

THE SWEDISH OMBUDSMAN'S POLICY  
ILLUSTRATED BY CASE-NOTES FROM THE ANNUAL REPORTS

By Ulf Lundvik  
Former Chief Parliamentary Ombudsman of Sweden

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## A. INTRODUCTION

The case-notes presented in this paper are selected from the Annual Reports covering the period January 1, 1976 - June 30, 1981. Most of the cases are from the latter part of the period. Where the cases are accounted for in the summary in English attached to each Annual Report, the text in this paper follows that of the summary with minor alterations. Most notes, however, are taken from the Swedish text which has been summarized and translated into English.

During the time now accounted for, there has been a number of incumbents of the office as Ombudsman. Since May 8, 1976, the office comprises four Ombudsmen and there has been a number of replacements during these years. I have deemed it to be of little interest to mention, each time, which Ombudsman was responsible for the decision made. So the text refers simply to "the Ombudsman".

The case-notes are grouped after the character of the Ombudsman's decision (e.g. prosecution, institution of disciplinary proceedings, etc.). They refer to the following agencies or organizations:

- Police (Nos. 1, 2, 5, 6, 26 and 27)
- Defence forces (Nos. 3, 7, 8, 12 and 23)
- Social and welfare agencies (Nos. 4, 18, 20 and 21)
- Courts of law (Nos. 9, 10, 13 and see also 16)
- Prison administration (Nos. 14, 17 and 22)
- Tax assessment (Nos. 15 and 16)

- Crown prosecutors (No. 11)
- Execution of civil judgments (No. 24)
- Schools (No. 19)
- State Church (No. 25)

As will be noticed, there are no examples given of cases where the Ombudsman recommends monetary compensation as a means of redressing a grievance. The reason none are included is that no such recommendation has been made during the period, the most recent probably being a recommendation made by myself as Ombudsman in 1974.

## B. PROSECUTION

In the time preceding World War II, prosecution was the main weapon of the Ombudsman. Although the Ombudsman still retains the power to prosecute official for malfeasance or neglect in office (provided the offence committed is grave), it is unusual nowadays that the Ombudsman resorts to prosecution. In the Annual Report submitted to Parliament in October 1981 three cases where prosecution was instituted are accounted for.

1&2 Two were instituted against police officers who allegedly had battered persons they were interrogating. The verdict in both cases was "not guilty" as the evidence for the prosecution was deemed insufficient.

3 The third action was instituted against a captain in the army who was charged with having menaced and insulted a conscript. The captain was acquitted on the first charge but found guilty on the second. The penalty was a fine.

The Report submitted in October 1980 did not account for any prosecutions instituted by the Ombudsman and the Report in 1979 only for one. This case however, is of some interest.

4 Mr. G., who was the chairman of a social welfare board, had lived common law with Mrs. M. for 10 years and had a son and a daughter with her. In 1978 G. and M. separated. G. took care of the children but M., who had the legal custody wanted them to live with her. G.

then applied to Court to have the custody transferred to him. M. now cohabited with Mr. B. G., who was of the opinion that the children ought not to come under the influence of B., informed the Court of certain discrediting facts concerning B.'s private life, of which G. had become aware in his capacity as chairman of the social welfare board. To support his statements G. submitted copies of documents from the board's archives. All these facts and documents were to be kept secret under law.

The Ombudsman instituted prosecution against G. for breach of secrecy. G. admitted that he had supplied the Court with information which should normally have been kept secret, but pleaded not guilty on the ground that he, under the circumstances, was entitled to divulge the information in the interest of the children. The Court did not accept this argument. It found G. guilty and imposed a heavy fine.

For a more serious case one must go back to the Report submitted in 1976. There, an account is given of a lengthy and complicated case related to the unlawful use of funds administered by the police.

5 Money had been employed, contrary to the regulations, for providing loans to policemen for private purposes. The case also concerned some other infringements committed by police officers, the worst being the acceptance of loans and other benefits from a private

person who held the police's permission to organize lotteries. The outcome of the Ombudsman's action was that a chief police superintendent was found guilty of instigation of the unlawful use of funds, taking bribes and breach of duty. He was removed from office. Further, a detective inspector was sentenced to suspension from his office for one month for taking bribes and five other police officers were fined for the unlawful use of funds.

- 6 The same Annual Report tells of a policeman whom the Ombudsman prosecuted for maltreating and battering two apprehended persons. The policeman was found guilty and a penalty of one month's imprisonment was meted out. The Court of Appeal, however, reduced the sentence to a heavy fine.

### C. INSTITUTION OF DISCIPLINARY PROCEEDINGS

Disciplinary proceedings are instituted by the Ombudsman only occasionally, slightly more often than prosecutions, though. The Annual Report submitted in October 1981 does not account for any such cases, but the Report presented in 1980 mentions three cases where the Ombudsman initiated disciplinary proceedings.

- 7&8 Two of them concerned army officers who had insulted conscripts. One officer had also misbehaved in other ways (by ordering conscripts, who were on the sick-list to carry out duties that they were exempted from). The

officers were both submitted to disciplinary punishment (fines).

The third case is more interesting:

9       An Assistant Judge heard a case about the custody of a divorced couple's children and maintenance. After the hearing he announced that judgment would be pronounced a fortnight later, alternatively a statement would then be made as to which day the judgment was to be pronounced. On the day fixed, the Assistant Judge merely made known that no judgment would be pronounced that day. No judgment was ever pronounced by the Assistant Judge, who thus held up the case for months. Ultimately the case was taken over by another Judge who held a new hearing and then pronounced judgment. The Ombudsman initiated disciplinary proceedings against the Assistant Judge. The State Disciplinary Board (headed by the Chief Justice of Appeal in Stockholm) found him guilty of neglect of duty and gave him a warning.

The Report presented in 1979 likewise accounted for three cases where the Ombudsman instituted disciplinary proceedings:

10       The first concerned a Judge who under, or immediately following a preliminary hearing of an expropriation case threw away and thus made irretrievable some documents which a party had submitted to the Court as evidence supporting his claim for compensation. The State Disciplinary Board found the Judge guilty of neglect of



duty and gave him a warning.

11 In the second case a Crown prosecutor had issued an order to the police that two young men, whom he suspected of larceny, be arrested when found. He did not know their names and the description he gave of them was vague. Early next morning two youngsters were apprehended by the police. They were detained for more than 20 hours. By then it was evident they were not the men suspected of the crime and they were set free. The State Disciplinary Board, where the Ombudsman instituted proceedings, found that the prosecutor had erred in ordering the arrest of two persons, who were not described well enough to make identification possible, and in not reconsidering his decision within reasonable time after their arrest. The prosecutor was warned.

12 The third case concerned two army officers who had organized a cross-country run for conscripts in an area where, at the same time, shooting with mortars, machine-guns etc. was being carried out. The Ombudsman instituted disciplinary proceedings against the officers, who were found guilty of neglect of duty (non-observance of safety regulations) and punished with fines.

#### D. CRITIQUE OF DECISIONS

The Ombudsman's policy can be highlighted by citing two cases from the Report submitted in 1981:

13 At a preliminary hearing of a divorce case the Court made a provisional order for the custody of the children, entrusting the custody to the wife and, at the same time, forbidding her to let the children leave Sweden. The Ombudsman demanded that the Court explain how it could issue such a prohibition. The presiding Judge answered that he wanted to secure contact between the children and their father. Their mother associated with a Canadian citizen and planned to emigrate to Canada. It would not be in the interest of the children to allow their mother to take them to Canada, thus debarring their father from contact with them. The Ombudsman, in his decision, declared that a Court cannot restrict a custodian's right to determine the place of residence of his or her child, even if the aim is to guarantee the other parent the right of social intercourse with the child. If one parent, as in this case, might have the intention to emigrate with the child, this should have been taken into account when the Court decided who should have the custody.

14 Under Swedish law an inmate of a correctional institution should, when possible, be allowed to participate, in his leisure time, in associational or similar activities outside the institution if this may

facilitate his rehabilitation in society. At one institution it happened that the right to such participation in leisure time was withdrawn for all inmates if any one took the opportunity to abscond. After the matter had been reported to the Ombudsman, he criticized the decision and stated that collective punishment is not compatible with Swedish conceptions of justice. If a prisoner takes part as an individual in leisure time activities outside the institution and neglects his duties, that should not prevent other prisoners from participating in such activities. When activities are conducted on a group basis the principle must also be that the right to continue leisure time activities is decided individually. It is another matter that some forms of group activities must be abandoned if they are put to improper use by prisoners.

The Report submitted in 1980 contains a case of some considerable interest where the Ombudsman criticized an authority for a decision which still could be appealed:

15       An employee of Scandinavian Airlines System (SAS) complained to the Ombudsman that the assessment board was pestering him by repeatedly requesting information about travel benefits which had recently been declared by a higher instance to be non-taxable. The board had ultimately decided to tax him for travel benefits from SAS of an estimated value of SEK 12,000.

In his decision the Ombudsman declared initially that

he could not annul or alter the decision of a taxation assessment board, nor direct the board to alter it. The remedy open to the taxpayer is appeal to the County Audit Court. The Ombudsman went on: the Ombudsman is admittedly free to make statements on the merits of a case, that is, on the application of law. He very seldom makes use of this right, however. When anyone complains and considers that a taxation measure is erroneous, the Ombudsman usually counsels him to appeal to the competent court. The Ombudsman justifies his attitude with reference to the fact that a future examination in the taxation court should not be anticipated. But there are cases when the circumstances are such that a statement on the merits is justified. This is such a case.

The Ombudsman considered that in this case the taxpayer had extremely strong reasons for his standpoint that the benefits were non-taxable and that consequently he should not be required to furnish information about them. The confidence in the taxation system will, in the Ombudsman's opinion, by no means be improved if an assessment board, on such weak grounds as in this case sets upon a taxpayer and threatens him with reconstructed assessment unless he furnishes the requested information. Reconstructed assessment may not be adopted as punishment of a taxpayer. The Ombudsman pointed to other courses open to an assessment board

desirous of bringing up such a matter. His opinion was that it was not reasonable that a taxpayer bears the entire burden of appeal and application for a respite from the obligation to pay the tax in a case where the judicial position is so clearly in his favour as in the present one. The Ombudsman took no further steps than to express his disapproval of the board's action.

#### **E. CRITIQUE OF PROCEDURE**

The ombudsman frequently criticizes the procedure followed in a court of law or an administrative authority. Three cases from the Annual Report presented in 1981 will illustrate this:

16 A taxpayer called personally at the Ombudsman's office and made the following statement:

He had had a tax-case pending in the Stockholm Court of Appeal for Administrative Cases. He had asked for an oral hearing as he wanted to expound his arguments and he could do that better orally. Much to his dismay the only answer he received was the Court's judgment disallowing his appeal and at the same time rejecting his application for a hearing. He contended that if he had been advised that no oral hearing was to take place, he would have submitted his additional arguments in writing.

The Ombudsman launched an investigation which had bearing not only on the individual case mentioned but

equally on the Court's practice in general. In his decision the Ombudsman expressed the opinion that it was unfortunate and nonchalant towards the complainant that the Court did not offer him an opportunity to conclude his exposition of the case.

The Ombudsman also made several general remarks. Among other things he stated: The process in the administrative courts is in principle conducted in writing. Oral hearings are sometimes a necessary, sometimes a desirable supplement. Applications for oral hearings should be considered in a generous spirit. A more restricted attitude could be accepted if warranted by a need to use the Court's time and resources for reducing a large backlog of cases and shortening the time used for each case. If a court contemplates rejecting an application for a hearing, the court should give the party time to conclude his presentation of the case before judgment is delivered. A court should never reject an application for a hearing and simultaneously bring the case to an end. Exception could be made only if the party's claim is fully granted and in cases where the court for some formal reason is prevented from considering the claim.

17      When inspecting a correctional institution the Ombudsman noticed that in some cases where inmates had been subjected to disciplinary punishment no proper account had been given of the offence committed. It

was, for instance, said merely that the inmate had behaved in a threatening or disturbing way. The Ombudsman made the following pronouncement: Before making a decision on a disciplinary charge the authority must conduct an investigation and put down its findings in writing. It is not sufficient to state in general terms that the inmate had behaved in a threatening or disturbing way; it must be made clear how the threat or disturbance had manifested itself. A thorough investigation and recording of the findings are important when the punishment later on will be reconsidered by a higher authority.

18 A couple of twins, borne in 1972, had lived in a foster-home since the first year of their lives. In 1980 the social welfare board decided that the children should be transferred to another foster-home. The reason for this decision was that the board had received information indicating that the foster-parents did not take good care of the children. The Ombudsman, upon receipt of complaints that no proper investigation had been made before the decision, launched an investigation. The social welfare board then decided to postpone the transfer of the children and to give the foster-parents adequate advice and help in their care of them.

The Ombudsman, his investigation completed, criticized the social welfare board. The board had not

- he said - fulfilled its duty of investigation before deciding to replace the children in another foster-home. Among other things, the foster-parents had not been notified of, nor given any opportunity to comment upon the reports directed against them as foster-parents, and on which the board's decision was based. The matter had manifestly not been of so urgent a nature that, on that ground, the board should have made its decision before the foster-parents had been able to comment on the criticism. It was also remarkable that the board had made its replacement decision without investigating how a change of environment would affect the children. He considered that such an investigation was especially important as the children were relatively small and at least one of them had a pronounced emotional disorder. As no complete investigation was made, there was a considerable risk that the decision would not be compatible with the best interest of the children. This appeared to the Ombudsman to be particularly unsatisfactory as there lies no appeal against replacement of foster-children.

#### F. SOME OTHER EXAMPLES OF CRITICISM PRONOUNCED

A case from the schools:

19 Late in 1980 a newspaper issued in the north of Sweden, carried an article alleging that an eleven year



old pupil had been sent home from school without his shoes while the temperature was -11 degrees Celcius.

The Ombudsman demanded a report and an explanation from the local school board. The board took a statement from the teacher concerned, Mrs. L. L. said the pupils in her form had taken to the bad habit of throwing about one another's shoes. This had been discussed at a meeting with the parents and it had been decided that a pupil who threw or concealed a comrade's shoes should be sent home without his or her shoes. The matter had been discussed with the pupils who had also accepted the decision. Some days later L. had - in conformity with the decision - sent home a pupil, Peter, without his shoes. As Peter's mother objected (she had not attended the meeting with the parents) the matter was discussed with the head master, the school psychologist and Peter's mother. L. had promised not to send home Peter any more without his shoes. On a later occasion Peter again misbehaved, throwing shoes in the classroom. A comrade then concealed Peter's shoes so Peter had to walk home in his stockings. L. was not aware of what had happened until later, when she found Peter's shoes in the classroom. Subsequent investigation proved that this latter incident was the one mentioned in the article.

The local school board disapproved of the decision made by the parents but held that L. could not be

blamed. The board was not prepared to take any action.

The Ombudsman, however, was not satisfied: L. ought to have realized that it was improper to send children home without their shoes. While it was commendable that contact was established between the school and the parents on questions relating to school discipline, it could not be left to the parents to make formal decisions. The responsibility was always incumbent on the school and the teachers. In the Ombudsman's opinion L. had shown a lack of judgment in following the parent's decision. The investigation had shown that it was not L. who had sent Peter home without shoes on the occasion mentioned in the newspaper but rather some pupils who used the same procedure as had been used by L. This showed what unlucky consequences the procedure had. As regards the school board it was all very well they had disapproved of the measure taken, but the Ombudsman held the board should have reacted more vigorously. As an agreement had subsequently been reached on other measures to be taken to keep order in that particular form, the Ombudsman found further action on his part not called for and closed the file.

A social welfare agency and its officers:

20 Mrs. A. stated in a letter to the Ombudsman:

On October 3, 1980, when visiting a post office, she lost an envelope containing SEK 3,200. She had intended to use the money for paying her rent and some bills.

She went the same day to the social welfare agency to apply for aid and talked with an official, K. K. said he did not believe she had lost any money. He gave her a small amount to cover her expenses for the next few days and advised her to call again on October 6. She did so and then talked with another official, L. L. was also disinclined to believe her. He said he would submit the matter to the board of the agency and meanwhile gave her money for a week. Some days later Mrs. A. received a letter from L., dated October 8. L. told her in the letter that the board doubted the veracity of her story, however, this was not material. The board had reached the conclusion that Mrs. A., in view of her ordinary financial position, could not be awarded relief for the payment of her rent and other bills. Yet she could, as previously, be granted small amounts from week to week to cover her living expenses as she said she was without resources.

The Ombudsman, upon receipt of Mrs. A.'s letter, asked the board for an explanation. The board answered that Mrs. A. had an income that would make it possible for her, in the long run, to pay off her debts. The question whether or not she had lost the sum of SEK 3,200 could therefore be disregarded.

The Ombudsman, in his decision, held that, as the board had declared that any possible doubts as to the veracity of Mrs. A.'s statements had no relevance for

the determination of the relief that could be granted, it was improper that K. and L. in their conversations with Mrs. A., and L. in his letter to her, had expressed their personal opinions about her credibility. It is, the Ombudsman continued, objectionable that officials of the agency behave in an improper manner in their contacts with the public and it is regrettable that the board, in its letter to the Ombudsman, did accept the attitude of the officials. The board ought to have realized that in the handling of a case there is no scope for critical observations on points which - according to the statement of the board itself - have no relevance to the decisions to be taken. The Ombudsman also criticized the agency for not giving adequate reasons for its decision and for not advising Mrs. A. that she could appeal the decision.

#### Housing allowances:

21 Under the regulations governing housing allowances, the applicant's income is of significance for the amount that can be allowed. In respect of married couples the calculation is based on their combined income, provided they do not live separately. Equated with a married couple are a man and woman who live together under marriage-like conditions and have a joint household. As regards examination concerning cohabitation it has merely been prescribed that the deciding authority shall accept the statement in the application unless

circumstances dictate otherwise.

Through a complaint to the Ombudsman, the following came to light. A woman had applied for a housing allowance and stated that she lived single and that a male boarder occupied part of her apartment. An official of the authority which was to decide on the case made an inspection of the woman's apartment - for that matter without notifying her in advance of his intention. The woman was not at home at the time, but the official was admitted by the boarder. Through this inspection the authority intended to discover whether the woman and the man could be considered to be cohabiting under marriage-like conditions. The official noted, *inter alia*, that there was a double-bed in one bedroom.

The authority judged that the man and woman were cohabiting under marriage-like conditions. Its decision was, however, rescinded by the next higher authority, which considered that the woman's statement in her application should be accepted.

In her complaint to the Ombudsman the woman stated that she reacted against the authority's manner of checking up on her private life. The authority, on its side, cited a regulation governing inspection in allowance cases, which the Ombudsman, in his decision, later found to have reference only to the standard of the housing and other comparable, nonpersonal

circumstances.

The Ombudsman, in his decision, said he found it incompatible with current law to have recourse to inspection as an element in the investigation of cohabitation. He referred, *inter alia*, to certain statements made by the responsible Minister of the Crown in connection with an amendment of the allowance regulation a few years previously. The Minister had said that authorities must accept the applicant's own statements "since, of course, no detailed check of the actual relation of cohabitation can be made". The Ombudsman emphasized that inspection of the interfering kind complained of is a threat to personal privacy. He also criticized the fact that the applicant had not been afforded the opportunity to oppose inspection.

#### G. RECOMMENDATIONS FOR LEGISLATIVE MEASURES

During recent years such recommendations have been relatively scarce. Three examples:

22 Inmates of correctional institutions may, on certain conditions, pursue studies at University level. In a case that came up in 1980 through a complaint to the Ombudsman the question arose whether and to what an extent such inmates could be granted state scholarships. The statute governing state scholarships had no specific rules for these cases but there was a provision of the content that when a student had his

subsistence provided for, totally or in part, by the state or a municipality, the scholarship to which he would otherwise be entitled could be reduced in accordance with governmental regulations. No such regulations had, however, ever been issued. The agency, responsible for granting of state scholarships, used to allow inmates scholarships reduced to amounts that seemed reasonable under the circumstances. The Ombudsman held that the matter should be statutorily resolved and recommended to the Government that a regulation be issued clarifying that reduced scholarships could be granted to inmates of correctional institutions. The recommendation was followed.

23 Commanders of regiments are authorized, under certain conditions to impose disciplinary punishment on conscripts who have misbehaved. Before so doing the commander must consult his judicial adviser, in Swedish "the auditor", who is a government appointed official. The auditor is considered responsible, jointly with the commander, for all decisions made in conformity with his advice.

While inspecting files at a regiment the Ombudsman found a number of cases where disciplinary punishment had been imposed improperly or where the decision otherwise was wrong. The auditor had been consulted in all of these cases and the decision corresponded with the advice given by him. If in these cases, the faults

committed had been really grave, both the commander and the auditor could have been prosecuted under Chapter 20 of the *Penal Code* . But the faults were not that serious. Under these circumstances the commander could have been held guilty of breach of duty under Chapter 21 of the *Penal Code*, applicable to military personnel only. An auditor is a civil servant and since January 1, 1976, simple breach of duty is no longer a punishable offence for civil servants. For most civil servants the previous penal responsibility has been replaced by a disciplinary responsibility but - probably due to an oversight - no such provision has been issued for auditors. Consequently, in the cases noticed by the Ombudsman, the auditor could not be held responsible under either the *Penal Code* or under disciplinary regulations.

The Ombudsman found it unreasonable that a regimental commander should be punished for a legally incorrect decision made on the advice of his auditor, trained in law, while the latter could not be held responsible at all. The Ombudsman recommended an amendment of the relevant regulations so as to extend disciplinary responsibility to auditors. The recommendation was followed. Using his discretion, the Ombudsman decided not to prosecute the commander; yet he criticized him and even more so the auditor.

24        During the inspection of an agency responsible for



the execution of civil judgments and similar matters the Ombudsman found that it was customary in that agency, that an officer, when commissioned to take back goods sold under a hire-purchase agreement, asked for and received some remuneration from the applicant. It was explained that the officer had no obligation to take care of the goods on behalf of the applicant, transport them to the agency and store them there until the applicant came to get them. It was therefore not considered improper for the officer to accept some remuneration from the latter. Subsequent investigation showed that the same practice was current in some other executory agencies but not in all.

The Ombudsman strongly objected to this practice. That an officer personally receives compensation from an individual was in the Ombudsman's view an improper combination of the discharge of official duties and the carrying out of private business. The Ombudsman held that it could be made a duty of the officer's that goods be taken care of, in the applicant's absence. If deemed necessary, the state could compensate itself for the time lost through increasing the fee that the applicant had to pay. If the officer should be allowed to accept remuneration from the applicant, the least that could be demanded was that the amount of the remuneration be fixed by statute. The Ombudsman recommended to Government that the matter be looked into.

A new *Code of Procedure* for the executory agencies was enacted in the spring of 1981. It was expected that the Ombudsman's recommendation would be considered in conjunction with that. So far, however, no action has been taken.

#### H. CASES WHERE THE OMBUDSMAN HAS EXPRESSED HIS OPINION ON HOW THE LAW SHOULD BE INTERPRETED OR HOW OFFICIALS SHOULD PROCEED

##### Ecclesiastical jurisprudence:

Sweden has a Lutheran State Church whose clergy are subject to the jurisdiction of the Ombudsman. In 1958, it was enacted by Parliament with the assent of the General Church Assembly, that women could be ordained as priests. When giving its assent the Assembly, however, made a reservation of the content, briefly, that no one should be compelled to act against his or her conscience. The interpretation of this reservation has been the subject of much doubt and controversy and in some cases the Ombudsman has had to intervene.

25 In 1976 the Rector of a parish in Stockholm, who opposed the female clergy on religious grounds, refused to let his church be used for a wedding at which a female priest was asked to officiate. The bride and bridegroom were married in another church, nevertheless, a complaint was submitted to the Ombudsman. Shortly after that the Rector died. The Ombudsman could have

closed his file then, but in view of the important questions of principle that were at stake, the Ombudsman decided to go on.

After having taken the opinion of the Archbishop of Sweden, who consulted with the other Bishops, the Ombudsman gave a lengthy exposition of the law as applied to the issue. He concluded, concurring with the view expressed by the Archbishop, that it was his firm opinion that the access to a church for the sake of performing a religious ceremony in compliance with the ritual of the State Church could not legally be subjected to a condition of the content that the officiating priest must be a male or a female.

In 1981, a Royal Commission recommended legislation to make it impossible for a Rector to refuse another priest in the State Church access to his Church for the sake of celebrating divine service, baptism, or a religious ceremony such as a wedding or a funeral. The Bishops were invited to express their opinions. They did so and unaminously recommended against legislation for the time being as the question ought to be analysed within a broader framework. They held that the legal issue seemed clarified through the Ombudsman's statements so it appeared practically out of the question that a Rector would refuse a female priest access to his church because of her sex.

Action of the police to evacuate buildings:

26        Some blocks of flats in Stockholm had been "occupied" by a number of persons in protest against a decision that the houses should be demolished. At the request of the Enforcement Office the police were called upon to evacuate the buildings. The evacuation took three days. In the course of the evacuation the police made use of certain parts of blocks of flats adjoining those to be demolished. Tenants in the former blocks lodged complaints with the Ombudsman. The Ombudsman in his decision made the following statement of principle:

"Among the police's duties are, on request, to assist the Enforcement Office in the eviction of anyone who unlawfully obstructs possession by another. For the police to be able to perform this duty in a satisfactory manner - whether evacuation of a flat or of a whole building - they have, as in most spheres of their work, certain means of enforcement at their disposal. Apart from the fact that the police may use force for execution of their duty, they must be entitled to take measures to prevent outsiders from impeding execution by gaining access to the site thereof. For such measures, as in respect of the force that may be necessary, the police shall never use severer means than the situation demands. The measures taken may naturally not involve danger to the life or health of another, nor to anyone's safety in other respects. On the other hand, of course, it cannot always be avoided that a measure encroaches to

some extent on the sphere of private life and causes certain disamenities for individuals. In my opinion it must be accepted, for example, if less interfering measures are considered inadequate, that the police keep a watch on entrances not only to the building to be evacuated but, when necessary, also to neighbouring buildings, and that they even make use of certain parts of the latter. The police should have this right even if the owner or beneficial user opposes the measure. I wish at the same time to emphasize how important it is that the police inform the latter of such forthcoming measures and that they pay remuneration for any damage, soiling or the like caused through their occupation. In general it is of great importance that the police conduct themselves in a reasonable and tactful manner and take pains to create understanding for their actions."

The Ombudsman concluded with some critical remarks on the procedure followed by the police on the occasion at issue.

The acceptance by the police of benefits.

27 An art collector was suspected of having smuggled works of art into Sweden. He was prosecuted and ultimately convicted. Meanwhile a Crown prosecutor brought to the Ombudsman's attention that the art collector, several years previously in 1974, in conjunction with the opening of a new police station in

his home town had deposited 250-300 pictures there for the decoration of the premises. According to the statement of the Crown prosecutor the pictures were worth millions.

After investigating the case the Ombudsman pointed out that there is no statutory prohibition to a public authority receiving a gift or benefit of other kind from a private person. On grounds set forth in his decision, the Ombudsman, however, considered that public authorities should be restrictive in their acceptance of such benefits, especially when of considerable value. An important point, in the Ombudsman's opinion, is how the public may view the reception of a benefit. It is highly important, the Ombudsman emphasized, that the view does not gain ground among the public that, by reason of the benefit, a special relationship exists between the authority and the conveyor of the benefit, such that the latter or his kin might possibly count upon some kind of favour in a given situation. The benefit should, accordingly in no way be calculated to undermine public confidence in the impartiality and uprightness of the authority.

The Ombudsman emphasized in this context the delicate position of the police in society and the strict demands that must be placed upon them. He pointed out, too, that if, after examination, an authority decides that it can accept a benefit not

comprizing a transfer of ownership, some circumstances may later occur which should cause the authority to reexamine whether the property should be handed back to its owner. In general the Ombudsman considered that the authority should hand back the property if the new circumstances, in the event they had already existed at the time when the authority was offered the benefit, would have constituted a reason for the authority to refuse the offer. He also questioned whether in certain cases it should not be incumbent upon another authority - superior to that offered the benefit - to examine whether it could be accepted. He had in mind particularly, such cases as when the benefit was of considerable value or the matter otherwise of a delicate nature. As far as the police are concerned it would be incumbent chiefly on the county administration as highest police authority in the county to examine the offer. Under all circumstances the Ombudsman considered it appropriate that an authority should consult its superior authority on the matter.

As regards the present case the Ombudsman stated - while remarking that the police's possession of the works of art continued after the art collector had been suspected and later sued for smuggling works of art - that in his view the pictures should be restored to the art collector. The Ombudsman emphasized at the same time that it was not incumbent upon him to give any

directives thereon to the police. He considered it most appropriate that the county administration should decide whether the pictures should be handed back or not.

The county administration later notified the Ombudsman of its decision that the works of art deposited in the police station should be restored to the art collector.

Stockholm, November 1981.