, as required by the principle of *condictio indebiti*.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Question concerning the scope of the Freedom of Information Act

(Case 2009/2282)

The Ministry of Petroleum and Energy took the view that the Freedom of Information Act of 19 May 2006 No. 16 did not apply to documents in the ministry's possession relating to the management of the state's interests in Gassnova SF's CO_2 capture and storage project, and had on several occasions refused access to such documents on the basis of section 1, third paragraph, sub-paragraph f), of the Freedom of Information Regulations of 17 October 2008 No. 1119 (see also section 2, second paragraph, of the Freedom of Information Act). The Ombudsman concluded that the ministry had interpreted the Freedom of Information Regulations incorrectly, and that documents relating to the management of the state's interests in Gassnova SF's CO_2 project fell within the scope of the Freedom of Information Act when they were in the possession of the Ministry of Petroleum and Energy.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Entitlement of inmates to social services and financial benefits

(Case 2009/2726)

In November 2009, based on a complaint, the Ombudsman raised with the Ministry of Labour on a general basis certain matters he assumed to be incorrect in circular I-11/2000, "The responsibility of the Norwegian Correctional Services and the social services for the provision of social services and financial benefits to inmates in prison service facilities, etc." The assumption in the circular that, "[i]nmates in prisons or institutions for preventive custodial supervision may be granted loans for tuition fees, books and materials at the rates used by the Norwegian State Educational Loan Fund" was no longer

correct. The ministry pointed out that as a result of changes in rules in areas outside its area of responsibility, parts of the circular were no longer correct. This had not been realised, and the municipalities had therefore not been informed of necessary adjustments. The adjustments would be made in the new circular on the Act relating to social services in the labour and welfare administration, which was expected to be completed in the summer of 2011.

Lack of information about the supervised practice system for medical candidates with qualifications from certain EU/EEA countries as an alternative to internships (*turnus*)

(Case 2010/102)

In the case of medical candidates with qualifications "from EU/EEA countries in which there is no requirement for practical service after the completion of the medical degree", and in the case of candidates from EU/EEA countries in which such service is required "but the candidate wishes to carry out the practical service in Norway", Norwegian authorisation may not be made conditional upon the completion of internships (*turnus*). This is laid down in a circular issued by the Ministry of Health and Care Services,

I-1/2008. In these cases, the medical candidates may instead choose a system of practice under supervision. However, the Norwegian Registration Authority for Health Personnel (SAFH) and the Ministry of Health and Care Services had not provided information about this system on the relevant websites. On the contrary, on the website www.safh.no, under the tab “Professions/medical practitioners/authorisation” *http://www.safh.no*, it was stated as at January 2010 that medical candidates from EEA countries who had not completed internships (*turnus*) in accordance with section 48, second paragraph, sub-paragraph b), of the Health Personnel Act "must have completed practical service (turnus) in order to obtain Norwegian authorisation. The legal provision is now interpreted to mean that doctors trained in EEA countries must also complete Norwegian internships to obtain authorisation." However, the ministry’s circular was available under the "Legislation" tab. The website of the Ministry of Health and Care Services at www.regjeringen.no referred to the information on the SAFH website.

In response to an enquiry by the Ombudsman, the ministry stated that "updated, adequate information about the new system will be available on the SAFH website by 1 April 2010".

As at August 2010, the SAFH website provided adequate information about supervised practice, under the tab "Professions – Internship. However, the information published under "Professions – Medical practitioner: Authorisation" is still unsatisfactory. The Ombudsman stated that it was extremely unfortunate that web-based information about the new system had been delayed, and that the information remained incorrect. The ministry then asked the SAFH to update its website in accordance with the Ombudsman’s comments.

Requirement of an accompanying driver during practice driving – section 26 of the Road Traffic Act

(Case 2010/327)

When practice driving, a learner must be accompanied by a person who held the right to drive "for an uninterrupted period of at least five years" (see section 26 of the Road Traffic Act and section 3-1 of the Driver Training Regulations).

According to the regulations, the requirement regarding the uninterrupted right to drive applied to the "last" five years, but this was not stated in the Act. In cases in which a driving licence had been withdrawn for health reasons, the Directorate of Public Roads took the view that, in very special cases, it was possible to grant an exemption from the requirement regarding an uninterrupted right to drive, held for the "last" five years. The Ombudsman pointed out that it was unclear how this power of exemption was to be exercised, and stated that it was in the interests of the rule of law and the equal treatment of cases that the Directorate of Public Roads prepare guidelines on the power to grant exemptions.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Property tax – Elverum municipality's valuation of holiday homes

(Case 2010/489)

The case concerned the question of whether Elverum municipality's valuation of holiday homes could be in breach of the valuation provision in section 5 of the Cities and Towns Tax Act of 18 August 1911 No. 9, and the equality principle of administrative law.

Elverum municipality had chosen to apply a reduction factor in valuations, and set this factor at 25%. The correct approach would have been for the valuation used for property-tax purposes to lie 25% below the assumed approximate sale value of each property or, alternatively, the sale value calculated using a set formula. This was not the case for valuations of holiday homes carried out by Elverum municipality. The Ombudsman therefore concluded that Elverum municipality must have misunderstood both the valuation provision in section 5, first paragraph, of the Cities and Towns Tax Act and the Ministry of Finance's many statements concerning the correct interpretation of section 5, first paragraph, of the Cities and Towns Tax Act.

Moreover, the municipality's use of different valuation principles when setting the property-tax valuation for holiday homes, based solely on which principle produced the lowest tax base in each case, also appeared to constitute a clear breach of the equality principle of administrative law.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Complaint against the refusal of an application for an exemption from a waste charge

(Case 2010/500)

This case concerned practice in contravention of the actual-cost principle. Hol municipality used a system that meant that waste charges were imposed in relation to certain properties which were not in fact in use, and which, moreover, could not legally be used. The Ombudsman stated that this practice contravened the actual-cost limitation which applies to the calculation of charges under the Pollution Control Act.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Appeals body for universities and university colleges in cases concerning access to documents under the Freedom of Information Act

(Case 2010/632)

The case concerned the question of which body is the appeals body in cases in which universities and university colleges refuse access to documents based on the Freedom of Information Act. The Ministry of Education and Research assumed that the complaints boards of the uni-

versities and university colleges were the correct appeals bodies, and stated that this was or, if necessary, would be, sufficiently authorised by section 5-1 of the Universities and University Colleges Act. The Ombudsman stated that the question of appeals bodies under the Freedom of Information Act is exclusively regulated by section 32 of the Freedom of Information Act and the associated regulations. Under this provision, the Ministry of Education and Research, as the superior administrative body, is the appeals body. Any change in the appeals system must be made using the regulatory power in section 32, first paragraph, fourth sentence, of the Freedom of Information Act.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Complaint against a decision to increase water rates in Engerdal municipality

(Case 2010/753)

In 2009, Engerdal municipality introduced a new fee scale under which stipulated water consumption was not calculated on the basis of the size of the residence, but rather set equally for all holiday homes. The Ombudsman concluded that the municipality's fee scale did not comply with the applicable rules, which stated that stipulated water consumption for the calculation of annual water rates must be calculated on the basis of the size of the residence. The municipality was asked to reassess the fees imposed for 2009 and 2010 and to amend the scale in accordance with the applicable rules.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Closure of schools – the municipality's processing of cases and the rules in the Public Administration Act concerning regulations

(Case 2010/868)

Several complaints against the closure of schools had a common theme: they raised questions about the case-processing rules relating to regulations contained in the Public Administration Act. The cases showed that Norway's county governors appeared to apply the rules differently when the checking the legality of decisions by municipalities. On his own initiative, and on a general basis, the Ombudsman therefore took up with the Ministry of Education and Research the question of whether and how a municipality must comply with the rules concerning regulations contained in the Public Administration Act when deciding to close schools.

The ministry agreed with the Ombudsman that the county governors' practices were dissimilar, even though it was uncertain whether the difference was due to the matters the Ombudsman had pointed out. The ministry therefore saw reason to ask the Norwegian Directorate for Education and Training to prepare a new circular to replace the old one.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

The case is also discussed in chapter IV.

The right of users to talk with Norwegian Labour and Welfare Service (NAV) officials

(Case 2010/946)

Based on several complaints, the Ombudsman, on his own initiative, took up with the Norwegian Labour and Welfare Service the current practice of shielding decision-making authorities from direct contact with users, asking

whether this complied with the rules in the Public Administration Act stating that a party with objective grounds for doing so should be able to speak to an official from the administrative body dealing with the case. The Ombudsman was not completely satisfied with the agency's reply, and asked it to conduct a critical review of the current practice.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

Strand municipality's processing of complaints in cases concerning start-up loans

(Case 2010/949)

Based on a specific complaint, the Ombudsman raised, on a general basis, certain question relating to Strand municipality's processing of complaints in cases concerning start-up loans. The Ombudsman concluded that the municipality's practices were deficient in several respects, among other things in relation to section 24 of the Public Administration Act concerning the giving of reasons, section 33 of the Public Administration Act concerning case preparation in appeal cases and section 40, third paragraph, of the Local Government Act relating to impartiality.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

A Norwegian Labour and Welfare Service office's procedures for sending preliminary replies to and confirmations of the receipt of email enquiries

(Case 2010/1096)

A lawyer complained to the Ombudsman that she did not receive replies to emails she sent to a local Norwegian Labour and Welfare Service (NAV) office.

When the matter was first raised by the Ombudsman, the office replied that it did not have procedures for providing information about email response times, but that information about response times was provided in connection with applications for benefits and appeals against decisions, as this was obligatory in "these cases".

A further letter from the Ombudsman questioned the legal basis for the office's procedures.

The NAV office then acknowledged that its procedures for sending preliminary replies to and confirmations of the receipt of email enquiries had not accorded with section 11 a of the Public Administration Act or section 6 of the eAdministration Regulations, and stated that it would now comply with the guidelines issued centrally by NAV.

The supervisory responsibility of the county governor in a case concerning daycare – handling of documents

(Case 2010/1458)

A municipality returned a letter containing additional information from applicants for a change of daycare facility. A summary of the letter was registered in the municipality's electronic case-management system. The reason given by the municipality was that the case-management system had a maximum capacity of 100 characters, and that the municipality did not store such documents it received in writing. The case was raised with the county governor who, like the Ombudsman, stated that the municipality was obliged to preserve a complete copy of the letter. Failing to preserve received documents is not consistent with proper administrative handling procedures.

Read the full statement on www.sivilombudsmannen.no/uttalelser.

The Norwegian Labour and Welfare Service's processing time in connection with sending case documents to parties and their representatives

(Case 2010/1911)

The Norwegian Labour and Welfare Service's processing time in connection with sending case documents to parties and their representatives was raised with the Norwegian Labour and Welfare Service on a general basis. The agency acknowledged that it had experienced difficulties in sending case documents within a satisfactory period, and described several measures intended to ensure better follow-up of these cases.

Read the full opinion on www.sivilombudsmannen.no/uttalelser.

IV. Recurring problems in the public administration's treatment of the public

Introduction

According to section 12 of the directive to the Ombudsman, my annual report must contain "a summary of the processing of the individual cases which the Ombudsman believes to be of general interest".

In previous reports, I have reproduced my statements in full. This year, I have decided not to do so, as the statements can be read on or downloaded from the Ombudsman website, www.sivilombudsmannen.no. The statements can also be found on www.lovdata.no. Referring to these websites has the advantage that readers can access continually updated versions of my statements which include the administrative sector's follow-up as it takes place. In the interests of clarity, I have included a summary of all of the statements published on the internet in chapter V of this year's report.

I do not publish all of my statements on the Ombudsman website. The guiding principles for whether a case is published is whether the case is considered representative of the type of case, whether it is relevant as an example of a procedural error, whether the case illustrates a particular principle or clarifies a point of law, and whether the case deals with issues related to the legal rights of individuals. My impression, based on my general contact with the public administrative sector through meetings and visits to institutions, is that the cases that are published are representative in view of the criteria outlined above. The cases are usually anonymised. This is done both to comply with confidentiality rules and to protect complainants. Cases which are of a particularly private or personal nature, and which cannot be anonymised sufficiently, are not published.

In the processing of individual complaints, the focus is often on the public administration's application of the relevant legal rules. My investigations also provide an insight into how the administrative sector processes cases. It is important that the work done by the public administration on a case before a decision is made complies with the rules for proper processing and good administrative practice. Cases must be processed properly and actively, and with an open attitude. The party involved must be given information that is important in the case, and the opportunity to comment on the findings.

My work on individual cases, along with my contact with the public administration, gives me a platform for communicating my general impressions about the case-processing work and other activities of the administrative sector. There is a danger that these impressions may be somewhat distorted by my work on individual cases, which after all are based on situations in which members of the public feel that they have been wrongly and unjustly treated.

In this chapter, I would like to point out certain matters which require further comment in view of my work on last year's complaints. I also describe some measures which I believe should be considered in order to remedy undesirable circumstances. This type of general review of my impressions provides an opportunity to consider the complaints in context – also those complaints which did not result in further investigation by me – and to point out trends in the nature of complaints and other matters of which I have become aware, but which are not necessarily discussed in the published statements. Wherever a published

statement can shed further light on a topic, this is pointed out.

Expectations of the public administration

In many cases, I find that the complainants have expectations of the public administration that cannot be met. There are several reasons for this gap between expectations and reality.

Many complainants are in a difficult situation. Dealing with an unfamiliar public body can be taxing, alienating and a little frightening. In addition, a case may have a decisive impact on the complainant's future life, as in an immigration case. In other cases, such as maintenance cases, building cases, licensing cases or personnel cases, the encounter with the public administration can be felt to be absolutely crucial. This can create unrealistic expectations regarding the processing of the case by the public administration. For a municipality or directorate, however, the case may be just one of many in the course of a hectic workday. Another reason may be that the administrative sector itself, in the information it provides, communicates aims which do not provide a realistic picture of actual conditions.

"My experience from dealing with complaints is that the public administration in Norway generally functions well. Nevertheless, there is clear room for improvement..."

The public administration needs to deal with the gap between expectations and reality, even though doing so can be demanding. My experience from dealing with complaints is that the public administration in Norway generally functions well. Nevertheless, there is clear room for improvement in some parts of the administrative sector. Overall, there are also many well-founded, reasonable expectations that are not met. Upon closer examination, minor procedural errors are found relatively frequently, such as a failure to confirm that an application has been received, or excessive processing times. However, there is seldom reason to believe that the errors have resulted in an incorrect decision, and thus seldom reason to criticise the outcome of a case on legal grounds.

I have divided the discussion below into three expectations, respectively focused on the processing time, the procedure and the decision.

Expectations regarding the processing of a case

In addition to an expectation that a case will be processed within a reasonable period of time, members of the public have views on how the administrative process should be. Sometimes, the public has unrealistic expectations that exceed the administrative sector's legal obligations. An entitlement to guidance does not necessarily mean that all questions that are asked must also be answered. Even though the Public Administration Act adopts the principle that a party must be given the opportunity to talk to an official, there are limits to this entitlement. Moreover, it not necessarily the case that all unclear matters in a case must be clarified; it is impossible to turn over every rock in every case. This can be difficult to communicate well, both for the public administration and for the Ombudsman.

"Sometimes, the public has unrealistic expectations that exceed the administrative sector's legal obligations."

Expectations regarding the decision

It is natural to be disappointed or frustrated when an application is refused or an appeal is unsuccessful. The same applies when onerous conditions are imposed, or when the public administration makes a decision that intervenes in someone's personal life. Such cases may involve everything from the refusal of an application for financial help or some other public benefit to a custodial decision or a decision to isolate someone in a psychiatric or correctional institution.

"The Ombudsman must base his decisions on the applicable laws, and the processing of complaints will often have an educational purpose: 'Yes, the rules really are like this'... If the rules have been properly applied, there is little else the Ombudsman can do."

Disappointment or frustration may often relate to the rules themselves. 'Is it really true that my neighbour can build an extension that bothers me, or that a building application can be refused because the building is not "pretty" enough?' 'Is it really true that a patient and his or her relatives are not party to, and cannot appeal against, the decision of the Norwegian Board of Health Supervision in a supervisory review?' 'And is it really true that I can be refused legal aid in this important case?' The Ombudsman must base his decisions on the applicable laws, and the processing of complaints will often have an educational purpose: 'Yes, the rules really are like this'. If necessary, the Ombudsman can highlight the rules to make it easier to understand the decision and the tasks of the public administration. If the rules have been properly applied, there little else the Ombudsman can do. Disagreement with the content of the rules must primarily be followed up through channels like politicians and the media.

It seems to be a sign of the times that the expectations the general public has of public authorities have generally increased. Not least, there appear to be considerable expectations of the welfare state. However, being heard is not the same thing as winning one's case. For example, it can be difficult to accept that patients have limited rights to treatment abroad at the state's expense, or to refunds of the costs of private treatment. The enshrining of various rights in law and society's general focus on rights may have contributed to this trend.

I would like to highlight the provision of the Social Services Act relating to user participation as an example of tension arising between the legislative text, and thus the expectations of the public, and the actual state of the law. Many people are granted rights under the Social Services Act, on the grounds of age, disability and heavy care responsibilities. Services such as practical assistance at home may be provided, for example through user-steered personal assistance, relief measures, care benefit, support persons or a place in an institution. The municipality decides what kind of service is to be provided, and the municipality's decision can be appealed to the county governor. If the applicant remains dissatisfied after the county governor has considered the case, the matter may be submitted to the Ombudsman. The Ombudsman receives a good number of such complaints.

People complain that the municipality fails to take account of their opinion regarding the kind of service that should be provided. For example, they would prefer extensive help at home to a place in an institution. They argue that they know what is best for them or for the family member that requires help. The user-participation provision of the Social Services Act reads as follows:

> "The service offered shall, insofar as possible, be designed in cooperation with the client. Great weight shall be given to the opinion of the client."

Many people interpret this as a right for the client to select a service. However, in practice, the Social Services Act is interpreted to mean that the municipality must undertake an overall evaluation of the services on offer. In addition to the user's needs and wishes, account is taken of specialist assessments, the municipality's resources, and the overall distribution of services among entitled persons in the municipality. In other words, the factors of finances and equal treatment also play a strong role. The result of this discretionary assessment may therefore often be somewhat different from what the client or his or her relatives believe to be best. To many people, it seems that no account has been taken of what they have said.

Differential treatment

In my view, comparing oneself to others, whether those who are in the same situation or those who have more, is a natural part of living in a society. The idea that the authorities should distribute collective benefits, and collective burdens, fairly is a well-established part of the general public's sense of justice. It is the job of politicians to decide what constitutes a fair distribution, but the legislative authorities have in many areas given the public administration discretionary power to decide the distribution. The price we pay for giving people discretionary power is that complete consistency can never be achieved.

The public administration is nevertheless required to seek to treat all cases in the same way. This ideal has not been expressed generally in the Public Administration Act, but has been safeguarded through the non-statutory rule prohibiting arbitrary differential treatment. It is important to emphasise that the prohibition is directed at *arbitrary* differential treatment, not all differential treatment.

Comparisons of cases will only be relevant if they are relatively similar with regard to both the facts and the legal issues involved. In many areas in which the public administration is tasked with undertaking wide-ranging discretionary assessments, it is difficult to make this kind of comparison. Moreover, equal treatment does not necessarily mean that a party is entitled to the same result in his or her case as in some other comparable case. The Norwegian Supreme Case stated the following in this regard in the case reported in the Supreme Court Reports 1983, on page 1290:

> "[T]he fact that some applicants – as may seem to be the case – have been granted more favourable treatment, perhaps on a weak basis, than has been given to A is insufficient to conclude that he has been subjected to arbitrary differential treatment."

In *case 2010/868*, the Ombudsman drew the Ministry of Education and Research's attention to the fact that Norway's county governors appeared to apply different interpretations of the procedural rules relating to school closures when checking the legality of municipalities' decisions. The Ombudsman had become aware of this through several complaints from individuals. The ministry agreed with the Ombudsman, and saw reason to ask the Norwegian Directorate for Education and Training to prepare a new circular.

Below, I discuss how the issue of differential treatment characterises the complaints I receive concerning building matters and cases relating to tax and tax assessment.

The public administration's duty to provide information and guidance

Under the Public Administration Act, administrative bodies have a general duty to inform and provide guidance to the public within their area of expertise. The aim is to enable parties to cases and others who are interested to safeguard their interests as well as possible. The guidance given to parties in cases processed by a public body must relate to the applicable legal rules, common practice in the specialist field, or procedural rules, particularly with regard to the rights and obligations of parties under the Public Administration Act. This may apply, for example, to the right of access to case documents, the opportunity to have one's costs covered, and the right of appeal. Guidance is free, and may be provided orally or in writing.

"The risk of a failure in an individual case appears to be greatest in the case of an administrative body which rarely makes decisions of the type in question."

Deficient information and guidance are a common cause of complaints to the Ombudsman, and a topic which is often raised with the public administration. The complaints usually relate to alleged failures in individual cases, but also focus on failures linked to general information or forms and standard templates. One example of the latter was unfortunate wording in the standard text of waivers of prosecution, which wrongly gave the impression that the case had been closed with final effect. However, a waiver of prosecution can be reversed on appeal, and this is now stated in the text, as suggested by the Ombudsman.

The risk of a failure in an individual case appears to be greatest in the case of an administrative body which rarely makes decisions of the type in question. For example, small municipalities relatively rarely announce and award operating grants to general medical practitioners and private physiotherapists. The municipalities may therefore not know the rules well enough, and may fail to inform parties about their right of appeal or other matters. Cases concerning prison inmates' access to case documents can also be mentioned in this context. In this regard, I have seen examples of deficient information about inmates' right of appeal, which may be explained by prisons' lack of experience of and familiarity with the rules governing access.

"Meeting the needs of individuals within a limited resources framework is a constant challenge for public bodies."

According to the Act, the scope of the duty to provide guidance must be adapted to the situation and capacity of the administrative body in question. However, the scope must also be adapted to the needs of the individual member of the public or group. Foreign nationals with a poor knowledge of Norwegian and little familiarity with Norwegian society will often have a great need for good, clear information and guidance. The same applies to other vulnerable groups which cannot easily inform themselves for health-related or other reasons. Meeting the needs of individuals within a limited resources framework is a constant challenge for public bodies.

Members of the public may require information and guidance in connection with the refusal of an application. However, this may also apply when a permit is granted. This will often be the case in immigration cases with regard to the effect of the permit (residence permit, visa, citizenship). It is nevertheless

important that the information is correct and adequate, which may be a challenge if the rules are detailed or complicated. As a minimum, the information must not be misleading, which I have also observed in some cases in this field. Deficient information can be worse than no information.

Our electronic reality of web-based administration offers new opportunities for reaching out to the public. Rules, practice and other sources of knowledge are much more available now than just a few years ago, and good information can be provided without imposing significant costs on the public administration. This may also be necessary in areas involving frequent changes to rules and procedures and an extensive need for information on the part of the public. For example, the Norwegian Directorate of Immigration invests considerable effort in providing general information on the websites www.udi.no and www.udiregelverk.no, also in languages other than Norwegian. The information includes case-processing times in different areas, which are updated regularly. These are positive administrative trends.

However, the use of electronic information also offers new challenges. It is very important that web-based public information is correct. Therefore, when changes are made to rules or practices, information must be updated quickly. If information is spread via different websites, changes must be implemented everywhere. Links and references between public websites mean that information – including out-of-date and incorrect information – is spread rapidly. Maintenance of the information on the websites of the public administration must therefore be given priority.

V. Overview of cases of general interest in 2010

Introduction

Under section 12 of the Directive to the Ombudsman, the annual report must include "an overview of the processing of the cases which the Ombudsman considers to be of general interest." Cases are selected for inclusion in this report on the basis of whether a case is regarded as representative of a specific type of case, whether it is a relevant example of an administrative error, whether the case involves questions of principle and serves to clarify legal issues, and whether the case concerns issues relating to the legal rights of individuals.

The cases have largely been anonymised, partly due to the provisions regarding the duty of confidentiality and partly out of regard for the complainants. Since summaries of the cases are published and made available to the general public, the names of the complainants are always omitted. Cases which are of a particularly private or personal nature and which cannot be adequately anonymised are not included in the report.

The cases below are cited by title and introductory description. The cases are also published on a continuous basis on the Ombudsman's website, www.sivilombudsmannen.no, and posted in their entirety on Lovdata, www.lovdata.no, once a year.

My ongoing work on individual cases and my contact with the public administration give me a general impression of the public authorities' administrative procedures and activities. There is a risk that my work on individual cases may give a distorted impression of the way the public administration generally deals with matters. After all, the complaints arise from situations where citizens feel that they have been wrongly and unjustly treated. In the light of the contact that I otherwise have with the administrative authorities in the form of visits and inspections, it is my impression that the cases I have included in this report are representative, based on the above criteria.

General administrative law

Fee for dredging – duty to provide guidance and impartiality

22 December 2010 (Case 2009/2869)

The owners of a recreational property intended to dredge the area in front of a private dock, and were charged a fee for a permit for vessel-based dredging. Land-based dredging and vessel-based dredging were governed by different sets of regulations. Dredging from a vessel always required a permit, and thus a fee, while decisions regarding dredging from land were based on a case-by-case assessment. The complainants felt that they should have been given this information, so that they could have avoided a fee by instead applying for permission to dredge from land. They further argued that an official who had facilitated the processing of the case was disqualified due to partiality.

The Ombudsman concluded that the county governor had not fulfilled his duty to provide guidance. He therefore requested that the case be reconsidered, so as to put the complainants in the position in which they would have been if the case had been processed correctly. The Ombudsman stated that, in general, the threshold for disqualification due to partiality must be low when the person dealing with the case is cohabiting in a marriage-

like relationship with one of the parties to the case.

The time taken by the Norwegian Labour and Welfare Service to send case documents to parties and their representatives

13 December 2010 (Case 2010/1911)

The time taken by the Norwegian Labour and Welfare Service to send case documents to parties and their representatives was raised with the Directorate of Labour and Welfare on a general basis. The directorate acknowledged that the welfare service had experienced difficulties in meeting the requests of parties and their representatives for case documents within a satisfactory period, and described several measures intended to ensure better follow-up of these cases. The Ombudsman stated that requests for access to documents should in principle be processed within two weeks, and that the parties or their representatives should receive a preliminary reply if the documents could not be sent by this deadline.

The Ombudsman stated that the measures would presumably help to shorten the processing time for cases regarding parties' access to documents, compared to the past few years. With reference to earlier statements, the Ombudsman noted that the time limit of two weeks that had now been set probably could and should be reduced gradually as more and more case documents are archived electronically.

The Norwegian Labour and Welfare Service's processing time and procedures for sending preliminary replies – cases regarding contractual early retirement pensions and retirement pensions

20 November 2010 (Case 2010/1290)

In connection with the processing of a complaint about the long processing time for applications for a contractual early retirement pension, it became apparent that the Norwegian Labour and Welfare Service (NAV) routinely made decisions regarding the granting of contractual early retirement pensions and retirement pensions in the three months before the pensions were to become effective.

The Ombudsman stated that the requirement laid down in section 21-10, first paragraph, of the National Insurance Act and section 11 a, first paragraph, of the Public Administration Act, to the effect that decisions must be made "without undue delay", did not prevent cases from being dealt with in a different order than that in which they were received, if this was warranted by objective and sufficiently weighty grounds. However, it would only be acceptable to process applications based on the date the pension would become effective, rather than the application date, if persons who applied in good time were informed of the time required for processing and, as far as possible, were given sufficient guidance to meet their information needs.

Health personnel's breach of the duty of confidentiality in connection with sending a patient file to the Norwegian Medical Association's Medical Ethics Council

27 October 2010 (Case 2009/187)

The case concerned the assessment by the Hordaland office of the Norwegian Board of Health Supervision of whether a doctor had breached his duty of professional secrecy by sending a patient file to the Norwegian Medical Association's Medical Ethics Council. The file was sent in connection with a complaint made by the patient to the Council, and the Norwegian Board of Health Supervision found that the complaint had to be interpreted as tacit consent that the file could be sent ((there)).

The Ombudsman stated that, in submitting a complaint to the Medical Ethics Council, the patient had to be deemed to have given tacit consent to the health personnel concerned making a statement containing their views on the circumstances raised with the Council. However, the complaint in itself could not be regarded as consent to the sending of the patient's file. Special grounds must apply if a complaint is to be interpreted as consent. The Ombudsman could not see that there were any such grounds in this case, and asked the Norwegian Board of Health Supervision to reconsider the matter.

Dismissal of application – legal effects of an administrative decision

18 October 2010 (Case 2010/14)

This statement concerned a decision to dismiss an application to partition off three lots in an area allocated to agriculture, nature or recreation in the land-use part of the municipal master plan. After considering the appeal against this decision, the county governor upheld the municipal authorities' dismissal on the grounds that the appellant had applied for a similar permit a short time before. On that occasion, the application was refused, but the refusal was not appealed.

The Ombudsman concluded that the municipality had no legal grounds for refusing the new application. Despite the fact that the application concerned the same matter as, and had been submitted shortly after, the first application, it should have been considered on its own merits. The material issues in the case had not been considered by two bodies, and the application was not intended to harass.

The county governor took due note of the Ombudsman's statement, and reversed his decision on the appeal. He also revoked the municipality's refusal and asked the municipality to process the appellant's application.

Covert sound recordings as documentation in a case regarding the rectification and erasure of patient file data

7 October 2010 (Case 2009/167)

This case primarily concerned the issue of whether the Norwegian Board of Health Supervision was obliged to take covert sound recordings into consideration in a case regarding the rectification and erasure of data in a patient file. A and B brought a case of this nature before the Norwegian Board of Health Supervision in Hordaland County, and wanted to submit covertly made sound recordings in support of their arguments. The Board did not wish to have the recordings sent to it, and did not consider the importance of the recordings. Nor did the Norwegian Board of Health Supervision centrally make any decision about the use of the sound recordings in the case in question.

The Ombudsman found reason to criticise the way in which the Norwegian Board of Health Supervision, both in Hordaland County and centrally, had dealt with the case. The fact that the sound recordings were not taken into consideration constituted a breach of the Public Administration Act's requirement that cases must be clarified as much as possible before a decision is made. Furthermore, the decision on the case did not appear to satisfy the requirements of the Public Administration Act relating to the giving of reasons. Although it was positive that the Norwegian Board of Health Supervision centrally eventually considered the specifics of the case and concluded that the recordings should have been taken into account, the Ombudsman was of the opinion that it should have reacted earlier to the way the county board had dealt with the case. The Ombudsman concluded that, due to the procedural errors, the decision of the Norwegian Board of Health Supervision in Hordaland County had to be regarded as invalid, and therefore requested that the case be reconsidered.

Legal right of appeal for a cottage owner association

29 September 2010 (Case 2010/1406)

This case concerned the question of whether a special-interest organisation had a legal right of appeal. Midtre Syndin Cottage Owner Association appealed against the municipality's consent to the levying of a road toll on the private road used by the association's members to access their cottages. The appeal was dismissed because, in the municipality's view, the association did not have a legal right of appeal.

The Ombudsman concluded that the association had a legal right of appeal. The system that requires municipal consent for road tolls on private roads was established precisely to protect those who use the road. The cottage owner association was a logical representative of the cottage owners' interests in this case, and it was reasonable that the association should be able to appeal the decision to grant consent. Therefore, the appeal had to be considered.

Following the issue of the Ombudsman's statement, the municipality considered the appeal of the cottage owner association on its merits.

Administrative costs – revocation of a dismissal decision in a case concerning a decision to impose an accumulating coercive fine

29 September 2010 (Case 2009/848)

This case concerned a claim for payment of legal costs under section 36 of the Public Administration Act related to a decision to impose an accumulating coercive fine under section 39, first paragraph, of the Fire and Explosion Prevention Act.

The Ombudsman concluded that, as the fire and rescue service had revoked a dismissal, an individual decision had been amended in favour of the party concerned. He therefore asked the Board of the Trøndelag Fire and Rescue Service IKS to reconsider the question of legal costs.

Strand municipality's processing of appeals in cases regarding start-up loans

23 September 2010 (Case 2010/949)

In the light of a specific appeal case, certain questions related to Strand municipality's processing of appeals in cases regarding start-up loans were raised on a general basis.

The Ombudsman had several objections to the municipality's procedures for processing appeals, and asked the municipality to change these procedures to bring them into line with the Public Administration Act, the Local Government Act and good administrative practice.

The municipality agreed, and took due note of the Ombudsman's statement. In a letter to the Ombudsman, the municipality stated that it had changed its routines and procedure for processing appeals in cases regarding start-up loans.

Case-processing times within the Norwegian Civil Affairs Authority and the police in cases concerning compensation following criminal prosecution

3 September 2010 (Case 2010/1682)

Based on complaints to the Ombudsman, a general enquiry was addressed to the Ministry of Justice and the Police regarding the time taken by the Norwegian Civil Affairs Authority and the police to process cases under chapter 31 of the Criminal Procedure Act on compensation following criminal prosecution.

Recommendation to Halden municipality concerning investigation of possible irregularities

26 August 2010 (Case 2010/1516)

In connection with the processing of three specific complaints, the Ombudsman learned through the local media that rumours and allegations had been circulating for some time about irregularities in both the public administration and the political leadership in Halden municipality. The Ombudsman considered it detrimental to local democracy that confidence in the local authorities appeared to have been heavily undermined. This could in turn affect the quality of municipal services for the local population. In the light of these rumours and the impression that the Ombudsman had gained of the municipality's willingness to address the problems, including the debate regarding the municipality's control committee and the way that tips regarding alleged irregularities were handled, the Ombudsman saw reason to urge the municipality to initiate investigations with a view to clarifying the situation and possibly helping to disprove the rumours and allegations. To ensure that the investigations would effectively counter the allegations, the Ombudsman recommended that they should be broad-based and carried out by external parties. Other than that, the Ombudsman did not wish to express any opinion as to how the investigations should be conducted.

The municipality viewed the situation differently, maintaining that it had already undergone investigations. The chief municipal executive described both the investigations that had already been carried out and those which the municipality had decided to implement. The mayor pointed to what he considered to be a coordinated campaign on the part of a small minority who did not accept majority decisions and did not follow the political rules of the game. It was pointed out that investigations could not be initiated without documentation. Such investigations were too costly, in terms of both financial and personnel resources, to set in motion on the basis of mere rumours. Moreover, investigations were liable to cause discord.

The Ombudsman closed the case, emphasising that attention had been focused on the allegations of irregularities, not on more ordinary administrative errors. It was also emphasised that the Ombudsman was not in possession of any documentation indicating that there was any basis to the rumours. The system inspection that the municipality had undergone, which appeared primarily to focus on ordinary administrative errors, might not have been adequate to repudiate the accusations of irregularities. The Ombudsman repeated that he was still worried that confidence in the local authorities seemed to be wearing thin, and left it up to the municipality itself to decide whether to take any action and, if so, what type of action. The municipality chose not to heed the Ombudsman's request, a response that was duly noted by the Ombudsman.

Access to statistical data from national tests

17 August 2010 (Case 2010/1383)

The newspaper *Varingen* was denied access to Nittedal municipality's statistics on pupils who had been exempted from taking national tests. Access was denied in cases where the number of pupils exempted was between 1 and 4, in accordance with an internal, automated set of rules drawn up in part for use in connection with the publication of statistics on the School Portal. The rules were established in order to comply with the duty of confidentiality, among other things. The reason given for denying access was the risk of revealing confidential information about individual pupils.

The Ombudsman stated that the arguments of the Ministry of Education and Research regarding the risk of identifica-

tion were based on a dubious interpretation of the confidentiality rules in connection with access to statistical data. Nor were the merits of this particular request for access adequately assessed. The ministry was therefore asked to reconsider the matter.

Payment of legal costs under section 36, second paragraph, of the Public Administration Act

23 July 2010 (Case 2009/1588)

This case concerned the interpretation of section 36, second paragraph, of the Public Administration Act, under which a party may be ordered to cover the opposing party's legal costs in cases that are essentially a "dispute between parties".

The Ministry of the Environment had assumed that there is no "dispute between parties" when a complainant is an administrative agency acting on behalf of public interests. The Ombudsman concluded that this interpretation of the provision is too narrow, and therefore asked the ministry to reconsider the matter.

Exemption from the ban on construction in shore zones and areas allocated to agriculture, nature or recreation in the land-use part of the municipal master plan to build bathing houses

30 June 2010 (Case 2009/979)

This case concerned the refusal of an application for an exemption in order to build bathing houses on the shore promenade at Nesodden. The county governor found that the exemption assessment involved a number of conflicting, relevant considerations. In the end, however, the county governor decided to attach decisive importance to the fact that the construction of bathing houses would "obstruct contact" between the promenade and the water.

In the Ombudsman's opinion, there were factual uncertainties which the county governor should have been able to clarify by carrying out an on-site inspection. The county governor was therefore asked to reprocess the application and assess the need for an on-site inspection.

The county governor thereafter inspected the area, and stated in a subsequent letter to the Ombudsman's office that he had seen no reason to reverse the decision of 30 March 2009. The Ombudsman then decided to let the matter rest.

Access to a price quotation in a publishing contract

29 June 2010 (Case 2010/65)

This case concerned the question of access to a contract dating from May 2008 between the Church of Norway National Council and a publishing house regarding the right to publish a new hymn book and liturgy. The Church of Norway National Council initially withheld the entire contract, but later granted access to all of the contract except for the price quotation. The denial of access was explained by reference to the fact that the price quotation was a business secret that could be withheld under section 13, first paragraph, sub-paragraph 2, of the Public Administration Act.

The Ombudsman doubted whether the price information was subject to confidentiality. Particular importance had to be attached to the distinctive nature of the contract, and to the fact that this type of contract is entered into very infrequently. Moreover, the time aspect and the question of transparency about the use of public funds also had a certain significance. The Church of Norway National Council was asked to reconsider the demand for access to the price quotation.

The right of users to talk with Norwegian Labour and Welfare Service (NAV) officials

21 June 2010 (Case 2010/946)

Under the provisions of the Public Administration Act, a party with objective grounds for doing so should be able to talk about a case with an official from the administrative body dealing with the case. After several complaints to the Ombudsman's office, the Ombudsman, on his own initiative, took up with the Norwegian Labour and Welfare Service the current practice of shielding decision-making authorities from direct contact with users, asking whether this complied with the rules.

The Ombudsman was not completely satisfied with the welfare service's reply, and asked it to conduct a critical review of the current practice.

Transfer to a prison with a higher security level

12 May 2010 (Case 2008/1980)

This case concerned the transfer of an inmate from a low-security prison to a high-security prison. The grounds for the transfer were the inmate's conduct and, in particular, warnings about an alleged action against the prison.

The Ombudsman criticised the prison for breaching the rules regarding advance warning, thereby depriving the inmate of the opportunity to express his opinion before the transfer decision was made. The Ombudsman also pointed out that notification of the decision was delayed. In the Ombudsman's view, there was also some doubt about the decision itself, since the fear of negative media coverage had apparently been a key factor.

Payment of legal costs under section 36 of the Public Administration Act in a case where NAV Complaints and Appeals had revoked a local NAV office's refusal of an application for disability benefits

29 April 2010 (Case 2009/343)

This case concerned a claim for payment of legal costs following NAV Complaints and Appeals' revocation of a refusal of an application for disability benefits. The refusal was revoked due to administrative errors in the local NAV office's processing of the application.

The Ombudsman concluded that there were grounds for criticising the decision of NAV Operative Services and Development in the case, and asked that the decision to refuse payment of legal costs be reviewed.

Dubious practice relating to the imposition of a coercive fine and lack of a right to appeal

20 April 2010 (Case 2008/998)

A construction company was given a coercive fine for failing to comply with an approved waste management plan. In accordance with common practice in the municipality, the coercive fine was imposed simultaneously with approval of the waste management plan, but payment of the fine did not fall due until it was ascertained that there was a breach of the plan. After the municipal authorities sent a claim for payment of the fine, the company appealed, arguing that the plan had not been breached. The appeal was dismissed as having been lodged too late, since the appeal period was three weeks from the date the coercive fine was imposed, and not three weeks from when the claim for payment was presented.

The Ombudsman concluded that the municipality's former practice of imposing a coercive fine in advance could not be considered consistent with the purpose

of the Pollution Control Act. The municipality was therefore asked to reassess the appeal against the coercive fine and, if appropriate, make sure that the case was subjected to final consideration of the appeal

Exemption from the duty of confidentiality for research purposes

16 April 2010 (Case 2009/1391)

The Ministry of Health and Care Services exempted Aker University Hospital (now part of Oslo University Hospital), from its duty of confidentiality under section 21 of the Health Personnel Act, to allow A to access patient files written by psychiatrist Johan Scharffenberg. The exemption from confidentiality was granted in connection with A's work on a biography of Scharffenberg. However, A complained to the Ombudsman, maintaining that he could not in practice access the information he required unless he was also allowed to see confidential information that was not covered by the exemption.

The Ombudsman stated that there was reason to question the ministry's procedures in connection with its evaluation of the scope of the exemption. This particularly concerned the degree to which all relevant considerations had been assessed, and the reasons given for what it was "necessary" to have access to in order to achieve the purpose of the research.

After reconsidering the matter, the ministry upheld its decision not to expand the exemption that had been granted.

Permit to build a veranda – right to reverse the decision and case processing

15 April 2010 (Case 2009/2923)

The municipality revoked a permit that it had granted for the construction of a veranda on half of a duplex residence on the grounds that the permit was invalid. The county governor upheld the reversal decision, despite the fact that he considered the original permit to be valid.

The Ombudsman concluded that there was doubt about the legal grounds on which the county governor based the decision to uphold the revocation, and that the case processing prior to the decision was deficient. The county governor was asked to revoke his decision and reconsider the matter.

Award of regular general practitioner licences – inadequate preparation and opportunity to present both sides of the case, etc.

15 April 2010 (Case 2009/1111)

The case concerned a municipality's award of regular general practitioner licences at a medical centre. Among other things, the municipality attached importance to the fact that the complainant cohabited with the holder of one of the licences at the centre. The municipality's stance was that a relationship of this nature was not desirable at small medical centres, and did not ask her to come for an interview.

The Ombudsman concluded that the municipality had committed several administrative errors. The case was not sufficiently well investigated, and the complainant was not given an opportunity to submit counterarguments against the municipality's views with regard to key factors. The requirement in the Municipal Health Services Act that a vacant licence must be awarded to the professionally best qualified person could not be set aside. The way the case was dealt with was in itself an injustice against the complainant, and the municipality was asked to reconsider the case.

After reviewing the case, the municipality concluded that the administrative errors had had no impact on the outcome of the case. However, the municipality apologised for the case processing.

Confidentiality in respect of information on participants in the buy-out scheme related to seismic shooting

17 March 2010 (Cases 2009/1977 and 2009/2220)

The issue in this case was whether the names of the fishermen who participated in the "buy-out scheme" in connection with seismic shooting in Lofoten and Vesterålen, and the amount of compensation they were paid, are subject to confidentiality.

The Ombudsman concluded that there were hardly any grounds for withholding the information in question on the grounds of confidentiality. The Ministry of Petroleum and Energy was asked to reconsider the matter.

After reassessing the case, the ministry allowed access to the documents.

Requirement to obtain clarifying information in connection with the suspension of a licence to retail alcoholic beverages

24 February 2010 (Case 2008/1997)

Following an inspection of an establishment licensed to retail alcoholic beverages, the licence holder was given eight penalty points, and his licence was suspended for two weeks. The inspectors had observed and reported that alcohol was served to a person who was obviously intoxicated. In his complaint to the Ombudsman, the licence holder argued that the customer in question was not intoxicated, but rather ill, with behaviour that was almost impossible to distinguish from that of an intoxicated person.

The Ombudsman saw no reason to criticise the county governor for failing to obtain clarifying information on the matter, and the fact that the county governor did not later meet with the customer concerned could not be regarded as an administrative error. Moreover, the case had to be regarded as sufficiently clarified when the suspension decision was made.

Duty of confidentiality as regards information on unit prices of influenza vaccines

15 February 2010 (Case 2009/1960)

This case concerned the question of whether information regarding unit prices in two contracts to supply seasonal influenza vaccines and pandemic influenza vaccines, respectively, was subject to confidentiality under section 13, first paragraph, sub-paragraph 2, of the Public Administration Act concerning business information.

The Ombudsman concluded that there were no grounds for legal objections to keeping the information on the unit price of the pandemic vaccine secret. In view of the time that had elapsed since the decision was made and changes in market conditions, the Ministry of Health and Care Services was nonetheless asked to reconsider the question. With regard to the unit price of seasonal vaccines, the Ombudsman did not have a sufficient basis for giving an opinion as to whether there was a need for secrecy. The ministry was therefore asked to reconsider this question as well.

The ministry reassessed the matter, and decided to allow access to the unit prices of the seasonal vaccines. It upheld its refusal relating to the pandemic vaccines.

Requirement to give grounds – decision to impose a disciplinary penalty

8 February 2010 (Case 2009/1931)

The case concerned the question of administrative errors in connection with the imposition of a disciplinary penalty in the form of a written warning.

The Ombudsman concluded that the decision to impose a disciplinary penalty did not satisfy the statutory and non-statutory requirements to give grounds for individual decisions. Nor had sufficient information been obtained about the case before the municipal executive board made a final decision on the matter. All in all, the possibility that these errors had had a determinative effect on the content of the decision could not be ruled out.

The municipality reconsidered the matter and revoked the decision to impose a disciplinary penalty.

Requirement of a real double hearing – case concerning a turn-off from a classified road

29 January 2010 (Case 2009/1233)

As the appeals body, the Østfold county governor made a new decision on the merits of the case under section 40, second paragraph, of the Roads Act, refusing an application for a turn-off, after the Norwegian Public Roads Administration as the first instance had dismissed the case.

The Ombudsman concluded that the county governor did not have the competence to make a decision on the merits of this case. To give the appellant a real double hearing and, not least, to ensure that the case was properly investigated and clarified, the decision of the Norwegian Public Roads Administration should have been revoked and the case sent back for renewed consideration.

In the light of the Ombudsman's statement, the county governor reversed his own decision, revoked the decision of the Norwegian Public Roads Administration and sent the case back for renewed consideration.

The question of the duty of confidentiality in respect of criminal offences and access to documents

19 January 2010 (Case 2009/544)

A local animal welfare committee granted access to parts of a report and associated pictures from an inspection of the conditions in which dogs were kept. Following the inspection, the animal welfare committee made a decision to the effect that the number of dogs had to be reduced. The regional office of the Norwegian Food Safety Authority concluded that the animal welfare committee had not breached its duty of confidentiality in disclosing the report.

The lack of documentation to show how the animal welfare committee had processed the request for access to documents made it difficult for the Ombudsman to investigate the matter. Nevertheless, there was reason to conclude that the duty of confidentiality was breached, since information on a person's criminal acts was disclosed. Even though the name was blanked out, the inspection report and the administrative decision contained enough other information to identify the person concerned. Specific factors made it natural to assume that the persons who had requested access to the pictures from the inspection already knew the identity of the person concerned. In a case of this nature, the disclosure of the pictures was also a breach of the duty of confidentiality, even though the pictures in themselves did not identify the person.

Failure to give notice of a change in zoning and the question of whether the county governor was disqualified to deal with an appeal

18 January 2010 (Case 2009/1306)

Following an objection from the Environmental Protection Department of the Office of the Aust-Agder County Governor, a draft zoning plan was amended, with the result that the shoreline of the complainant's property was to be zoned as a recreational area rather than a building area. The property owner appealed, but the same county governor confirmed the zoning decision.

The Ombudsman concluded that there was reason to doubt whether the possibility that administrative errors had affected the outcome of the case could be ruled out. The impartiality of the county governor could also be questioned. The Ombudsman asked that the matter be reconsidered, and recommended appointing a substitute county governor.

The county governor of Telemark was then appointed as substitute county governor, and dealt with the case. The county governor took the view that "the rezoning had no negative effects in practice on the utilisation of the property", nor "any effect on its current use". The county governor concluded that the complaint could not "succeed on the grounds of the failure to give notice".

The complainant disagreed with the assessment of the county governor and asked the Ombudsman to resume his processing of the case. The request was sent to the county governor of Telemark for comment.

Children

The supervisory responsibility of the county governor in a case concerning daycare – handling of documents

19 October 2010 (Case 2010/1458)

Additional information relating to an application for a change of daycare facility was registered in the municipality's electronic case-management system in a summarised form. The letter itself was returned to the applicant.

The Ombudsman took up the question of the scope of the supervisory duty under section 9 of the DayCare Centre Act with the county governor. The county governor concluded that the municipality had a duty to retain at least one complete copy of the letter and any additional information.

Child maintenance – discretionary determination of income

6 April 2010 (Case 2009/2069)

A person required to pay child maintenance left his highly paid job and started a business, from which he earned a lower income. The Norwegian Labour and Welfare Service (NAV) calculated his income on a discretionary basis, and the maintenance payer submitted a complaint about that and the actual determination of income.

The Ombudsman concluded that NAV's assessment of whether there were reasonable grounds for the reduction in income, and thus grounds for exercising its right to determine the income on a discretionary basis, was deficient. The Ombudsman also had objections concerning the actual amount of income determined. NAV's appeals body was asked to reconsider the matter.

Health

Complaint regarding the refusal of an application for a nursing home place

24 September 2010 (Case 2009/1494)

The county office of the Norwegian Board of Health Supervision confirmed a municipality's refusal of an application for a short-term/rehabilitation place at a nursing home. The applicant was instead offered home-based services. The subject matter of the complaint included the municipality's appeals system and the grounds cited by the county office of the Norwegian Board of Health Supervision for its conclusion that the applicant's right to "necessary medical assistance" under the Municipal Health Services Act had been fulfilled.

The Ombudsman pointed out that the municipality had not followed the rules for proper processing of appeals, as the decision-making authority and the appeals body that assessed the case were one and the same. The Norwegian Board of Health Supervision should therefore have referred the case for renewed consideration by the municipality. Furthermore, the grounds on which the Board of Health Supervision had based its decision were scant, and it was uncertain whether the Board had a sufficient basis for assessing the case.

Dismissal of an appeal against a decision to transfer a patient to compulsory mental health care on an in-patient basis

17 August 2010 (Case 2009/823)

The background for the case was that a hospital's control commission dismissed an appeal from a patient against a decision to transfer him from compulsory mental health care on an out-patient basis to compulsory care in a hospital ward, under section 4-10 of the Mental Health Care Act of 2 July 1999 No. 62. The commission had explained its dismissal on the grounds that it was unclear whether an appeal had been lodged and that, in any event, the appeal was no longer relevant, since the patient had been discharged from the hospital ward in question at the time the commission dealt with the matter.

The commission was criticised for not having investigated whether or not the patient wished to appeal the decision. The Ombudsman further stated that the patient was entitled to have his appeal considered on its merits, and that it could not be dismissed on the grounds that it was no longer relevant because the patient had been discharged from the hospital ward in question. The commission was asked to reconsider the matter.

The Norwegian Correctional Services (prisons, etc.)

Investigation of the Norwegian Correctional Services' INFOFLYT system

3 December 2010 (Case 2007/2274)

The Ombudsman asked the Ministry of Justice and the Police a number of questions regarding INFOFLYT, a system used by the Norwegian Correctional Services and the police and prosecution authorities to exchange information in cases that are particularly serious and that present a particularly high risk. In its reply, the ministry stated that a committee had been appointed and tasked with, among other things, examining many of the questions the Ombudsman had taken up.

In the light of the ongoing investigation, the case was closed, but the Ombudsman asked to be kept informed of further work in this field//area. The Ombudsman also made certain critical comments on the way the ministry and the Correctional Services had dealt with the privacy aspects of INFOFLYT. Among other things, he stated that the

privacy issues should have been clarified before, rather than after, the system began to be used.

Long waiting period between a final judgment and notice to begin service of sentence

15 June 2010 (Case 2009/2696)

The case concerned the long waiting time between the handing down of a final judgment and notice to begin service of the prison sentence. A was not called in to serve a three-year prison sentence until six years after the judgment became final. The wait was due in part to the fact that the Public Prosecution Authority for the Region of Oslo did not issue the order to execute the sentence until at least six months after the Director of Public Prosecutions had accepted the judgment. It also appeared to be clear that the case was considerably delayed after it was sent to Oslo Police District, which was responsible for enforcing the sentence under the rules in force at the relevant time.

The Ombudsman stated that the very long waiting period was a serious and obvious breach of the provisions of the Criminal Procedure Act and the Prosecution Instructions requiring that a sentence must as a general rule be served "as soon as it is final". An apology to A – which the Director of Public Prosecutions had made on behalf of the prosecution authorities – was therefore appropriate. The Ombudsman otherwise assumed that such an unusually long period of time between a final judgment and execution of sentence, which was not the fault of the convicted person, could be a relevant factor in the assessment of an application for a pardon. After A applied for a pardon, the prosecuting authority endorsed the application, recommending that the sentence be suspended by means of a pardon.

A was pardoned by Royal Decree of 1 October 2010, in the form of a suspension of his entire prison sentence.

Agriculture, forestry and reindeer husbandry

Refusal of an application for a licence to acquire an agricultural property

14 September 2010 (Case 2009/567)

The case concerned the refusal of an application for a licence to purchase a forest property with no buildings. The complainant did not own any other agricultural property, and the municipality took the view that agricultural properties that offered no basis for residence or independent operation should instead be consolidated with actively operated, inhabited properties in order to expand the resource base of such properties. This is a way of ensuring a basis for continued residence on the property.

The Ombudsman concluded that there was reason for doubt as to the validity of the decision. The municipality had not documented that there were other relevant parties who were interested in the property. Furthermore, there were grounds to believe that the complainant had been subject to biased, differential treatment, since the municipality had not set corresponding requirements for ownership of agricultural property in respect of other licence applicants.

Refusal of an application for a licence to purchase an agricultural property

29 June 2010 (Case 2009/1976)

The Rogaland County Board of Agriculture refused an application for a licence to purchase an agricultural property on the grounds that it was best for the local community and the agricultural sector that farms based on traditional agricultural operations be given the opportunity to strengthen their resource base. The applicant wanted to "develop retreat, cultural and tourism facilities" and to lease out the agricultural land.

The Ombudsman concluded that the County Board of Agriculture's grounds left some doubt as to whether the starting point for its assessment was correct and whether all relevant factors had been taken into consideration. The county governor was asked to reconsider the matter.

The county governor subsequently revoked the decision of the County Board of Agriculture and granted the complainant a licence to purchase the property.

Transfer of a part of a reindeer-herding unit (*siida)*

14 May 2010 (Case 2009/702)

The Norwegian Reindeer Husbandry Board had consented to the transfer of leadership responsibility for a part of a siida from an uncle to his niece. The leader of another siida part in the same district claimed that the new siida leader did not satisfy the requirements of section 15, second paragraph, of the Reindeer Husbandry Act as regards "having participated in all aspects of reindeer husbandry work with the leader for at least three years", and that no exception could be made from this rule.

The Ombudsman concluded that the decision of the Reindeer Husbandry Board and its grounds were unclear, and asked that the matter be reconsidered.

The Reindeer Husbandry Board then reconsidered the matter and reached the same conclusion, but gave more detailed grounds for its decision.

Construction of a herdsman's hut for reindeer husbandry

24 February 2010 (Case 2009/586)

The Ministry of Agriculture and Food reversed the Norwegian Reindeer Husbandry Board's decision to approve the construction of a herdsman's hut under section 21, first paragraph, of the Reindeer Husbandry Act, citing the fact that approval for such huts could only be granted to reindeer husbandry districts, reindeer herding units (*siidas)* and the owners of part of a siida.

The Ombudsman concluded that there was reason to doubt whether the ministry was entitled to reverse the decision, since no specific assessment had been made of whether the herdsman's hut was "necessary"; see section 21, first paragraph, of the Reindeer Husbandry Act. The ministry was asked to reconsider the matter.

Human rights

Written warning following publication of an opinion piece

15 April 2010 (Case 2009/2770)

The case concerned the question of whether an employer was legally entitled to give an employee a written warning because he had written an opinion piece and had it published in a newspaper.

The Ombudsman concluded that the written warning was not legally justified. The employer was asked to reconsider the matter.

After a new assessment, the employer withdrew the warning.

Calculation of additional charge – effect of the presumption of innocence in the European Convention on Human Rights

15 April 2010 (Case 2008/2261)

The case concerned the method for calculating the additional charge where company A had erroneously deducted input value added tax too early – i.e. before it actually had the right to make the deduction – and the error was discovered by the tax authorities in an audit

before the company had had an opportunity to correct the error of its own accord.

The Ombudsman concluded that it was wrong of the tax authorities to calculate the additional charge automatically on the basis of the entire amount that had been erroneously deducted, and that it instead would be most consistent with the presumption of innocence in the European Convention on Human Rights and general considerations of proportionality to give the company an opportunity to prove that it would more likely than not have corrected the error in any event, before a decision was made to impose an additional charge and, if so, on what basis.

Visit to the police's internment facility for foreign nationals in the autumn of 2008

26 March 2010 (Case 2008/1966)

The Ombudsman visited the police's internment facility for foreign nationals at Trandum in October 2008. The visit was a follow-up of a visit made in 2006, and the purpose was to obtain information about conditions at the centre and, in particular, about the changes made since the Ombudsman's previous visit.

The Ombudsman noted that the material conditions and the legal rights of the internees at the holding centre had improved significantly. At the time of the new visit, work still remained to be done to ensure full agreement between section 37d of the Immigration Act (section 107 of the current Immigration Act) and the regulations governing internment facilities for foreign nationals on the one hand, and internal rules and procedures on the other. However, some important changes had been made after critical questions were raised by the Ombudsman, particularly as regards monitoring of visits, rules regarding the storage of clothes, and the furnishing of bedrooms and cells. When the case was closed, there was still doubt as to whether certain procedures were acceptable from a legal perspective. This applied to the temporary confiscation of certain belongings and supervisory procedures in the security wing. It was the Ombudsman's impression that considerations of control and security had in certain areas outweighed internees' need for privacy within the constraints of their detention. It was pointed out that the legislature's assumption that case-by-case assessments will be made cannot be set aside by instructions imposing rigid procedures and rules.

Responsibility for the police's use of force in connection with arrests, particularly relating to use of the prone position

16 February 2010 (Case 2007/2439)

The Ombudsman issued an opinion on the case that was opened in response to Eugene Ejike Obiora's death on 7 September 2006. The investigations were initiated by the Ombudsman on his own initiative, and were focused on aspects of responsibility for police procedures for the use of force in connection with arrests, especially use of the prone position. The Ombudsman has criticised the justice and police authorities on several counts. In the Ombudman's opinion, the failure to ensure satisfactory regulation and training constitutes a breach of the human rights obligations that Norway has assumed.

Freedom of information and public access to information

Access to appendices to a share purchase agreement – environmental information

18 November 2010 (Case 2010/479)

This case concerned a request for access to a share purchase agreement with appendices. The Ministry of Trade and Industry took the view that the information in the appendices constituted business secrets that could be exempted under

section 13 of the Freedom of Information Act; see also section 13, first paragraph, sub-paragraph 2, of the Public Administration Act, and section 11 of the Right to Environmental Information Act.

The Ombudsman concluded that the refusal gave rise to doubt on one point, namely whether a report on pollution, Appendix 1.11.5, was subject to confidentiality. The Ministry of Trade and Industry was asked to reconsider the request for access to this document.

The ministry presented the Ombudsman's statement to A Gruve AS, which concluded that it could make Appendix 1.11.5 public.

Duty to establish a list of applicants when an application deadline is extended

20 September 2010 (Case 2010/856)

The local government sector newspaper *Kommunal rapport* had requested access to the list of applicants for the position of chief municipal executive in Sortland municipality. With reference to the fact that the deadline for applications had been extended and that no list of applicants had been established when the request was submitted, the request for access was refused by the municipal authorities and the county governor.

After a complaint about the matter was submitted to the Ombudsman, the county governor changed his stance on the issue, stating that the duty to establish a list of applicants arises when the original deadline for applications expires. The Ombudsman therefore decided to let the case rest.

Consideration of new requests for access to the same document

1 September 2010 (Case 2010/870)

About two months after A's request for access to a document was denied, she contacted the regional office of the Norwegian Food Safety Authority alleging that the legal basis cited for denying access was invalid. Her enquiry was regarded as a formal appeal, and was therefore dismissed since it was received after the expiry of the three-week appeals deadline. The dismissal decision was appealed, but the head office of the Food Safety Authority upheld the dismissal.

The Ombudsman concluded that the complainant's enquiry should not have been regarded as an appeal. The Food Safety Authority should have dealt with the new enquiry as if it were a new request for access, and reconsidered the request on its own merits.

Public access to an internal agency document – assessment of access based on a weighing of interests

18 August 2010 (Case 2010/417)

The Ministry of Government Administration, Reform and Church Affairs refused to allow access to an interministerial report and other documents. Reference was made to the fact that the report had been drawn up for the Government's own internal case preparation. The report was to serve as the basis for the Government's reply to a Storting representative's proposal to introduce a registration system for lobbying activities in the Storting, ministries and the prime minister's office.

The Ombudsman found the ministry's grounds for denying access to the report to be somewhat general and unclear, and concluded that there was reason to doubt whether there was a real and objective need to deny access to the

entire report. The ministry was asked to reconsider the question of access.

The ministry reconsidered the matter and granted access to parts of the report.

Appeals body for universities and university colleges in cases concerning access to documents under the Freedom of Information Act

6 July 2010 (Case 2010/632)

In the light of several enquiries and a specific complaint, the Ombudsman saw reason to take up the issue of which body is the appeals body when a university or university college refuses a request for access to documents under the Freedom of Information Act.

The question of appeals bodies for the university and university college sector in cases concerning ordinary access to documents is regulated exclusively by the Freedom of Information Act and the associated regulations. Under these rules, the Ministry of Education and Research, as the superior administrative body, is the appeals body in cases where universities and university colleges refuse requests for access to documents on the basis of the Freedom of Information Act. Any change in the appeals system must be made using the regulatory power in section 32, first paragraph, fourth sentence, of the Freedom of Information Act.

Access to a petition for the reopening of a criminal case – the definition of a case document

22 June 2010 (Case 2010/610)

The case concerned the question of whether the Norwegian Criminal Cases Review Commission could refuse a request by two convicted persons for access to another convicted person's petition for the reopening of the same criminal case. The Commission's grounds for the refusal were that the documents in the first reopening case were not part of the "case documents" in the two other convicted persons' reopening case.

The Ombudsman concluded that the request for access to documents could not be refused on the grounds that two different cases were involved. The Norwegian Criminal Cases Review Commission was asked to reconsider the matter.

Case concerning access to the Norwegian Chief of Defence's annual report for 2008

1 June 2010 (Case 2010/575)

The case concerned the question of whether the information in the Chief of Defence's annual report for 2008 could be classified as "restricted", thus exempting the document from public disclosure on the grounds of confidentiality.

The Ombudsman concluded that the Ministry of Defence was not entitled to maintain the classification of the entire annual report for 2008. The ministry was asked to reconsider the document's classification and to reassess the complainant's request for access to the report.

Question concerning the scope of the Freedom of Information Act

24 March 2010 (Case 2009/2282)

The Ministry of Petroleum and Energy refused to grant access to several documents, on the grounds that the documents concerned the state's administration of its interests in Gassnova SF's carbon capture and storage project. The ministry took the view that the documents did not fall within the scope of the Freedom of Information Act. The complaint to the Ombudsman concerned refusal of access to six specific documents.

In the Ombudsman's view, the Ministry of Petroleum and Energy had incorrectly interpreted section 1 of the Freedom of Information Regulations. The exemption in section 1, third paragraph, sub-para-

graph f), of the regulations in respect of "documents relating to the administration of the state's interests in Gassnova SF's carbon capture and storage project" does not apply to documents held by the Ministry of Petroleum and Energy. The Ombudsman did not assess whether the ministry was entitled to refuse access to the documents under other provisions in chapter 3 of the Freedom of Information Act. The ministry was asked to reconsider the issue of access to documents.

After a new assessment, the newspaper *Bergens Tidende* was granted access to a further two documents and parts of two other documents, while it was refused access to the rest of the documents on the basis of various provisions of the Freedom of Information Act.

Scope of the Freedom of Information Act – Karmsund Havnevesen IKS

19 January 2010 (Case 2009/1203)

This case concerned the question of whether Karmsund Havnevesen IKS (Karmsund Port Authority) is covered by the Freedom of Information Act.

The Ombudsman concluded that Karmsund Havnevesen IKS falls within the scope of the Freedom of Information Act. Particular weight was attached to the purpose of the company and the fact that functions relating to administration and the exercise of authority in connection with maritime matters make up a significant part of its activities, as well as to the fact that a large part of its revenues derive from port fees laid down and collected by law.

The county governor subsequently reversed his own decision, and made a new decision to the effect that Karmsund Havnevesen is covered by the Freedom of Information Act.

Planning and building

Exemption from a waste disposal charge for buildings that are not in use

5 November 2010 (Case 2010/500)

An application for exemption from a waste disposal charge because the buildings were not yet in use was refused by Hol municipality. The grounds for the refusal were that, under municipal regulations, the municipality was entitled to impose a waste disposal charge in the year after a building permit had been granted.

The actual-cost principle hardly permits a municipality to collect a waste disposal charge for a property which as a matter of fact is not in use and which, moreover, cannot legally be used. The Ombudsman accepted a rule to the effect that charges generally apply from the year after a building permit is granted. However, it had to be legally possible to grant exemptions from the duty to pay a charge, and this power of exemption had to be applied in accordance with the actual-cost principle. The merits of the complainant's application for exemption did not appear to have been sufficiently considered, and there was also reason to doubt whether the municipality had adopted the correct legal basis for its decision. The municipality was asked to reconsider the application.

Partitioning-off of a building plot for recreational purposes

4 October 2010 (Case 2010/108)

An application to partition off, for recreational purposes, a plot on which a building is located was refused. The partitioning-off was contrary to the current regulation of land-use in the land-use part of the municipal master plan and building development plan. The main issue was whether the partitioning-

off would entail a change in the use of the property.

The Ombudsman found no grounds for criticising the county governor's conclusion that the partitioning-off entailed a change in the use of the property, but he could not see the relevance of attaching importance to which type of plan applied to the area. The decisive factor had to be the use of the property before the land-use was regulated in the municipal master plan, compared with the intended use after partitioning-off.

Question of whether sufficient notice had been given of an extra water connection charge

1 September 2010 (Case 2010/418)

The issue in this case was whether a municipality could require a subscriber to pay an extra water connection charge.

The Ombudsman took the view that the extra connection charge for properties in a certain building area had been laid down in regulations. However, the regulations could not be applied to the complainants, as insufficient notice had been given of the regulations stipulating the amount of the charge at the time the complainants applied for a building permit. The Ombudsman also found reason to make some critical comments concerning the municipality's general procedures in the matter of the charge.

After reconsidering the matter, the municipality decided to waive the claim for payment of an extra water connection charge by A and another affected household, and apologised for the error that had been made.

The rules governing development agreements – effects of breaches of section 17-4, fifth paragraph, of the 2008 Planning and Building Act

31 August 2010 (Case 2009/2897)

The Parliamentary Ombudsman, on his own initiative, took up certain issues with the Ministry of Local Government and Regional Development related to the rules governing development agreements.

The Ombudsman concluded that, as a general rule, municipal authorities do not have the right to impose constraints on their planning authorities. However, he did not find it logical to interpret section 17-4, fifth paragraph, of the 2008 Planning and Building Act as having the direct effect under contract law of invalidating any development agreement entered into in breach of the provision, thereby making it impossible for the parties to enforce the agreement. The ministry was asked to consider whether it might be appropriate to examine what legal effects section 17-4, fifth paragraph, should have with a view to future law (*de lege feranda*), and thereafter to assess the wording of the provision.

Dismissal of a building application based on unclear private law factors

30 August 2010 (Case 2007/2187)

The Hordaland county governor dismissed an application to build a road across another person's property, on the grounds that it had not been proved that the project was compatible with the private-law rights of any third party in the property in question.

The Ombudsman stated that when the landowner has consented to a project on his property, the basic principle under private law is that the project is legal. Since it was not clear in this case that the project would breach third-party rights in the property, the Ombudsman concluded that the application should have been

processed. He therefore asked the county governor to reconsider the matter.

The county governor subsequently revoked the dismissal of the application and sent the matter back to the municipality to be considered on its merits.

Refusal of an application for exemption to enlarge a dock on a shoreline property zoned as a public outdoor recreation area

4 August 2010 (Case 2009/1939)

This case concerned the refusal of an application for exemption from a zoning plan in order to upgrade and enlarge a dock. In the zoning plan, the property was earmarked as a public outdoor recreation area, but the municipality had no plans to implement the plan.

The Ombudsman concluded that the zoning plan could not be considered to have lapsed, even though the municipality had not implemented it. Nor was there any reason to criticise the authorities for having given significant weight to national shoreline zone interests.

Fee for processing a private zoning proposal

12 May 2010 (Case 2009/210)

In the complainant's view, the fee for processing a private zoning proposal for the Mølleneset district in Bergen was time-barred, and there were in any event grounds to claim a reduction because the municipality had exceeded the 12-week deadline laid down in section 30, second paragraph, of the Planning and Building Act. He also questioned whether the fee was compatible with the actual-cost principle.

The county governor took the view that an extension of the 12-week deadline had been agreed, and that there were therefore no grounds for reducing the fee. The Ombudsman stated that this view was based on a correct interpretation of the rules.

The Ombudsman concluded that there was doubt on several points relating to the time-bar assessment. Furthermore, the county governor had not obtained sufficient information from the municipality as to whether the fee was in accordance with the actual-cost principle. The Ombudsman asked the county governor to re-examine and reconsider the matter with regard to these points.

Complaint regarding a failure to process a building application for physical alterations of terrain

13 April 2010 (Case 2009/1635)

On 12 November 2004, Skien municipality granted permission to make physical alterations of the terrain on property X. The permit was confirmed on 6 June 2005 by the Telemark county governor. A (hereafter the complainants) contacted the Ministry of Local Government and Regional Development to request that the decision be reversed. The ministry found no grounds for reversing the county governor's decision. The complainants then contacted the Ombudsman. In a letter dated 13 July 2006, they were informed that the case was too old for a complaint to be dealt with by the Ombudsman.

In 2009, the complainants again contacted the Ombudsman with a complaint about physical alterations made to the terrain of the neighbouring property. They alleged that around 60 m^2 of terrain had been physically altered within the four-metre zone without any application for permission, notice to neighbours or municipal approval. The complaint was understood to mean that these physical alterations had been made under the county governor's decision of 6 June 2005, and that the allegations related to the county governor's

letter of 13 January 2009; see also a subsequent letter dated 20 May 2009.

The Ombudsman therefore decided to let the case rest, based on the explanation provided by the county governor in his letter of 31 August 2009. A more detailed investigation of the matter revealed no grounds for decisive legal objections to the assessments made by the county governor in his letter of 13 January 2009.

Location of a building over water and sewage pipes – sections 70 and 7 of the Planning and Building Act

6 April 2010 (Case 2009/533)

This case concerned the extent to which underground water and sewage pipes are a relevant factor in assessing where to locate an extension and in granting exemption from the rule of a minimum distance from an adjoining property; see sections 70 and 7 of the Planning and Building Act of 14 June 1985 No. 77. An exemption and a permit had been granted to build an extension with a cellar in the zone along the boundary of the adjoining property and over shared water and sewage pipes. The neighbours maintained that this location entailed disadvantages for their property, including the risk of damage to the pipes, and made it difficult to maintain and repair the pipes. They wanted the extension to be located elsewhere, where these disadvantages could be avoided or, alternatively, that the permit should be granted subject to certain conditions.

The Ombudsman's premise was that neighbours' interests are key considerations that underpin both the provision regarding location in section 70 (1) and the provision regarding distance from an adjoining property in section 70 (2) of the Planning and Building Act. Satisfactory water and sewage arrangements are not just a private interest in a narrow sense, but also a matter of public interest. The underground pipes should therefore have been a factor emphasised in the assessment under section 70 (1) of the Planning and Building Act, both as a relevant matter of interest to the neighbours and as a matter of public interest. In the exemption assessment, the general purposes of the Act will supplement the more specific considerations which the individual statutory provisions from which exemption is granted are intended to protect. Importance should therefore also have been attached to the underground water and sewage pipes when assessing the question of exemption under section 7, see also section 70 (2), of the Planning and Building Act. The omission of this consideration could have been decisive for the outcome of the weighing of the various factors. The decision was therefore invalid. On this basis, the county governor was asked to reconsider the matter.

Following the Ombudsman's statement, the county governor revoked the decision on the grounds of invalidity and sent the matter back to the municipal authorities for reconsideration in accordance with the Ombudsman's interpretation of the law.

Duty to apply for a permit for a tennis court with a fence and lamp posts

30 March 2010 (Case 2009/767)

This case concerned the duty to apply for a permit for a tennis court with a fence and lamp posts. The municipality took the view that terrain work and subsequent laying of the surface/artificial grass were exempt from application, but that an application was required for fencing and lamp posts to be installed in connection with the court. The county governor agreed with the municipality's assessments.

The complainant, who was a neighbour of the property in question, argued that the court, fence and lamp posts had to be considered a single project. In her opinion, an application was required for the project. She was particularly concerned that the court appeared to be in breach of the rules

regarding a minimum distance to the boundary with adjoining properties.

The Ombudsman considered it doubtful that there was a legal basis for exempting the court from the application requirement. He considered it illogical not to treat the court and the fence and lamp posts as a single project. The county governor's processing of the complaint seemed deficient, and he was therefore asked to reconsider the matter.

The county governor subsequently concluded that the decision was invalid. The decision was revoked and the matter was sent back to the municipal authorities for reconsideration.

The county governor's power to reverse an underlying zoning decision in connection with the processing of an appeal concerning a building permit

29 March 2010 (Case 2009/1936)

This case concerned a decision to revoke a building permit for five boathouses. The permit was appealed by neighbours and revoked by the county governor on the grounds that the underlying decision regarding a minor change in the zoning plan was invalid. The developer pointed out, among other things, that the zoning decision could only be set aside on the basis of section 35 of the Public Administration Act, and that the county governor had not carried out a sufficiently specific discretionary assessment of whether the change was a minor one.

The Ombudsman concluded that it was doubtful whether it was within the county governor's authority under section 34 of the Public Administration Act to make decisions of the kind made in this case. Furthermore, there was reason for doubt concerning the county governor's assessment of whether or not the change in the plan was to be regarded as minor.

The county governor was therefore asked to reconsider the matter.

The county governor subsequently reconsidered the matter. He maintained that the zoning decision was invalid and upheld his earlier decision. A then submitted a complaint to the Ombudsman concerning the county governor's new decision.

Self-approval of a zoning plan – deadline for objections

18 March 2010 (Case 2009/424)

The municipality approved its own zoning plan after determining that an objection by the county governor was lodged too late. The county governor maintained that the objection was lodged in time, and appealed against the municipality's decision. The Ministry of the Environment upheld the county governor's appeal, and confirmed the zoning plan subject to certain changes. Following the processing of a complaint submitted to the Ombudsman, the ministry was asked to reconsider the matter. In its new assessment, the ministry upheld its earlier decision.

The Ombudsman concluded that there was still reason for doubt regarding the ministry's decision, and that the county governor should take responsibility for dispelling the doubt in the case. It was pointed out that the public administration is best placed to secure some kind of clarification of the issue of extended deadlines in cases concerning objections. The ministry was asked to reconsider the matter.

Zoning of cottage lots in connection with the establishment of an archipelago park

16 March 2009 (Case 2007/1992)

The municipality zoned lots for the construction of three cottages in the shoreline zone, in return for which the landowners gave the municipality the right to use parts of the area to establish an archipelago park. The case raised questions of principle relating to the use of zoning authority as an instrument of barter.

The Ombudsman stated that the assessment of what considerations are relevant when drawing up zoning plans must be based on the Planning and Building Act. The Act's general ban on building establishes limits, and a requirement must be that any physical development must in itself be justifiable based on land use considerations. The rights acquired by the municipality by means of the agreement in question could have been obtained in another way, and the county governor was asked to reconsider the matter.

Zoning plan – the interests of children and young people

9 March 2010 (Case 2009/2016)

The complainant claimed that the interests of children and young people were not safeguarded in the preparation of a zoning plan that included a residential area. He pointed out that the county governor's decision in the appeal case was based on a supplementary memorandum which the developer had had drawn up after the municipality had completed its processing of the case.

The Ombudsman stated that the consequences for children and young people must be clarified prior to the municipal politicians' consideration of a proposed plan. Children and young people are a vulnerable group, and are dependent on other persons promoting their interests. The failure to clarify and assess such considerations can undermine people's confidence in the public administration, also in relation to matters other than the case in question. The Ombudsman found that the interests of children and young people had not been adequately clarified and assessed during the municipality's processing of the plan, and that the county governor had neglected his duty to safeguard these interests during the planning process. This deficiency had not been remedied through the processing of the appeal.

The Ombudsman further pointed out that it is not easy after the fact to make amends for a failure to clarify and assess the interests of children and young people in the planning process without completely reassessing the matter. The legal system and the competence rules provide that it is the municipal council that determines whether these interests have been adequately safeguarded. On this basis, the Ombudsman requested that the matter be reconsidered.

The county governor revoked parts of the planning decision on the grounds that they were invalid. The Ombudsman questioned why the grounds of invalidity did not apply to the entire plan, stating that the interests of children and young people will always be relevant when planning an ordinary residential area. He reiterated that the municipal council, as the proper planning authority, had to determine whether these interests were sufficiently investigated and safeguarded in the plan.

The county governor sent the matter to the municipality, and the municipal council adopted a recommendation stating, among other things, that the interests of children and young people were adequately safeguarded in both of the zoning plans for Kruttverket. However, the procedures for safeguarding such interests were to be revised. In the light of the process that was carried out following the Ombudsman's statement, and the municipality's promises to follow up on the

interests of children and young people, the Ombudsman decided to let the case rest, with certain concluding comments.

The Planning and Building Services' processing of a building application concerning a property that was later affected by a decision to impose a temporary ban on subdivision and building

4 March 2010 (Case 2009/196)

This case concerned the City of Oslo's Planning and Building Services (PBS)'s processing of a building application concerning a property that was later affected by a decision to impose a temporary ban on subdivision and building; see section 33 of the Planning and Building Act. The complainant maintained that PBS had been "dragging its heels" for many years, and that it had consistently focused on obstacles to developing the property rather than possibilities. The complainant also alleged that PBS had failed to comply with its duty to provide information and guidance.

The Ombudsman found reason to criticise PBS for the way the minutes of a preliminary conference were worded. Among other things, PBS questioned whether the grounds on which an exemption had been granted were correct. In the Ombudsman's opinion, the statement, which suggested that the complainant had deceived the Standing Committee on Urban Development, was both thoughtless and unnecessary. Other formulations suggesting that the complainant had done something censurable in his efforts to solve the problems of access to the site were also ill-judged. The Ombudsman also pointed out that, in view of the special circumstances in the case, PBS should have informed the complainant that an application could be submitted despite the notification of a ban. Apart from that, the Ombudsman found no legal grounds for blaming PBS for the fact that a building permit was not granted before the end of the three-year exemption period or before the adoption of the temporary ban.

The county governor's power of review in zoning matters and the legality of zoning of a common area for swimming

1 March 2010 (Case 2009/1402)

This case concerned the zoning of a common area for swimming. The complainant argued that the zoned area was not suitable for swimming because it was only around 10 cm deep, only five square metres in size and very difficult to access. The municipality took the view that it was sufficient that the area could be used by small children for wading. In the Ombudsman's opinion, the county governor had not reviewed the issue as broadly as he should have in his capacity as the appeals body.

The county governor subsequently carried out an assessment of whether the area was suitable to serve as a "common swimming area for children", and upheld his decision on the matter. The Ombudsman then decided to let the case rest.

Error in survey of property

23 February 2010 (Case 2009/1608)

The complainants purchased a plot and were granted a permit by the municipality to partition off a 1/4-acre plot. After the survey proceedings were carried out, the size of the plot was only 849.7 m^2. The question was whether the subdivision of the plot was carried out in accordance with section 3-2 of the Land Subdivision Act, which states that the administrator must ensure "that new boundaries are staked on the land in accordance with the municipal permit".

The Ombudsman concluded that the boundaries were not consistent with the

subdivision permit. The conditions in the Land Subdivision Act for deviating from the permit – that it is a question of a "minor discrepancy" – did not appear to be satisfied.

Moreover, there was much to indicate that there was an error in the land survey which the complainants had to be entitled to have rectified. The Ombudsman asked the county governor to reconsider the matter.

In his reassessment, the county governor found that the conditions for deviating from the subdivision permit under section 3-2 of the Land Subdivision Act were not satisfied. The county governor therefore revoked his decision and sent the matter back to the municipality for reconsideration.

Requirement that a building lot must be "assured lawful access to a road that is open to general traffic"

17 February 2010 (Case 2009/260)

This case concerned the question of whether a building lot was "assured lawful access to a road that is open to general traffic"; see section 66 (1) of the Planning and Building Act of 14 June 1985 No. 77. In the complaint to the Ombudsman, it was pointed out that the landowners had not committed themselves to keeping the private road "open to general traffic".

The county governor of Oslo and Akershus had, with reservations, concluded that the landowners were obliged on the basis of contract law to keep the road open to general traffic as long as the municipality and others cleared the road of snow. The Ombudsman found the grounds to be doubtful, pointing out that, in principle, passivity does not establish a legal right. He could not see that the owners had been made aware of the municipality's expectation that the road would be kept "open to general traffic" in return for the road being cleared. The situation thus gave them no encouragement to make a reservation against this obligation. The Ombudsman further questioned whether the requirement of access might imply a certain minimum level of duration and stability. He pointed out that the wording of the Act, the considerations underlying the provision and the internal consistency of the provision could suggest this. The county governor was asked to reconsider the matter.

After reassessing the matter, the county governor upheld the decision, but on a different legal basis. The Ombudsman did not find it expedient to pursue the matter, but made certain comments regarding the county governor's new assessment.

Period spent in a police cell – general rule requiring transfer to a prison within 48 hours, etc.The police and prosecuting authorities

14 May 2010 (Case 2008/1775)

In the autumn of 2008, the Ombudsman initiated a new investigation of the time spent in police cells by detained persons. The primary question raised was whether the period of detention was in line with the provisions of the Regulations of 30 June 2006 concerning the use of police cells and the general rule in the regulations regarding transfer to a prison within 48 hours. The Ombudsman also questioned whether the system for recording the time spent in police cells is adequate. After several rounds of obtaining information from the Ministry of Justice and the Police, the investigation was concluded in the spring of 2010.

The Ombudsman stated that the statistics available on time spent in police cells were still not satisfactory. Even so, the statistics sent by the ministry showed that there was still a disturbingly high number of cases in which the 48-hour deadline for transferring detainees to a prison had been exceeded. The Ombudsman assumed that the responsible authorities would make active efforts to reduce the number of such cases, and in this context

would focus particular attention on the total time spent in police cells.

Tax and tax assessment (property tax)

Property tax – Elverum municipality's valuation of holiday homes

23 November 2010 (Case 2010/489)

This case concerned the issue of whether Elverum municipality's valuation of holiday homes in the municipality might be in breach of the valuation provision in section 5 of the Cities and Towns Tax Act of 18 August 1911 No. 9 and of the administrative-law principle of equality.

The Ombudsman concluded that Elverum municipality must have misunderstood both the valuation provision in section 5, first paragraph, of the Cities and Towns Tax Act and the Ministry of Finance's many explanations of how that section is to be interpreted.

The municipality's use of different valuation principles in determining the property tax rate for the holiday homes in the municipality, based solely on which principle resulted in the lowest tax base in each individual case, also seemed clearly contrary to the administrative-law principle of equality.

Complaint concerning the refusal of a request for a legally binding prior statement in a tax matter – the effect of tax treaties

2 August 2010 (Case 2009/2637)

A taxpayer residing abroad who had assets in Norway complained to the Ombudsman about the tax office's dismissal of a request for a legally binding prior statement in a tax matter. The dismissal was based on the grounds that the enquiry concerned matters regulated by a tax treaty. With reference to established practice in the Norwegian Directorate of Taxes, the Ombudsman found that this interpretation of the rules was too strict. The tax office should be able to act on the basis of the taxpayer's submission that in this case the right to levy tax lies with Norway under the tax treaty, and make a binding prior statement on the tax effects of a possible sale, based exclusively on domestic Norwegian tax rules.

After reconsidering the matter, the tax office decided to issue a binding prior statement.

Property tax on agricultural property

22 March 2010 (Case 2009/1262)

This case concerned the imposition of a property tax on agricultural properties in X municipality. A pivotal issue in the case was the effect on the assessment of the tax exemption for agricultural properties of the property being leased to and operated by persons other than the owner. Another key question was whether the municipality should take account of the licence requirement and ban on subdivision when valuing agricultural property, also in cases where the property was not exempt under the rules governing agricultural properties in operation.

The Ombudsman concluded that X municipality had to be criticised for having given unclear grounds for the valuation, since the municipality appeared to have attached importance to the fact that the properties were leased out and, moreover, had not assessed whether the ban on subdivision and the licence requirement had an effect on the sale value of the properties.

The municipality reconsidered the matter and upheld the valuation.

Extended entitlement to upper secondary education of pupils at private schools

19 October 2010 (Case 2010/338)

The issue of the right to extended education of pupils at private schools who are entitled to special education services (see section 3-6 of the Private Schools Act and section 3-1 of the Education Act), was raised with the Ombudsman's office by a school. The case concerned pupils who are entitled to a fourth and fifth year of upper secondary school, and whether the pupils had to transfer to a public school for these years.

The Ombudsman concluded that some doubt attached to the Ministry of Education and Research's interpretation of the Private Schools Act, and requested that the matter be reconsidered. The ministry was asked to take steps in any event to ensure that the statute was worded more precisely. In its consultation paper of 19 October 2010, the ministry proposed that the right to extended time in upper secondary school should be established by law in the Private Schools Act, so that pupils can choose to make use of this right in private schools that qualify for government funding on the same conditions as in public schools.

Closure of schools – municipalities' processing of cases and the rules in the Public Administration Act concerning regulations

23 June 2010 (Case 2010/868)

A common theme in several complaints about schools being closed was the case-processing rules relating to regulations contained in the Public Administration Act. The cases showed that Norway's county governors appeared to apply the rules differently when checking the legality of the municipalities' decisions. On his own initiative and on a general basis, the Ombudsman therefore took up with the Ministry of Education and Research the question of whether and how a municipality must comply with the rules concerning regulations in the Public Administration Act when deciding to close schools.

The ministry shared the Ombudsman's opinion that the practice followed by the county governors was not consistent, even though it was uncertain whether the differences were due to the matters pointed out by the Ombudsman. The ministry therefore saw reason to ask the Norwegian Directorate for Education and Training to prepare a new circular to replace the old one.

Coverage of expenses for transport to and from a private school in a neighbouring municipality

20 September 2010 (Case 2010/738)

A lower secondary pupil who changed schools from a local school to a private school in the neighbouring municipality was granted transport by bus from his home to the new school. The pupil's parents complained, claiming among other things that the transport offered was contrary to expert recommendations and the UN Convention on the Rights of the Child.

There was doubt as to whether the county governor had assessed and given sufficient weight to the relevant factors in the case. The Ombudsman also objected to the fact that the county governor had failed to consider the arguments related to the Convention on the Rights of the Child. The county governor was asked to reconsider the matter.

Social assistance

Partial repayment of national insurance benefits paid in arrears

11 November 2010 (Case 2009/2874)

A social welfare office demanded the repayment of overpaid national insurance benefits in respect of previously paid social benefits. The welfare recipient had wrongly received an overpayment of benefits in connection with the payment of benefits to which he was entitled, and the case concerned whether he had to repay the excess amount.

The Ombudsman concluded that it was doubtful whether the social welfare office had the right to demand that the amount be repaid or refunded, and asked the county governor to reconsider the matter.

Appointments, employment matters

Appointment of a police officer – right to apply for a similar position in the same agency

1 November 2010 (Case 2010/816)

A police officer who was employed at the level of police sergeant 1 applied for a position at police sergeant 2 level at the same police station where she was already working. She was not regarded as a real applicant by the local appointment board, despite dissent among the board members, because the main difference between the positions was the salary level. The minority of the local appointment board appealed the matter to the central appointment board, which upheld the appeal. Nevertheless, the police sergeant was not appointed.

The Ombudsman concluded that the police sergeant was a real applicant, and that she was entitled to the position of police sergeant 2 in accordance with the decision of the central appointment board. The police district was therefore asked to consider the possibility of promoting the complainant to police sergeant 2 and paying her financial compensation for the loss of salary that she had suffered because she was not offered the position. The Ombudsman also made certain comments regarding the procedures of the local appointment board and statements made by the police district to the Ombudsman in connection with another appointment process.

Change in employment contract in connection with reorganisation

1 September 2010 (Case 2010/516)

In connection with the reorganisation of a service area in X municipality, A's position as deputy head teacher became redundant. She was "released" from her duties by the municipality, and applied for a position as departmental head in the new service area. She was not offered this post, but was offered a position as team leader.

The basic principle is that an employment contract remains unchanged even after a reorganisation process. If a position is eliminated in the reorganisation, the employer may in principle require that the employee accept changes within the limits of management authority. A was hardly entitled to a post as head of a department, but neither was X municipality, by virtue of its management authority, entitled to change her position to that of a team leader. The rules governing dismissal with an offer of a position on different terms should have been applied. The term "release" is not a legal concept, nor does it give the employer more extensive rights in connection with reorganisation.

Administrative requirements in connection with entry into an agreement regarding transfer to a new position as an alternative to dismissal

29 June 2010 (Case 2009/1942)

Following a criminal case, X municipality gave A the choice between resigning from his position as head of a municipal department and being transferred to a position with no management responsibility. The municipality had made it clear that it was not possible for him to remain in his position. The parties entered into an agreement regarding a transfer.

The agreement could hardly be said to have been concluded without pressure. Since the municipality, at the time the agreement was entered into, had not assessed whether the substantive conditions for summary dismissal or dismissal with notice were fulfilled, it was a breach of the principles of objective, justifiable treatment to try to pressure the employee into entering into a "voluntary" agreement to transfer to a new position. The municipality should first have informed A whether the municipality considered there to be a legal basis for dismissal. Only then would he have been in a position to assess whether it was expedient to enter into an agreement concerning a transfer to a new position.

Demand for repayment of incorrectly paid salary

15 June 2010 (Case 2009/2194)

The issue in this case was whether Trondheim municipality had a basis for claiming a refund from A after she had been overpaid a total of NOK 65 209 in salary over a period of around a year and a half. The municipality had demanded that the excess amount be repaid and, in assessing the claim, had attached decisive weight to the fact that A had not acted in reasonable good faith in view of the amount of salary paid during the period in question.

The question of whether there are grounds for a restitution claim must be assessed in accordance with the non-statutory principle of *condictio indebiti* (payment of a thing not due). It had to be assumed that A was not aware of the incorrect payment, but that she should have discovered the error if she had checked her salary slips more carefully. After an overall assessment, the Ombudsman concluded that the municipality could not be criticised for claiming repayment of the amount paid out incorrectly.

National insurance and pensions

Case concerning a claim for repayment of cash support paid out in error

16 December 2010 (Case 2010/410)

A mother had appealed against a decision requiring that she repay half of the cash support that had been paid to her in error. She maintained that she had been assured verbally by several officials at the Norwegian Labour and Welfare Service (NAV) that she was entitled to full support. In the appeals process, the appeals body decided that she had to repay the entire amount that was paid out incorrectly, on the grounds that the rule regarding the sharing of blame could not be applied in cases where the benefit recipient had acted intentionally.

The Ombudsman concluded that there was reason for doubt concerning several factors of importance in the case. This especially applied to the quality of the telephone communications between NAV and the user. Furthermore, it was not clear from the decision whether the appeals body took the view that the benefit recipient had acted intentionally in the case, or just negligently. It was also unclear whether the decision of the lower body could be regarded as invalid. As an amicable settlement, the Ombudsman recommended that the claim for repayment be limited to half the amount, a solution which the lower body had previously sug-

gested. NAV subsequently followed the Ombudsman's recommendation.

Parental benefit – compensation for an incorrect decision

9 September 2010 (Case 2010/405)

This case concerned the question of whether the Norwegian Labour and Welfare Service (NAV) is liable for losses resulting from an error in the calculation of the benefit period in a decision concerning parental benefit.

The Ombudsman concluded that a question had to be raised as to whether NAV Appeals Southern Norway had applied the correct standard of due care in its assessment of liability, and that there was a basis for holding NAV liable in damages. The appeals body was asked to reconsider the matter.

Work assessment allowance – the importance of providing timely, correct information to users making the transition to a new system of benefits

8 March 2010 (Case 2009/2829)

In the Ombudsman's letter of 9 December 2009 to the Norwegian Directorate of Labour and Welfare, he requested an account of the measures which the directorate had planned and intended to implement to ensure that no problems arose during a transitional phase for users who were to start receiving a work assessment allowance rather than either a rehabilitation allowance or time-limited disability benefits, and who for some reason might find it "unnecessarily onerous" to comply with the duty to report to the authorities.

On the whole, the account provided by the Norwegian Directorate of Labour and Welfare on 23 December 2009 gave the impression that the agency was well prepared to handle the various challenges that could be expected to arise in connection with the transition to the system of work assessment allowances.

Road traffic

Requirement of an accompanying driver during practice driving – section 26 of the Road Traffic Act

30 June 2010 (Case 2010/327)

When practising driving, the learner driver must be accompanied by a person who has held the right to drive for an "uninterrupted period of at least five years". This case raised questions as to what this requirement entails, particularly when the right to drive has been temporarily withdrawn due to health problems, and whether there is any possibility of obtaining an exemption in such cases.

The Ombudsman had no legal objections to the decision of the Directorate of Public Roads in this case, but recommended that more detailed guidelines should be drawn up concerning the power to grant an exemption from section 3-1 of the Driver Training Regulations.

Immigration cases

The residence requirement for stateless persons in the Norwegian Nationality Act

23 July 2010 (Case 2008/2790)

This case primarily concerned the interpretation of the residence requirement in the Norwegian Nationality Act for stateless persons who are applying for Norwegian citizenship. A applied for a renewal of her work permit four days after her previous permit had expired. The Norwegian Immigration Appeals Board refused her subsequent application for Norwegian citizenship on the grounds that she did not meet the Act's requirement of three years' continuous residence in Norway with a permit.

The Ombudsman found that the Immigration Appeals Board had cited the wrong legal basis in refusing her application, and that this was blameworthy. Furthermore, the Board appeared to have applied too strict a standard when assessing the residence requirement. The Ombudsman concluded that there was reason for doubt concerning significant factors in this case, and therefore requested that the Board reconsider the case.

In his concluding statement, the Ombudsman also referred to the fact that the ministry had initiated steps to amend the regulations in this field. The Ombudsman was in favour of the proposed amendment, which would presumably result in the required clarification of the rules.

Citizenship for children – question of uncertain identity

26 April 2010 (Case 2009/345)

Four Iraqi children's applications for Norwegian citizenship were refused even though their mother had become a Norwegian citizen and two of the children had been born in Norway. The grounds for the refusal were that their identity was regarded as uncertain due to the uncertainty about their father's identity. The question was whether this uncertainty also attached to the children in such a way that they could be refused Norwegian citizenship.

The Ombudsman stated that the current practice of refusing Norwegian citizenship to children when there is doubt about the identity of one of their parents is strict and can have unreasonable consequences, particularly when the other parent has become a Norwegian citizen. In the Ombudsman's opinion, this practice and the rules should be changed, and it was therefore encouraging that the ministry had initiated a legislative review focused on these issues. There were insufficient legal grounds for criticising the outcome of the four cases which the complaint concerned. Nevertheless, the assessment had given risen to doubt.

The best interests of the child must be evaluated in this context, as in other contexts, in accordance with Article 3 of the UN Convention on the Rights of the Child, and there should be clear reference to this evaluation in the statement of reasons.

The Norwegian Immigration Appeals Board later informed the Ombudsman that it will in future be stated in the Board's decisions that the case has been assessed in the light of the provisions of the Convention on the Rights of the Child.

Expulsion case. Arrival in Norway at an early age – procedure followed by the Immigration Appeals Board

12 January 2010 (Case 2008/2685)

A was nine years old when he came to Norway in 1989, and has lived here since then without returning to his home country. He was convicted of criminal offences in 2001 and 2003. In 2005, he was sentenced to imprisonment for a term of eight years for serious drug offences, after which he was expelled from Norway. The question in the case was whether the decision to expel him was a disproportionate reaction ((in view of the complainant's actions)); see section 30, third paragraph, of the Immigration Act of 24 June 1988 No. 64.

The Immigration Appeals Board subsequently reconsidered the case at a board hearing without the appellant present. The Board found no grounds for reversing the expulsion decision. Great emphasis was placed on the seriousness of the offence.Based on, among other things, existing case law relating to the expulsion of foreign nationals who have come to Norway at an early age, the Ombudsman concluded that significant doubt attached to the exercise of discretion in this case (the assessment of proportionality). The appeal should therefore have been dealt with at an appeals board hearing attended by three board members, not by the board leader alone.

Appendix 1

The Ombudsman's office – list of staff

As at 31 December 2010, the Ombudsman's office had the following departmental structure and comprised the following staff. The specialist areas of the departments are set out in the organisational chart in chapter I.

All departments:

Department 1:

Head of Department:	Bjørn Dæhlin
Deputy Head of Department:	Annicken Sogn
Adviser:	Jan Gunnar Aschim
Adviser:	Leif Erlend Johannessen
Adviser:	Øystein Nore Nyhus
Higher Executive Officer:	Signe Christophersen

Department 2:

Head of Department:	Eivind Sveum Brattegard
Deputy Head of Department:	Camilla Wohl Sem
Senior Adviser:	Elisabeth Fougner
Adviser:	Stine Elde
Adviser:	Harald Søndenå Jacobsen
Adviser:	Kari Bjella Unneberg

Department 3:

Head of Department:	Berit Sollie
Deputy Head of Department:	Bente Kristiansen
Senior Adviser:	Camilla Lie
Adviser:	Eva Grotnæss Barnholdt
Adviser:	Frederik Langeland

Department 4:

Head of Department:	Kai Kramer-Johansen
Deputy Head of Department:	Lisa Vogt-Lorentzen
Senior Adviser:	Christian P. Gundersen

Senior Adviser:	Marianne Guettler Monrad
Senior Adviser:	Johan Nyrerød Spiten
Higher Executive Officer:	Martin Bogstrand Sørensen
Higher Executive Officer:	Eirik Myking Midtbø

Department 5:

Head of Department:	Annette Dahl
Deputy Head of Department:	Ola Berg Lande
Senior Adviser:	Siv Nylenna
Adviser:	Edvard Aspelund
Adviser:	Ingvild Lovise Bartels
Adviser:	Therese Stange Fuglesang
Adviser:	Dagrun Grønvik

Head of Department:	Harald Gram

Administrative department:

Head of Administration:	Grethe Fjeld Heltne

Finance, personnel, general operations:

Senior Adviser:	Solveig Torgersen

Office and reception:

Senior Executive Officer:	Mette Stenwig
(The Ombudsman's secretary)	
Adviser:	Martin Ewan Jæver
Higher Executive Officer:	Nina Olafsen
Senior Executive Officer:	Torill H. Carlsen
Senior Executive Officer:	Tina Hafslund
Senior Executive Officer:	Kari Rimala

Archives and library

Head of Archives:	Annika Båshus
Adviser:	Liv Jakobsen Føyn
Adviser:	Anne-Marie Sviggum
Higher Executive Officer:	Elisabeth Nordby

Senior Executive Officer:	Anne Kristin Larsen
Senior Executive Officer:	Kari Partyka

The following members of staff were on leave as at 31 December 2010:

Senior Adviser:	*Yeung Fong Cheung*
Senior Adviser:	*Cathrine Opstad Sunde*
Adviser:	*Heidi Quamme Kittilsen*
Adviser:	*Vidar Toftøy-Andersen*
Higher Executive Officer:	*Anne Gunn Lyen Green*

Appendix 2

Gender equality summary

		Gender balance			Pay	
		Men %	Women %	Total	Men average per month	Women average per month
Total for the enterprise	This year	35%	65%	100%		
	Last year					
The Ombudsman	This year	100%				
	Last year	100%				
The management group	This year	57%	43%	100%	75,934	76,055
	Last year	57%	43%	100%	71,981	70,878
Senior advisers	This year	25%	75%	100%	44,914	49,800
	Last year	22%	78%	100%	45,383	50,399
Advisers	This year	47%	53%	100%	37,978	38,494
	Last year	42%	58%	100%	39,372	39,255
Higher executive officers	This year	40%	60%	100%	33,983	34,280
	Last year	50%	50%	100%	32,094	31,731
Senior executive officers	This year		100%			
	Last year		100%			
Paid by the hour	This year		100%			
	Last year		100%			
Part-time	This year		100%			
	Last year	14%	86%			
Temporary appointments	This year	0	0			
	Last year	0	0			
Doctor-certified sick leave	This year	1 day*	26 days*			

** Distributed among five women and one man.*

Appendix 3

Overview of department structure and specialist areas

Appendix 4

The Ombudsman's lectures, meetings, visits and trips in 2010

Lectures:	
10 January	Lecture on human rights at the Wadahl seminar for law students
21 January	Lecture on the relationship between elected representatives and the public administration, personnel conference for the public sector, Lillehammer
2 March	Lecture including a review of the Ombudsman's newest statements at a refresher course on administrative law, Centre for Continuing Legal Education
8 April	Lecture on the Ombudsman's law-making function, particularly in the area of planning and building law, meeting of county governors, Hedmark
6 May	Lecture on the Parliamentary Ombudsman's experiences in police administrative cases, quality and supervisory tasks, meeting of administrative heads in the National Police Directorate, Gardermoen
19 May	Briefing on the Parliamentary Ombudsman at a specialist meeting with the Health and Social Services Ombudsman
31 August	Lecture on ethical guidelines, HumAk forum, University of Oslo
2 September	Lecture on the impartiality of municipalities at a dialogue conference hosted by the County Governor of Sør Trøndelag, Røros
26 October	Lecture to the Oslo City Government appeals board on similarities and differences between administrative appeals and complaints to the Ombudsman, Oslo
24 November	Lecture, "What's most effective – the Parliamentary Ombudsman or the courts?", at a course on administrative law hosted by the Centre for Continuing Legal Education
25 November	Speech on compulsory psychiatric health care from an ethical and human rights perspective, at a conference for psychiatric health personnel, Hamar

Meetings and visits in Norway:

12 January	Speech on the Parliamentary Ombudsman at an internal seminar for new members of the Storting (the Norwegian parliament)
13 January	Visit to the County Governor of Vestfold, Tønsberg
16 February	Visit to the Norwegian Mapping Authority, Hønefoss
19 February	Meeting with the Red Cross concerning the fundamental human rights of vulnerable groups
5 March	Meeting with Juss-Buss concerning problems the Ombudsman encounters in his work
26 March	Audience with the King
12 April	Human rights forum hosted by the Norwegian Centre for Human Rights. The topic was: “Should a human rights catalogue be included in the Norwegian Constitution?”
14 April	Visit to St. Olavs Hospital, for psychiatric health care, Brøset department
27 April	Visit to the Norwegian Association of Local and Regional Authorities (KS)
29 April	Visit from the Storting’s Standing Committee on Scrutiny and Constitutional Affairs for the presentation of the Ombudsman’s annual report
11 May	Visit to the Climate and Pollution Agency (KLIF)
31 May	Visit to Stavanger Prison
20 September	Visit to the Norwegian Board of Health Supervision, Oslo
25 October	Annual information meeting with the Norwegian Directorate of Immigration (UDI)
29 October	Meeting with Juristforum, information about a local government project
1 November	Meeting with the Patient and User Ombudsman in Østfold regarding confidentiality
21 December	Visit to Ila Prison. The topics included the current situation at the facility, and particularly the conditions faced by inmates suffering from psychiatric illnesses and non-conforming inmates.

International visits to the Ombudsman:

9 February	Meeting with Russian parliamentarians
10 February	Meeting with the Irish ambassador regarding the role of the Police Ombudsman
25 March	Meeting with the US Ambassador

13 April	Meeting with the Director General, Foreign Affairs Office of the People's Government of Guangdong Province regarding the possibility of establishing an Ombudsman system in China
3 May	Visit from CIDH, an inter-American human rights court
11 May	Visit from China concerning anti-corruption efforts
18 May	Visit by the Uzbek Deputy Minister of Foreign Affairs
14 June	Visit from the Vietnamese bar association. The topics included the Norwegian legal assistance sector and social structure.
15 June	Visit from the Chinese public prosecutor's office
26 August	Visit by six members of the control committee of the Japanese parliament. A briefing was provided on the Ombudsman system, with a particular emphasis on the position of the Ombudsman from a constitutional and parliamentary perspective.
15 September	Visit by the Indian Minister of Rural Development & Minister of Panchayati Raj (local self-governance)
7 October	Visit by the Kaliningrad Human Rights Ombudsman, reciprocal briefing on the Parliamentary Ombudsman and Kaliningrad Human Rights Ombudsman
12 October	Visit by a parliamentary delegation from Montenegro
19 October	Visit by a Chinese delegation consisting of, among others, journalists, professors and representatives of non-governmental organisations. The subject was a study visit focused on the Nordic welfare model and the Ombudsman's supervisory function.
9 November	Chinese delegation
29–30 November	Meeting in Oslo of the board of The International Ombudsman Institute (IOI)
30 November	Visit by the Northern Ireland Ombudsman, who gave a briefing on special circumstances related to his Ombudsman mandate.

Meetings and visits abroad, participation in international conferences, etc.:

1 February	Human rights conference hosted by Johns Hopkins University, Paris
4–5 February	Meeting of Western-Nordic ombudsmen, Copenhagen
11 February	90-year anniversary of the Parliamentary Ombudsman of Finland, Helsinki
11 March	Counter-terrorism and Human Rights Conference 2010, London
5–8 June	Liaison Officers' Seminar hosted by the European Ombudsman, as well as various meetings, Strasbourg
16–18 June	Meeting of Western-Nordic ombudsmen, Faroe Islands

19–23 August	Meeting of Nordic ombudsmen, Ilulissat, Greenland. The meeting topics included the new Danish Freedom of Information Act and the work of the ombudsmen on cases concerning human rights.
27 September	European Ombudsman 15-year anniversary
3–5 October	Participation in the conference *Europe: An open society*, hosted by the International Ombudsman Institute (IOI)
17–19 October	Participation in a meeting of the board of the International Ombudsman Institute (IOI), Bermuda
19 November	Annual Judicial Review Conference, London
1–2 December	Meeting of Western-Nordic ombudsmen, Copenhagen

Appendix 5

The Constitution of the Kingdom of Norway

Article 75 litra l:

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

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

Appendix 6

Act of 22 June 1962 No. 8 concerning the Storting's Ombudsman for Public Administration[2]

§ 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 the public administration respects and safeguards human rights.

§ 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,

[2] 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, 29 June 2007 No. 82 and 19 June 2009 No. 82.

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

The Storting may stipulate in its Directive to the Ombudsman:

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

§ 5.

Basis for acting.

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

§ 6.

Further provisions regarding complaints and time limit for complaints.

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

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

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

§ 7.

Right to obtain information.

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

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

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

§ 8.

Access to offices in the public administration.

The Ombudsman shall have access to places of work, offices and other premises of any administrative agency and any

enterprise which come under his jurisdiction.

§ 9.

Access to documents and pledge of secrecy.

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

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

§ 10.

Termination of a complaints case.

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

The Ombudsman may point out that an error has been committed or that negligence has been shown in the public administration. If he finds sufficient reason for so doing, he may inform the prosecuting authority or appointments authority what action he believes should be taken accordingly against the official 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, pension and working conditions of the staff shall be fixed in accordance with the agreements and provisions that apply to employees in the Civil Service.

§ 15.

1. This Act shall enter into force 1 October 1962.

Appendix 7

Directive to the Storting's Ombudsman for Public Administration[3]

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.

[3] 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 author-ise specific members of his staff to terminate cases which must obviously be rejected or cases where there are clearly insufficient grounds for further consideration. The Ombudsman renders his decision in a statement where he gives his opinion on the issues relating to the case and coming within his jurisdiction, cf. § 10 of the Ombudsman Act.

§ 10.

Instructions for the staff.

(Re § 2 of the Ombudsman Act.)

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

§ 11.

Public access to documents at the office of the Ombudsman

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

§ 12.

Annual report to the Storting.

(Re § 12 of the Ombudsman Act.)

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

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

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.

(The Constitution of the Kingdom of Norway article 75, l)

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 the public administration respects and safeguards human rights

(Act concerning the Storting's Ombudsman for Public Administration § 3)

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.

(Directive to the Storting's Ombudsman for Public Administration § 1)

The Parliamentary Ombudsman
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Sivilombudsmannen

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