

**The Parliamentary  
Ombudsman  
Norway**

**S'OM**

The Parliamentary Ombudsman  
Annual Report 2009  
Summary in English





# Introduction

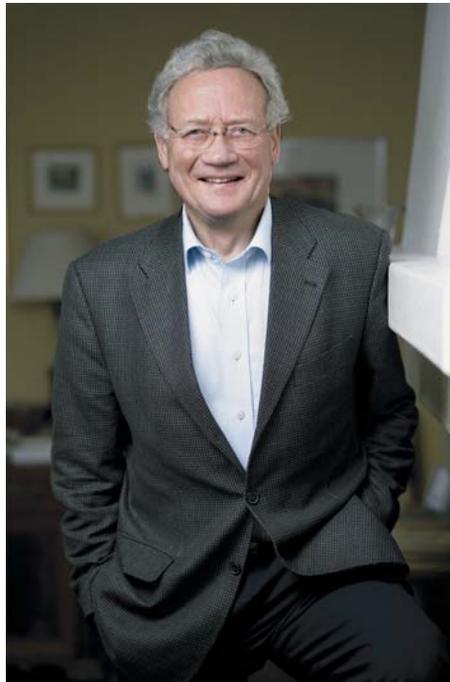
This is a summary in English of my Annual Report to the Storting (the Norwegian Parliament) for the year 2009. It also contains an overview of cases of general interest processed during the course of the year.

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

The full report to the Storting in the Norwegian language is available on the Parliamentary Ombudsman's website, [www.sivilombudsmannen.no](http://www.sivilombudsmannen.no).

Oslo, May 2010

*Arne Fliflet*



*Photo: Jo Michael*

*Parliamentary Ombudsman Arne Fliflet*



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# Activities in 2009

## 1. What does the Ombudsman do?

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

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

The Ombudsman's remit is not limited to decisions passed by public agencies, his right to investigate and examine includes actions, omissions and other matters connected with the operation of a public agency. When a public agency fails to reply to written applications, when case processing is slow or if civil servants in

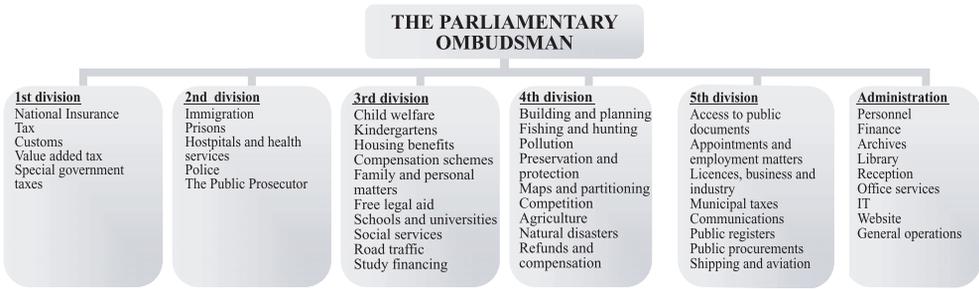
administrative positions behave in an improper or insulting manner, citizens may complain to the Ombudsman. This is a practical and inexpensive way for citizens to obtain a neutral and objective legal investigation of their case or of the problem they are experiencing with the public authorities. An investigation by the Ombudsman can be a useful and practical alternative to the courts. It is also important that individual citizens can submit a complaint to the Ombudsman without the need to use expert assistance, for example a lawyer.

### // A useful and practical alternative to the courts

The staff at my office is comprised of 33 members of the legal profession, with an administrative support group of 11 persons. The office is divided into five divisions, each division being responsible for a specialist area. Dividing the institution into specialist areas provides the heads of divisions and myself with a continuous overview of case portfolios, thus streamlining priorities and efficiency in case processing.

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

Figure 1.1 Overview of divisions and case categories



## 2. Complaints in 2009, case processing procedures and the results of processing

A total of 2695 complaints were received in 2009. This is an increase of 226 complaints compared with the figure in 2008 and an increase of 569 complaints compared with the figure for 2007.

Of the complaints received, 1319 were rejected on a formal basis. These include for example complaints against bodies, institutions and other independent legal entities that do not form a part of the public administration and that are not encompassed by the Ombudsman scheme. Moreover, if no appeal has been lodged with an appellate body in public administration or if the complaint has not previously been raised with the agency concerned, the complaint will normally be rejected. The reason for this is that the control by the Ombudsman is mainly based on re-examination, that is to say that the public agency concerned must first have the opportunity to process and decide on the issue that forms the basis for the complaint. Complaints will also normally be rejected if they are submitted after the cut-off date for submitting complaints to the Ombudsman. Complaints must be submitted no later than one year after the action or event that caused the

complaint took place, or ceased to take place.

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

Of the cases that were taken up for further investigation in 2009, 1057 were terminated following a study of the complaint

and the case documents submitted by the public agency, without the case being taken up with the agency. In 710 of these cases, it was shown that, following a study of the complaint and the case documents it was obvious that the complaint could not succeed. In the other 347 cases, a telephone call to the public agency concerned was sufficient to settle the matter. These cases mainly concerned extended case processing time or failure to reply on the part of the agency.

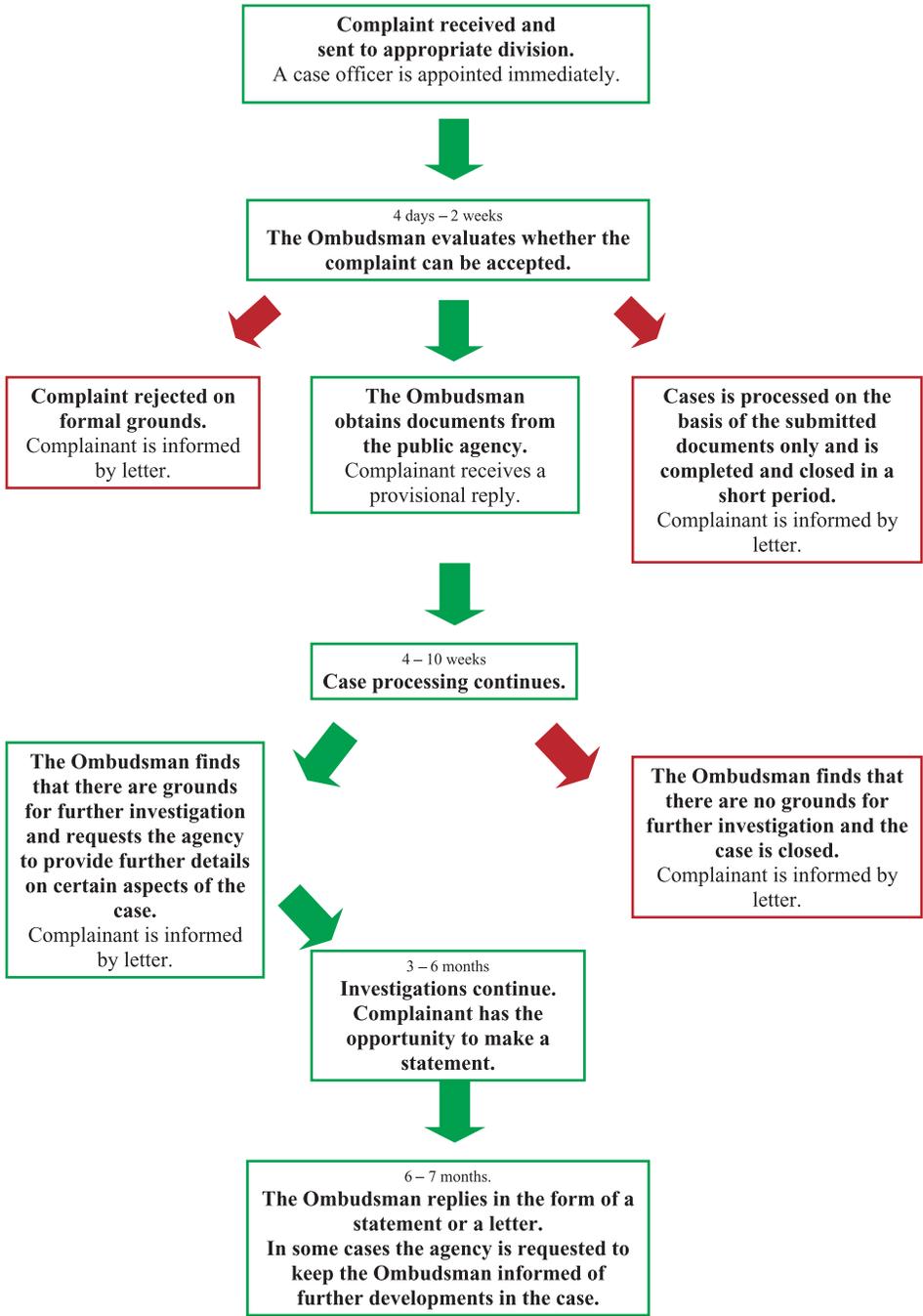
Of all the complaints received, 212 complaints resulted in criticism in one form or another or a request to the public agency. Pursuant to the provisions of Section 10 first subsection of the Ombudsman Act, the Ombudsman “is entitled to express his opinion on matters”. The Ombudsman may point out that an error has been made in case processing or in the application of the law and may also express the opinion that a decision must be considered to be invalid, clearly unreasonable or in contravention of good administrative practice. Moreover, the Ombudsman may express the view that compensation should be made, depending on the nature of the error. It is also important that the Ombudsman may point out that there can be reasonable doubt with

regard to decisions forming the subject of the complaint. Such doubt may apply to both factual and legal matters.

**//** The main impression is that public administration agencies are loyal when dealing with a decision from the Ombudsman

When I am of the opinion that an agency has acted in error or an injustice has taken place, I will normally request the agency to re-examine or re-process the case in question. Experience has shown that public agencies comply with such requests. Agencies will normally take my opinions as a basis. The main impression is that public administration agencies are loyal when dealing with decision from the Ombudsman. If the agency does not act in accordance with the Ombudsman’s decision, the Ombudsman may advise the citizen to try the case before the courts. As a consequence of such recommendation, the citizen is entitled to free legal aid, cf. section 16 first subsection no. 3 of the Legal Aid Act no. 35 dated 13 June 1980. In 2009 there were no cases in which legal action was advised.

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



### 3. Case processing time

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

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

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

- Cases rejected on formal grounds 11 days
- Cases closed without raising the matter with the public agency 6 weeks
- Cases closed after raising the matter with the public agency 7 – 8 months

The calculations were based on between 80 and 100 randomly selected cases, each

within one of the three different case categories. The result of the calculations mainly conforms to the previously specified target figures for case processing time. During the course of 2010, the office will probably take a new electronic tool into use that can provide a more precise overview of case processing time.

Figure 2.1 above provides a graphic presentation of case processing time in the different stages of processing. The chapter dealing with statistics includes figures that provide a more complete picture of case processing time at this office in the abovementioned categories.

### 4. Cases raised on own initiative

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In addition to investigating complaints from citizens, the Ombudsman may take up issues on his own initiative. All cases that are taken up without a basis in a complaint are registered as cases taken up on own initiative. The usual reason for taking up such cases is that during the investigation of a complaint, I may be made aware of aspects in public administration that provide grounds for a separate investigation. Moreover, if several complaints are received concerning the same type of situation, it can be more practical to raise the matter on a general basis on own initiative rather than pursuing the specific individual cases. Other grounds for raising issues on own initiative without reference to a specific complaint may be information from the general public or matters that are raised in the media. Visits and inspections are included in cases taken up on own initiative. During the year under review, 25 cases were taken up on own initiative. In two of these cases, no further action was required by this office. The actual number of cases is therefore 23, the same figure as in 2008. 21 cases were finalized during the year. The following cases taken up on own initiative and terminated during the year are

also referred to in chapter V of the Annual Report.

Case No. 31: Failure to announce the position of Chief Administrative Officer

Case No. 59: Follow-up of visit to Tromsø prison

Case No. 63: The Ombudsman's investigation of protection of privacy following a visit to Lier State reception unit for asylum seekers.

Case No. 69: Updating of income tax list on the Internet, published by the press

Case No. 74: Levying of property tax in Vågsøy Municipality

## 5. Special reports to the Norwegian Storting

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Special reports can be submitted if the Ombudsman becomes aware of "negligence or errors of major significance or scope", cf. section 12, second subsection of the Ombudsman Act. In 2009 I submitted one such report to the Storting.

This concerned the Ombudsman's right to receive case documents in connection with the processing of a complaint.

The background for the special report was that in connection with processing of a specific complaint, the Ministry of Petroleum and Energy refused to provide me with access to a case document. Inasmuch as access to the document was refused, I was unable to process the complaint that also concerned refusal of access to the controversial document. Due to the Ministry's decision, I was therefore prevented from carrying out my duties.

This case concerned a complaint from a journalist. The journalist had requested access to a memorandum from the Attorney General to the Ministry of Petroleum

and Energy. The Ministry rejected the request referring to section 15, second subsection of the Freedom of Information Act that provides that a document may be withheld from public access if it is obtained from an outside source in connection with internal case preparation. Access was also refused following an evaluation of the principle of enhanced access to information.

To enable me to process the complaint and to decide on whether the Ministry had acted in a correct legal manner in its assessment of the right of access issue it was requested, in line with normal routine that the case documents be submitted by the Ministry of Petroleum and Energy pursuant to the provisions of section 7 of the Ombudsman Act. The Ministry of Petroleum and Energy refused access to these documents referring to section 7 second subsection of the Ombudsman Act, cf. section 22-5 of the Civil Procedure Code.

I pointed out in the special report that case documents submitted to the Ombudsman are for use in the Ombudsman's investigation of the case and that such documents will normally be returned to the public agency when the case is closed. The documents are not part of the Ombudsman's case documents to which access is allowed pursuant to the provisions of the Ombudsman Act and the Ombudsman would under no circumstances send the documents to the complainant. I also pointed out that the purpose of section 7 of the Ombudsman Act was to ensure that the Ombudsman had access to the relevant documents in order to process a case. In order to supervise application of the law pursuant to the provisions of the Freedom of Information Act in a specific case it is necessary to have access to the documents concerned. I stated that it was unfortunate that the Ministry of Petroleum and Energy refused to submit the document as this prevented me from carrying out my duties.

On 15 December 2009 the Standing Committee on Scrutiny and Constitutional Affairs presented its recommendation to the Storting, see Innst. 121 S (2009-2010). In this recommendation, a unanimous committee expressed the view that it did not consider that the provisions of section 22-5 of the Civil Procedure Code should prevent the Ombudsman's access to documents prepared in connection with the agency's report or preparation of cases. The committee emphasised that it is of decisive importance that the Ombudsman has access to whatever documents the Ombudsman finds necessary in order to carry out his office.

In this specific case, the committee did not find that the grounds for making an exception to this main rule were sufficiently weighty.

The document in question was sent to the Ombudsman on 18 December 2009. The Storting discussed the recommendation on 14 January 2010.

## 6. Consultation statements

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In 2009 the Ombudsman received 109 consultation letters from public administration agencies containing proposals for new or changed regulations. The basis for the Ombudsman's investigations is current statutory law and re-examination of appraisals made by the lawmakers is not included in the Ombudsman's remit. With the exception of cases that directly concern the institution of the Ombudsman or in matters that have previously been processed by this office, I have on grounds of principle therefore shown restraint in expressing opinions in regard to proposed legislation. I made only two statements in the consultation process in 2009, the same as in 2008.

The one case concerned amendments to the Public Administration Act and the Execution of Sentences Act. In a consultation memorandum, the Ministry of Jus-

tice proposed a legal authorization for processing of personal information by the Norwegian Correctional Services. The consultation memorandum also contained proposed legislation concerning duty of confidentiality for employees in the Correctional Services, defining of the regulations governing duty of disclosure, obtaining confidential information and regulations governing access, providing greater openness in cases concerning pardoning. With regard to the proposed statutory authorization for the processing of personal information by the Correctional Services, I referred to the letter dated 5 June 2009 from this office to the Ministry containing several questions concerning the so-called INFOFLYTT system for exchange of personal information between the Correctional Services and the police. These questions concern several of the matters raised in the consultation memorandum. With regard to the question of access in cases of pardoning, I pointed out that the proposed provision in the Public Administration Act would appear to be a codification of ruling law and would be unlikely to contribute to more openness in cases of pardoning than is the case today, as requested by the Storting. Neither could I see that the proposal aimed at, or would contribute towards solving the problems and waiving of interests that arise in view of the fact that access to a criminal case and access to a case of pardoning are subject to different regulations. Apart from this I had no other comments to the proposals.

The second consultation statement was submitted in connection with the report "Examination of the regulations concerning mental incapacity in criminal law, special reactions and preventive custody". In a letter of consultation, the Ministry of Justice requested suggestions on possible requirements for clarification or amendment of the regulations concerning remuneration for legal aid for those in preventive custody in the case of applications for release on parole. The Ombudsman had processed a case concerning free legal aid

for a person in preventive custody and I found that there was ambiguity connected with free legal aid practice in such cases and I requested State Civil Law Administration consider this and possibly take up the issue with the Ministry of Justice. Although I had already requested the State Civil Law Administration to follow up this case in relation to the Ministry, an anonymised copy of the final letter in the case was sent to the Ministry in order to illustrate the problem.

## **7. International issues and human rights**

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In 2009, the Parliamentary Ombudsman continued work on human rights and international issues. A separate resource group has been in function throughout the year at the Ombudsman's office with the object of monitoring international issues and acting on my behalf in different international forums and networks.

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

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

In 2009, the European Court of Human Rights passed three judgements and two rejection decisions in cases against Nor-

way. In case A against Norway, infringement of the provisions of Article 8 concerning respect of privacy was established. The case did not require any further steps on the part of the Ombudsman.

### **The Ombudsman's human rights seminar**

In November, the Parliamentary Ombudsman's human rights seminar was arranged for the third time. This year's seminar was entitled "Violation of rights by private persons – the responsibility of the authorities?" The seminar focused on the State's responsibility to protect against physical and mental abuse of the human rights of other private persons, for example at schools and at reception centres for asylum seekers. Njål Høstmælingen, a researcher at the Norwegian Centre for Human Rights opened the proceedings with a lecture on the State's human rights responsibility for protecting against physical and mental abuse on the part of other private persons. Mette Yvonne Larsen, attorney-at-law, then spoke about the safety of residents at reception centres for asylum seekers and protection of human rights against violation by private persons. The Children's Ombud, Reidar Hjermand addressed the seminar concerning protection of children from abuse in schools. Associate professor and member of the UN's Committee on Torture, Nora Sveaass spoke about the responsibilities of the authorities for the prevention of torture and violation, also on the part of private individuals and shared her experiences and reflections from her work in the UN Convention against Torture. The seminar was wound up with an address by Morten Eriksen, Chief Public Prosecutor in the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) and by Marius Emberland, attorney-at-law with the Office of the Attorney concerning the limits of the State's responsibility. This was followed by a panel discussion.

The seminar attracted about 100 participants from public administration, academia and special interest organisations.

## National Preventive Mechanisms (NPM)

In 2002, the UN's General Assembly adopted a supplementary protocol (OPCAT) to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 1984. This protocol came into force on 22 June 2006, after ratification by 20 countries.

Norway signed the protocol on 24 September 2003, but has yet to ratify it. Ratification has been announced by the Norwegian Authorities on several occasions, latest in connection with the periodic examination of the human rights situation in Norway under the auspices of the Human Rights Council in November 2009. In Norway's report dated 8 September 2009 it was stated inter alia that Norway «plans to complete ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) within the very near future».

The aim of OPCAT is to improve the efficiency of the UN Convention against Torture by establishing a system of regular visits to all locations where persons are deprived of liberty. Pursuant to OPCAT special control mechanisms are to be established both at international and national levels. On the international level, this means the establishment of a new UN committee (The UN Subcommittee on Prevention of Torture - SPT). The committee started work in February 2007 and shall among other things visit those countries that have ratified the protocol. In countries that have ratified OPCAT, a National Preventive Mechanism – NPM shall be established.

OPCAT provides that the NPM function in the individual country may be organized in several different ways. One possibility is to include the NPM-function in an existing body, for example the office of the Ombudsman. This solution has been particularly relevant in respect of the Nordic Countries. The Ombudsman to the Folketing in Denmark was originally nominated as NPM and in Sweden the Ombudsman to the Riksdagen (JO) was nominated as NPM together with the Office of the Attorney General (JK).

The Ombudsman is aware that clarification is taking place in Norway at ministerial level with regard to how the NPM function is to be established when OPCAT is ratified. Otherwise the question appears to have attracted relatively little attention. The Ombudsman has not received any official approach with regard to the organization of the NPM function and it is unclear whether it will be relevant to include this function in the office of the Ombudsman. Several annual visits are already being made by the Ombudsman to locations where inmates have loss of liberty. If the NPM-function is to be included in the remit of the Ombudsman, the institution will have to be strengthened appreciably in order to fulfil the requirements placed by OPCAT.

## Strengthening of human rights in China

In 2009, the Ombudsman continued to cooperate with the Ministry of Foreign Affairs on the strengthening of human rights in China, and a member of the Ombudsman's legal staff who is conversant with the Chinese language and China in general has been placed at the disposal of the Ministry of Foreign Affairs in connection with the Norwegian initiative for strengthening human rights and continuing development of a state based on rule of law in China. As well as acting as liaison officer between the Chinese and the Norwegian Authorities, the person con-

cerned has a special assignment to promote prisoners' rights.

In this connection, the Office of the Ombudsman has welcomed several delegations from the Chinese Authorities and Chinese members of the legal profession. A delegation from The Supreme People's Procuratorate (SPP) visited this office in August. The theme for this visit was the role of the public prosecuting authority in criminal law and the relationship between the Ombudsman and the Director General of public prosecutions. The office also welcomed four other delegations comprising Chinese members of the legal profession and researchers in January, May, September and October. The subjects for these visits included the Ombudsman's role in strengthening the rights of citizens; the Ombudsman as a useful tool for strengthening human rights and "The Ombudsman - a Possibility to Improve Oversight Mechanism on Administrative Power in China?" There is obviously great interest in China in the Norwegian Ombudsman's assignments, functions and work. After these visits, the Ombudsman received an enquiry for cooperation in order to chart the possibility of establishing an Ombudsman's scheme in China, similar to the Norwegian model.

In connection with the celebration of the 200<sup>th</sup> Anniversary of the Swedish Ombudsman's institution, the Ombudsman and some of his staff attended the «The IX<sup>th</sup> International Ombudsman Institute (IOI) World Conference» in Stockholm in June. Kofi Annan, the previous Secretary General of the UN, and Navanethem Pillay, the UN High Commissioner for Human Rights gave addresses «The State and the Individual» and «Current Challenges to the Protection and Promotion of Human Rights» respectively. Sir Brian Elwood, previously president of IOI and previously Ombudsman in New Zealand, emphasised in his speech the importance of bringing China into the IOI, provided that the country ful-

filled the conditions for membership. At the present time there are approx. 120 nations and regions in IOI.

In December the Ombudsman in cooperation with the Supreme People's Procuratorate (SPP), arranged a seminar concerning the protection of the rights of young criminals, including human rights in criminal procedures in China. The background for this seminar was China's ongoing revision of the country's criminal code and the Criminal Justice Act. Due to increased criminality among young people in China, the country has found it necessary to revise penal sanctions and to find alternative sanctions. Norwegian legislation and practice with regard to dismissal of criminal proceedings, conciliation councils, transfer to the child welfare authorities and alternative penal reactions including community punishment were dealt with thoroughly during the seminar. With reference to the UN Convention of the Right of the Child that has been ratified in both Norway and China, the use of imprisonment as the "last resort" and "for the shortest possible period" in respect of young criminals was discussed in relation to practice in both countries. How to prevent and reduce criminal behaviour on the part of young criminal persons in prison was also the subject of considerable attention. At the request of SPP, the relevant Norwegian acts were translated into Chinese and sent over prior to the seminar. 120 participants comprising public prosecutors, police lawyers, representatives of the prison authorities from several provinces in China and representatives of the Ministry of Justice participated at the seminar. A delegation comprising four Norwegian speakers comprising an assistant regional director, a defence lawyer, a representative of the Child Welfare Authorities and the Ombudsman's representative dealt with these subjects from different angles.

The office of the Ombudsman again participated in the Norwegian-Chinese human rights dialogue under the auspices of the

Ministry of Foreign Affairs. "Returning to society – the transition from imprisonment to freedom" was the subject for this year's working group for prisoners' rights which was attended by the Ombudsman's representative. During the dialogue it was emphasised that it was important that inmates should as far as possible live a "normal" life in prison reflecting life and rights outside prison. This enables the sentenced inmates to prepare for a life free of crime after release. It was also emphasised that a person sentenced to imprisonment does not lose any human rights other than the necessary consequences of deprivation of liberty. Freedom of speech for inmates was mentioned specifically as a right that is retained. A prisoner who had participated in an election debate on crime prevention policy, broadcast by NRK in September participated at a meeting of the working group and replied to many questions from the Chinese participants. The prisoner's participation made a deep impression on the Chinese participants.

## 8. Meetings, visits and lectures

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

For example a meeting was held with the County Governor of Buskerud and similar meetings with other County Governors are arranged at regular intervals. In addition to a mutual exchange of information, subjects dealt with at these meetings include general public administration issues and issues concerning the processing of cases relating to social services, the Child Welfare Act and the Planning and Building Act. I also visited Alv-

dal Municipality where I met representatives of several municipalities in Hedmark County. In May I also had the opportunity of addressing a meeting of mayors and county Governors held in Buskerud. I had similar meetings with mayors and County Governors in Østfold County.

// Such meetings are important and provide opportunities for exchange of viewpoints and provide useful insight to public administration and a better basis on which to deal with the cases received by this office

Visit to locked institutions form an important part of the Ombudsman Activities. This year I visited Oslo prison, Ringerike prison, Kongsvinger prison, Vik prison and the police cells at Hamar and Lillestrøm. I also visited Sanderud hospital at Hamar.

During the year under review, my staff and I have participated at several seminars and courses and have held numerous talks and lectures for both public administration and for citizens in general. For example I held lectures at Bergen Student Society, at the University of Oslo during the student festival, in Sandefjord at a meeting of the legal profession and at a course in practical public administration law in Oslo. Giving lectures is an important part of spreading information on the Ombudsman organization and making citizens and members of the legal profession aware of the Ombudsman scheme. It also provides me with the opportunity of holding interesting meetings and talks with the people I meet on these occasions.

Delegations from many countries have visited us. There is a high level of international interest in the assignment, functions and operations of the Norwegian Ombudsman's office. Contact with foreign institutions also provides us with information that is of value for our own operations. In October I welcomed a dele-

gation comprising heads of anti-corruption bodies, public prosecutors and other legal enforcement officers from Kosovo, Montenegro, Macedonia and Turkey. This visit was initiated by the UN development programme (UNDP) that was responsible for the organization of an international seminar «National Anti-Corruption Strategies» in Oslo. In November I received a visit by a delegation from Kazakhstan comprising numerous representatives from the country's authorities in addition to human rights workers. This visit was also initiated by UNDP with the project title «Transparency and Access to Information and Justice in Kazakhstan». In April I welcomed a delegation from Maria-Curie-Sklodowska University, Law Faculty, Poland, and in June I received a visit from the Ombudsman in Thailand.

I continued to have close contact with the other Nordic Ombudsmen throughout 2009. These meetings formed useful opportunities for discussing specific cases and exchanging experiences.

In the year under review I have also participated and been represented at numerous international conferences and seminars. In April I attended the seventh seminar for national Ombudsmen in the EU/EEA that was held in Paphos on Cyprus. This seminar was arranged by the Ombudsman for the EU and the Cypriot Ombudsman. The main subject at this seminar was migration and its impact on the work of the Ombudsmen. The seminar dealt with several important issues for processing of cases concerning foreign citizens by the Ombudsmen. In June, I and four of my staff participated at «The IX<sup>th</sup> International Ombudsman Institute World Conference» in Stockholm. My contribution was a talk entitled «Protecting the Particularly Vulnerable» in which I dealt with the Ombudsman's control of prisons.

During the year under review, my staff and I have also held numerous meetings with citizens who have submitted com-

plaints and with others wishing to present their case and receive guidance and information on how the case may be processed by the Ombudsman. I take a positive view of personal meetings with complainants and I try to fit in such meetings as far as possible. There were 19 such meetings in 2009 where I was personally present.

## 9. Electronic communication with citizens

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The number of enquiries to the Ombudsman received by e-mail is steadily increasing. It is assumed that the increasing number of e-mails is connected with the new website that opened on 1 October 2008 and that the increase is also in line with normal developments. There seems to be a lower threshold for writing and sending an e-mail than is the case with letters sent by ordinary mail. For many citizens, e-mail is simpler than a telephone call and many questions that were previously dealt with by telephone are now submitted by e-mail. At the present time we do accept complaints by e-mail, but complainants are requested to submit a written and signed complaint by ordinary mail as well.

Complainants use e-mail to a greater extent than before when following up current complaints. E-mail applications are processed in the same manner as other mail received. However, the use of e-mail is limited when replying to complainants concerning case processing and replies to e-mail enquiries are normally sent by ordinary mail. The reason for reluctance with regard to e-mail in correspondence with complainants is consideration to safe processing of confidential information and to ensure that the person applying to this office is indeed the complainant concerned. It is assumed that there is a greater risk of information going astray in the case of an electronic transmission of

documents then there is when documents are sent by ordinary mail.

The access of complainants to follow up their case by e-mail can be said to strengthen communications and has the result that investigations by this office can be improved. However, this arrangement means that there can be uncertainty as to when the complainant has finished commenting on the matter and there can be uncertainty concerning when, and whether all comments ought to be submitted to the public administration agency for comments.

The aim must be to accept this development without compromising security in case processing. The National Courts Administration has stated that the courts have issued guidelines to the effect that sensitive information must not be sent by e-mail. The practice of accepting information by e-mail appears to differ somewhat in the different courts. Scanned documents attached to e-mails are accepted to a certain extent in the same manner as use of telefax. The National Courts Administration has instigated a process for establishing a portal based common solution for all the courts in the country whereby authorized bodies may deliver and process court documents to replace e-mail as an information and communication channel between the courts and the parties concerned.

Public administration must relate to the regulations concerning electronic communications with and in public administration. Complaints against individual decisions may be submitted electronically provided the public agency receiving the complaint has made the necessary arrangements, implying that this can therefore be a policy issue. It is assumed however that public agencies will show restraint in accepting complaints by e-mail unless the complaint is attached to the e-mail in the form of a scanned document. The Agency for Public Management and eGovernment is at present in the process of establishing

a common infrastructure for electronic identification in the public sector (MinID and eID). I shall monitor developments both in the courts and in public administration and investigate the possibility of the Ombudsman using such an infrastructure when this becomes available.

## 10. The Ombudsman and the media

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### The Ombudsman's cases in the media

Processing of cases by the Ombudsman are subject to general interest both in national and local media, first and foremost in the dailies. Most of the cases reported concern matters of local interest. Local media therefore play an important part as a source of knowledge with regard to the operations of the Ombudsman. It is usually the local media that presents reports on the processing of cases by the Ombudsman.

**// Local media therefore play an important part as a source of knowledge with regard to the operations of the Ombudsman**

As a rule, the press first show interest in case processing by the Ombudsman when the case is finalized at this office, whether the final decision is criticism of, or a request to a public agency or whether the Ombudsman cannot deal with the case for formal reasons. The Ombudsman is frequently mentioned when public administration has terminated the case and when the citizen concerned feels that he/she has been unfairly treated and states that a complaint will be submitted to the Ombudsman. The fact that the case is to be considered by the Ombudsman is regarded as a news item and the media do not wait for the result of case processing before presenting the case in print. This could perhaps indicate that the Ombudsman is correctly perceived as an extraor-

dinary examination body and not just another administrative appellate body in public administration.

## All types of cases are reported

The Ombudsman's scope of activities comprises the entire public administration, and complaints cover a wide range. Press coverage of cases brought before the Ombudsman is the same as for news in general and is to a great extent affected by the types of case that are of interest to as many readers as possible. In the national media there are two areas in particular, cases concerning public access and cases concerning penalties. Public access cases that have made the headlines in the national media in 2009 concern access at a high level in public administration (Ministry level). An obvious reason why documents that are not for publication make the headlines is the fact that public administration operates on behalf of the community and people feel they have a right to know how common resources are being managed. "Secrecy" in public administration whether it be at central or local level is almost sure to arouse interest in readers.

The person who is refused access is also a factor with regard to media coverage – journalists who have requested access to information are frequently rejected.

Coverage by the local press of cases that have been dealt with by the Ombudsman is usually linked to municipal matters. Although media coverage varies from year to year, planning and building cases, cases concerning nomination or employment, schools and health care and cases concerning access to meetings are representative of the types of case that attract the attention of the local press.

I would like to emphasise the importance of investigative journalism in the local press that actively uses right of access and "that takes a good look at the workings of

public administration", and the importance of the work of local editorial offices in the different counties and municipalities.

**//** I would like to emphasise the importance of investigative journalism in the local press that actively uses right of access and that takes a good look at the workings of public administration

## Has publicity an effect of the number of complaints?

Once again, the number of complaints has increased compared with the preceding year. The Ombudsman does not have the necessary tools to track tendencies with regard to the increase in complaints following major coverage in the media, in comparison with normal figures. It is my impression that publicity concerning cases processed by the Ombudsman results in a fairly short upsurge in the number of complaints. This applies particularly to news items which also provide general information on the Ombudsman's scheme including areas covered and how these schemes operate, and the fact that processing is free of charge. It is further assumed that attention in the media concerning the Ombudsman's scheme contributes to the steadily increasing number of complaints.

## How does the Ombudsman relate to the media?

Through the media, the Ombudsman receives information on cases that should possibly be taken up by this office on own initiative, and the office therefore subscribes to news services that supply lists of news items divided into the office's specialist areas, on a daily basis. Receiving tips through national and local media is an important aspect of the Ombudsman's control of public administration. It is also useful to read real life descriptions on

how the processing of cases by the Ombudsman and the institution of the Ombudsman is perceived by the general public. This is something the Ombudsman can learn from and which helps to develop the institution.

I am frequently asked whether the Ombudsman is sufficiently profiled in the media. The Ombudsman's presence in the media must be on a professional basis. The Ombudsman must be independent, politically and in relation to public administration, the complainant and the Storting. He has the right to voice his opinion but his terms of reference are limited to legal issues and maladministration. The Ombudsman shall first and foremost process individual cases. He shall not therefore defend individual groups or act as a driving force in relation to certain interests. In this way, the Parliamentary Ombudsman differs considerably from special interest ombudsmen and ombudsmen in public administration.

The Ombudsman Act and the Directive to the Ombudsman state that the object of the Ombudsman scheme is to "prevent injustice". If I were to be more present in the media, it would have to be as a means of preventing future injustice. In such cases this must be seen in connection with my access to express an opinion on matters that can contribute towards improving public administration.

However, this is a difficult balancing act. The Ombudsman scheme relies partially on the confidence of public administration. Engagement by the Ombudsman in individual cases at an early stage could easily be perceived by public administration as inappropriate interference in the business of the agency concerned. Moreover, the fact that control of public administration by the Ombudsman must take place after the case has been dealt with by the agency will mean that individual cases may have lost their news value by the time the Ombudsman becomes engaged in the matter. Profiling in the media

will often not be compatible with the assignment of the Ombudsman.

## Comments to the media

When the Ombudsman is asked to comment on individual cases, whether or not I can reply in full will depend on the nature of the case. Obviously I must be able to make statements in individual cases concerning a situation that has not been dealt with when the case was closed.

However I make a specific appraisal on whether I should comment on the case myself or if it is more appropriate for the head of the division concerned to make a statement. Taking into account the personal element in the office of the Ombudsman, I usually find it correct to reply to such enquiries myself.

Although on occasion, it could be preferable that the office of the Ombudsman had an information and communications section, I believe that it is important to emphasise the personal element in the Ombudsman scheme and take care of external communications myself.

## Processing of cases involving major media coverage

Cases taken up by the Ombudsman may at times attract considerable interest in the media. A case in point in November 2008 concerned the question of access to a memorandum in connection with the Government's contact with a bank during the "financial crisis". It is natural to ask whether extreme coverage in the media can have an effect on how the Ombudsman processes cases and if such cases are given priority.

Basically, all complaints to the Ombudsman are to be processed equally with regard to case processing time and no cases are to be given priority. In cases concerning access, when access has been refused before the complaint has been

submitted to the Ombudsman, case processing time will normally be somewhat shorter than otherwise.

The Ombudsman scheme is dependant on confidence among the general public and in public administration agencies. When the Ombudsman's processing of a case receives wide coverage in the media this balancing act is made apparent. On the one side, the Ombudsman's processing of the case must not be perceived as insignificant by the party concerned. They must be confident that the Ombudsman acts as a driving force in cases in which he is engaged. On the other hand it is essential that the Ombudsman's case processing is thorough and proper and the agency concerned has the opportunity to present arguments and that sufficient light has been thrown on the case before the Ombudsman makes a statement - all of which takes time to implement. The Ombudsman shall have the role of an extraordinary inspection body and must not act as an ordinary administrative body with the right to issue instructions.

## 11. The Ombudsman as a supplement and alternative to the Courts

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In its recommendation in 1958, the Public Administration Committee stated that «bringing legal action before the Courts is costly and is not always an easy solution for a member of the general public». The Ombudsman's scheme in Norway is a supplement and an alternative to the Courts and serves partially to fill the gap represented by the absence of Administrative Courts.

Whether a case should be brought before the Courts or a complaint submitted to the Ombudsman is a question that cannot be answered unambiguously. I would like to emphasise some important differences between the Ombudsman's scheme and the Courts, in particular access to have the case tried, the financial consequences, the

process, the means available, limits of examination and the result of the process. The choice will also partially depend on what complainant wishes to achieve.

**// A complaint to the Ombudsman is a request to commence investigations. The individual citizen does not have a general right to demand that the Ombudsman shall process the case**

Basically, everyone has the right to take legal action before the courts, provided the conditions are fulfilled (cause of action). In the same manner, every individual has the legal right to have a case processed by public administration and to appeal the initial decision to an appellate body. A complaint to the Ombudsman is in reality a request to commence investigations and must be regarded as an extraordinary legal remedy. The individual citizen does not have a general right to demand that the Ombudsman shall process the case. The Ombudsman decides himself whether a complaint provides sufficient grounds to take the matter further, cf. section 6, forth subsection of the Ombudsman Act. This evaluation has a certain parallel to the evaluation of "legal interest" in the Courts. A decision pursuant to the provisions of section 6, fourth subsection is based on several aspects including the question of whether there are sufficient grounds to make investigations.

Although the Ombudsman for different reasons may find that there are insufficient grounds for processing the case in question, the case itself may raise important principle issues. Instead of processing the matter as a formal complaint, the Ombudsman may consider whether to take the case up on own initiative and to carry out more general investigations. On this point, the Ombudsman's scheme differs from the role of the Courts.

The financial consequences of having a case processed by the Ombudsman or by

the Courts differ appreciably. When bringing action before the Courts, there are Court fees to pay, a lawyer is invariably required and there is always the risk of having to pay legal fees. A complaint to the Ombudsman costs nothing and the complainant does not risk liability for legal costs even if the complaint is not successful.

Some complainants use the services of a lawyer when sending a complaint to the Ombudsman. This is not necessary and has no effect on the processing of the case by the Ombudsman.

Legal action before the Courts is regulated by the provisions of litigation law, including the Civil Procedure Code, the Criminal Procedure Act, the Enforcement Act and the Courts Act. Examination by the Ombudsman is regulated by the provisions of the Ombudsman Act and the Directive to the Ombudsman. According to the objective of the institution of the Ombudsman, the examination of a case should not be too circumstantial and should take place quickly, simply and less formally. Obviously case processing must be as secure and dependable as possible. Both complainant and the public administration agency must have the opportunity of stating their case and submitting relevant material. Processing by the Ombudsman tends to take the form of an investigation, rather than Court procedure as it is the Ombudsman who is responsible for obtaining information in the case.

### **// A complaint to the Ombudsman costs nothing**

Processing by the Ombudsman is in writing, and is limited to the study of the available documents and it is not usual to carry out physical inspections. Cases requiring clarification of factual situations are therefore less suitable for processing by the Ombudsman. In such cases the verbal process before the Courts involving case preparation, the main hearing, the submission of evidence and statements by witnesses may be a better alternative. Pursuant to the

provisions of section 7, third subsection of the Ombudsman Act, the Ombudsman may actually demand the taking of evidence before the Courts. In practice however this access is not used.

In the same manner as the Courts, the Ombudsman may test application of the law in full, that is to say whether an act has been interpreted correctly, whether all information in the case has been submitted and whether case processing has otherwise been correct. In a similar manner to the Courts, the Ombudsman may also investigate the basis for a discretionary decision, whether all relevant considerations have been evaluated and whether outside considerations have been taken into account. The access of the Courts to examine the discretionary decisions of public administration is limited by rules created through case law and the Courts are, depending on the type of case, reluctant with regard to re-examination of discretionary decisions passed by public administration agencies. In the same way as the Courts, the Ombudsman has reservations with regard to examinations of discretionary decisions based on the public administration agency's professional insight and local knowledge. The Ombudsman also takes into consideration that public administration has the best overview of the scope of cases and practice in that particular area.

When examining a discretionary decision, the Courts are reluctant about concluding that such a decision as been unreasonable. In such cases the Ombudsman can go further than the Courts, cf. section 10 second subsection of the Ombudsman Act, he may criticise a decision rendered if he finds that this is "clearly unreasonable".

### **// The Ombudsman has reservations with regard to examination of discretionary decisions based on the public administration agency's professional insight and local knowledge**

Case processing by the Ombudsman compared with the Courts gives different results. The Courts pass binding decisions concerning invalidity, compensation, remedy for non-economic loss, sentencing, repayment etc. if necessary by enforcement. The Ombudsman cannot pass binding decisions concerning invalidity etc. and must request that his recommendation be carried out.

Moreover, processing by the Courts concentrates particularly on which legal effects are to apply. The Ombudsman focuses first and foremost on whether the complainant has been subjected to injustice. In his conclusion of a case, the Ombudsman may criticise a public administration agency, decide not to criticise, or to express reasoned doubt concerning leading aspects in the case. On the other hand, the validity of legal effects does not play such a leading role as in the Courts. The public administration agency must itself decide on how to deal with the errors. This is because the Ombudsman's statement takes the form of recommendations, not binding decisions.

Certain cases are more suitable for processing by the Courts and can perhaps only be clarified through a binding decision. In such cases, the Ombudsman will

advise accordingly. This applies e.g. to cases where it is not possible to clarify facts in a manner that can be accepted by the parties or when there is strong disagreement between a public administration agency and a citizen and only a legally binding decision will be accepted. This is particularly applicable in cases when complainant has claimed compensation from the public administration agency concerned. The Ombudsman may also recommend a party to take legal action before the Courts, and in such cases complainant will have the right to free legal aid.

Which system should be selected will depend on the circumstances. If it is a case of incorrect case processing or incorrect application of the law, the Ombudsman may be a good alternative to the Courts. Clarification of such issues form the core of the Ombudsman's control, and as mentioned, the Ombudsman can go further than the Courts when examining decisions passed by a public administration agency. On the other hand the Ombudsman will show restraint with regard to questions of compensation. When the alleged errors are connected with clarification of actual events, the Ombudsman's access to pass an opinion will be limited.

# Statistics

## 1. Introduction

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

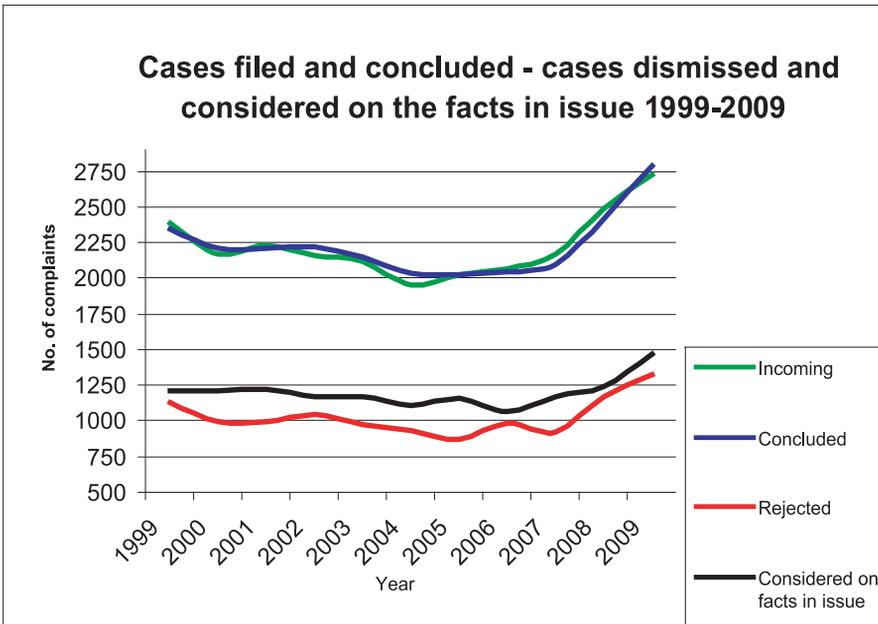
Fig. 1.1 provides an overview of complaints filed and concluded, cases dismissed and cases considered on the facts in issue throughout the last ten-year period.

The figures in the diagram are dealt with in more detail in this chapter.

In addition to the presentation of figures in this chapter, 21165 documents were registered during the year under review.

Of this total, 9041 were incoming documents and 12124 were outgoing documents. In addition there were approx. 1772 general enquiries by telephone. There were 52 conferences with private individuals requiring information on complaint procedures in relation to the Ombudsman. There were also 1201 requests for access to information. 719 requests were granted full access, 150 partial access and 332 were dismissed.

**Fig. 1.1 Cases filed and concluded – cases dismissed and considered on the facts in issue 1999–2009**



## 2. Cases dealt with in the year under review

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

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

In 2009, approx. 8 % of the cases were reopened when complainant reverted to the matter after the case had been closed at this office.

**Table 2.1 Type of cases received**

	2008	2009
Complaints and enquiries	2469	2695
Cases taken up on own initiative	23	25
Total	2492	2720

**Table 2.2 Cases concluded and unresolved cases at yearend**

	2008	2009
Cases concluded during the year	2411	2788
Unresolved cases at yearend	499	430

## 3. The outcome of cases

The outcome of cases processed by the Ombudsman can be divided into two main categories: cases dismissed and cases considered on the basis of facts in issue. During the year, 47 % of the issues brought to the attention of the Ombudsman were dismissed and 53 % were processed on the basis of the facts in issue.

Cases that are processed on the basis of facts in issue comprise all cases that have not been dismissed on formal grounds. This means that the Ombudsman has expressed an opinion in the case. Cases that have been settled for the complainant are also registered as cases processed on the basis of facts in issue. This also applies when case processing has been limited to a preliminary investigation to see whether there are “sufficient grounds” for processing the complaint, cf.

Section 6 fourth sub-section of the Ombudsman Act. In these cases, the object of the processing by the Ombudsman will normally be to find out if there is a basis for implementing further investigations. In such circumstances, the facts in issue will only be considered to a limited extent. In many cases, investigations are limited to case processing in the public agency. Many citizens complain that administrative agencies fail to reply to their enquiries or that case processing takes too long. In such cases, processing by the Ombudsman may be limited to a telephone call to the agency concerned.

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

showing the final outcome of the Ombudsman's processing with regard to the number of complainants who were assisted in having decisions reversed, who were awarded compensation etc., partly because in cases that are re-examined, the new decision is frequently not announced by the agency before the end of the statistical year. However, such information will appear in subsequent annual reports (see chap. III: Follow up of

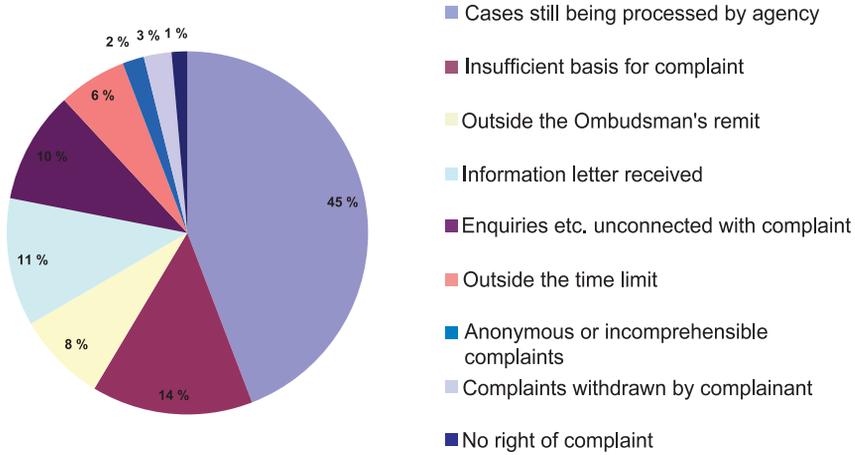
the Ombudsman's earlier statements by public administration).

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

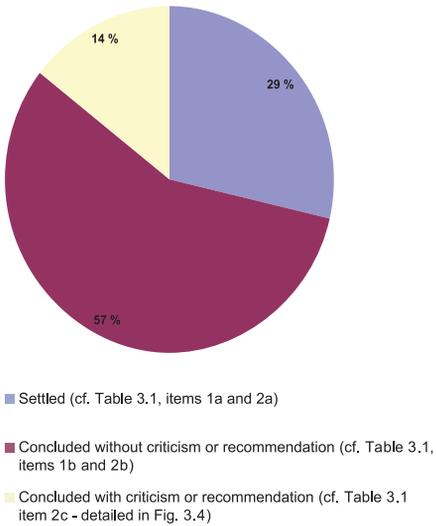
**Table 3.1 Distribution of cases rejected and cases considered on facts in issue**

	2008	2009
<b>Cases rejected</b>	<b>1174</b>	<b>1319</b>
<b>Cases considered on facts in issue</b>	<b>1237</b>	<b>1469</b>
1. Unnecessary to obtain statement in writing from the public agency		
a) Case settled by telephone call	270	347
b) The letter of complaint, possibly supplemented by case documents, show that the complaint could not succeed	598	710
2. Obtained statement in writing from the public agency		
a) Case settled without the necessity of a final opinion by the Ombudsman	50	74
b) Case closed without criticism or recommendation i.e. complaint not successful	110	126
c) Case closed with criticism or request to reconsider the case and possibly remedy harmful effects	209	212

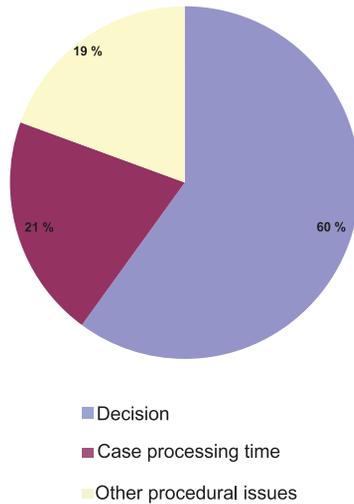
**Fig. 3.2 Cases rejected (47%)**



**Fig. 3.3 Cases considered on facts in issue (53%)**



**Fig. 3.4 Further details concerning cases closed with criticism or recommendation and what these concerned (14%)**



## 4. Case processing time

Calculations based on 80-100 randomly selected cases in three different case categories (rejected, considered on facts in issue without further investigations, considered on facts in issue with further investigations) show that the average case processing time for the different types of cases is 11 days, 6 weeks and 7-8 months respectively.

A more complete picture of case processing time at this office is shown at the following tables. These tables specify case processing time in intervals of days, weeks and months respectively. As is shown, most rejected cases are decided within 10 days, cf. fig. 4.1. Cases taken up with public agencies are as a rule decided within a period of 6 months cf. fig. 4.3.

Fig. 4.1 Cases rejected

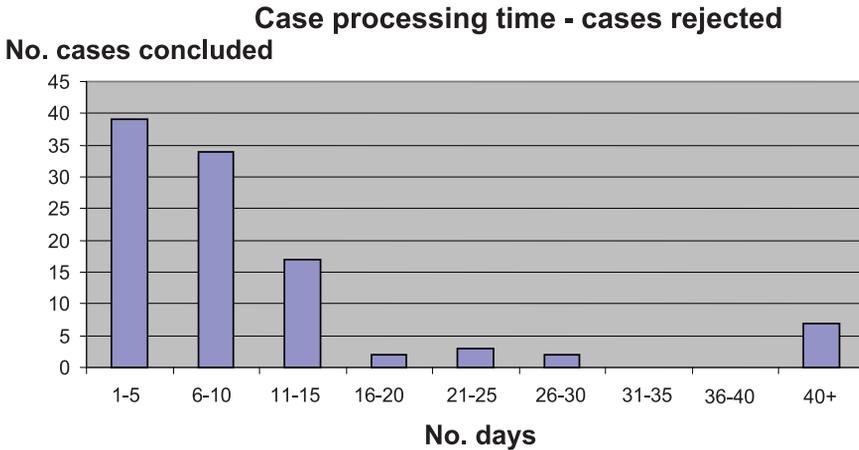


Fig. 4.2 Cases not submitted considered on facts in issue without further investigation

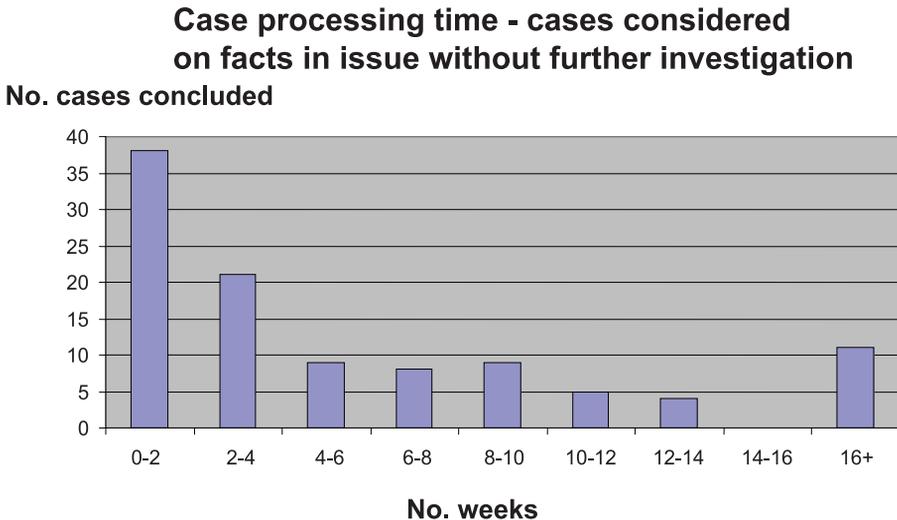
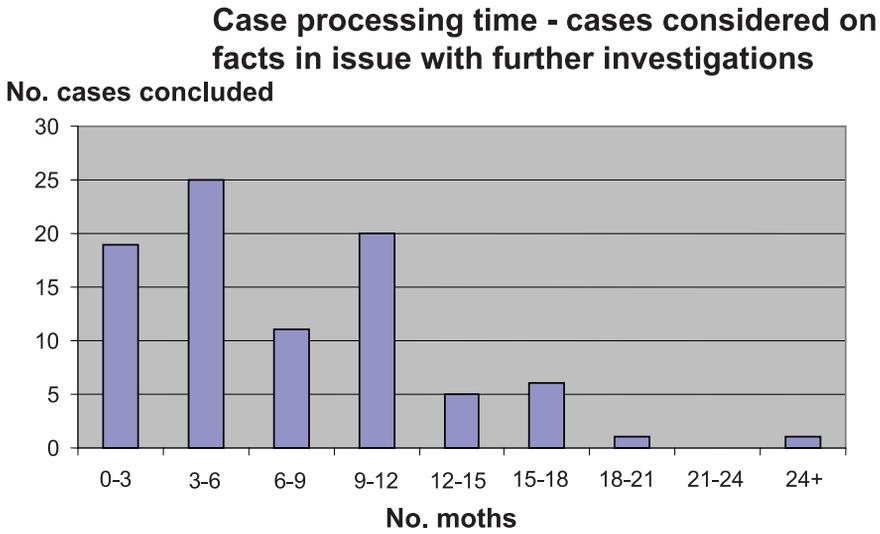


Fig. 4.3 Cases considered on facts in issue without further investigations



## 5. Distribution of cases based on location, public administration agency and type of case

Table 5.1 shows the geographical distribution of cases. Some complainants are resident abroad or are in institutions for example prisons or psychiatric institutions, other complaints may be any-

mous or received by e-mail showing the e-mail address only. These complaints are grouped under “other” in the table. Tables 5.2 and 5.3 show cases closed during the year under review distributed by public agency and case area respectively. As shown in the tables, complaints are distributed throughout the entire public administration sphere, i.e. government, county and municipal administration. Complaints are also divided into many different areas and types of cases.

**Table 5.1 Geographical distribution of complaints**

County	No.: complaints	Complaints in percent	Percentage of total popula- tion 01.01.09
Østfold	120	5.2	6.0
Akershus	274	11.9	11.0
Oslo	483	21	12
Hedmark	62	2.7	3.9
Oppland	38	1.7	3.8
Buskerud	94	4.1	5.3
Vestfold	131	5.7	4.7
Telemark	55	2.4	3.5
Aust-Agder	49	2.1	2.2
Vest-Agder	98	4.3	3.5
Rogaland	120	5.2	8.7
Hordaland	232	10.1	9.8
Sogn og Fjordane	38	1.7	2.2
Møre og Romsdal	61	2.7	5.1
Sør-Trøndelag	143	6.2	6
Nord-Trøndelag	45	2	2.7
Nordland	105	4.6	4.9
Troms	99	4.3	3.2
Finnmark	52	2.3	1.5
Svalbard	1	0	0
	2300	100	100
Other	395		
Total	2695		

**Table 5.2 Distribution of cases by public agency**

	Total	Rejected	Processed
<i>The office of the Prime Minister</i>	4	2	2
<i>Ministry of Labour and Social Inclusion</i>	17	11	6
The Norwegian Labour and Welfare Administration	447	194	253
The Norwegian Labour Inspection Agency	5	3	2
The Directorate of Integration and Diversity	1	1	-
The National Insurance Court	33	10	23

	Total	Rejected	Processed
Norwegian Directorate of Immigration	87	28	59
The Norwegian Immigration Appeals Board	74	24	50
The Petroleum Safety Authority	4	1	3
<i>Ministry of Children and Equality</i>	4	2	2
Directorate for Children, Youth and Family Affairs	9	3	6
County Social Welfare Boards	2	2	-
The Consumer Council	2	2	-
The Consumer Dispute Commission	1	1	-
The Market Council	1	-	1
The Equality and Anti-Discrimination Ombud	1	1	-
<i>The Ministry of Finance</i>	21	10	11
The Financial Supervisory Authority	5	1	4
The Tax Administration (Population Register)	152	54	98
The Customs and Excise Authorities	30	8	22
The Norwegian National Collection Agency	5	5	-
The Stock Exchange Appeals Committee	1	-	1
<i>The Ministry of Fisheries and Coastal Affairs</i>	2	-	2
The Directorate of Fisheries	11	5	6
The Norwegian National Coastal Administration	3	2	1
<i>The Ministry of Government Administration and Reform</i>	5	2	3
The Competition Authority	4	3	1
Statsbygg	1	1	-
The Government Pension Fund	6	3	3
<i>The Ministry of Defence</i>	9	5	4
Norwegian Armed Forces	6	3	3
<i>The Ministry of Health and Care Services</i>	8	5	3
County Medical Officers	2	2	-
Control Commissions	6	3	3
The Norwegian System of Compensation to Patients/The Patients' Injury Compensation Board	13	4	9

	Total	Rejected	Processed
The Norwegian Directorate of Health	17	4	13
Norwegian Board of Health Supervision	57	17	40
Hospital and Health Institutions	21	14	7
Regional Healthcare Enterprises	7	2	5
The Norwegian Government Appeal Board for Treatment Abroad	2	-	2
The Norwegian Appeal Board for Health Personnel	4	-	4
HELFO The Norwegian Health Economics Administration	7	4	3
<i>The Ministry of Justice and Police</i>	17	9	8
National Police Directorate	18	3	15
The Directorate for Civil Protection and Emergency Planning	2	2	-
The Compensation Board for Victims of Violent Crime	3	2	1
The Norwegian Correctional Services	108	64	44
The Police and Public Prosecution Authorities	107	56	51
Law enforcement offices	8	6	2
The Courts	32	32	-
The Storting's Ex gratia Payment Panels	3	3	-
The Civil Affairs Authority	19	7	12
Norwegian Criminal Cases Review Commission	4	3	1
The Supervisory Council for Legal Practise	2	2	-
<i>The Ministry of Local Government and Regional Development</i>	7	4	3
The Complaints Board for Central Approval of Corporate Liability	1	-	1
The Norwegian State Housing Bank	6	3	3
<i>The Ministry of Culture and Church Affairs</i>	7	4	3
Norwegian Broadcasting Corporation	2	2	-
The Church of Norway	4	2	2
The Gaming and Foundation Authority	7	2	5
The National Archival Services of Norway	1	1	-
<i>The Ministry of Education and Research</i>	5	2	3
The Research Council of Norway	1	1	-

	Total	Rejected	Processed
The State Educational Loan Fund	38	18	20
Universities and Colleges	35	19	16
The Norwegian Directorate for Education and Training	3	3	-
<i>The Ministry of Agriculture and Food</i>	10	5	5
The County Agricultural Boards	18	10	8
The Norwegian Agricultural Authority	7	3	4
The Food Safety Authority/The Animal Welfare Board	20	8	12
Norwegian Reindeer Husbandry Administration	2	1	1
Statskog SF	3	2	1
The Norwegian Natural Damage Fund	1	-	1
The Complaints Board for Milk Quotas	2	1	1
<i>The Ministry of the Environment</i>	9	3	6
The Directorate for the Nature Management	3	1	2
The Climate and Pollution Agency	2	1	1
The Norwegian Mapping Authority	4	2	2
The Directorate for Cultural Heritage	3	2	1
The Predatory Animal Boards	2	1	1
<i>The Ministry of Trade and Industry</i>	5	2	3
Innovation Norway	2	-	2
The Norwegian Maritime Directorate	2	2	-
The Brønnøysund Registers	1	1	-
<i>The Ministry of Petroleum and Energy</i>	4	2	2
The Norwegian Water Resources and Energy Directorate	1	-	1
Statkraft	1	1	-
<i>The Ministry of Transport and Communications</i>	13	6	7
Norwegian Public Roads Administration	27	18	9
<i>The Ministry of Foreign Affairs</i>	6	2	4
<i>County Governors</i>	426	153	273

	Total	Rejected	Processed
<i>County Administration</i>	45	23	22
<i>Municipal Administration</i>	530	284	246
<i>Other</i>	102	93	9
<b>Total</b>	<b>2788</b>	<b>1319</b>	<b>1469</b>

**Table 5.3 Distribution of cases – type of cases**

	Total	Rejected	Processed
<b>Working life, education, research, culture, lotteries, copyright, language in the civil service</b>			
<i>Isolated case processing issues:</i>			
Case processing time, failure to reply	28	11	17
Freedom of information, duty of confidentiality, access to documents	39	21	18
Legal costs, compensation	2	2	-
Case processing, other	36	20	16
<b>Appointments</b>	<b>162</b>	<b>59</b>	<b>103</b>
Work and service related situations	62	34	28
Working environment, protection rules	20	12	8
Other employment matters	11	9	2
<b>Primary schools</b>	<b>43</b>	<b>25</b>	<b>18</b>
Advanced education in schools	30	16	14
Advanced education in companies	3	2	1
Colleges and universities	21	10	11
Public certification of professionals	5	3	2
Financing of studies	39	18	21
Education, other	1	-	1
Research	1	1	-
<b>Culture</b>	<b>2</b>	<b>-</b>	<b>2</b>
Lotteries	3	1	2
Language in the civil service	1	1	-
<b>Other employment issues</b>	<b>7</b>	<b>3</b>	<b>4</b>

	Total	Rejected	Processed
<b>Health and social services, national insurance, family and personal cases</b>			
<i>Isolated case processing issues</i>			
Case processing time, failure to reply	209	45	164
Public information, duty of confidentiality	36	20	16
Legal costs, compensation	13	3	10
Case processing, other	70	41	29
The Ombudsman (complaints against)	1	1	-
Approval of offers	10	4	6
Processing, enforcement, complaints against personnel, patient injury	107	52	55
Medical record issues, etc.	20	9	11
Payment for board and lodging, refund, patient funds	16	5	11
Financial assistance	38	22	16
Social services outside institutions	37	19	18
Health and social services, other issues	30	21	9
Membership in the National Insurance Scheme	5	1	4
Benefits at birth, adoption and maintenance of children	13	5	8
Unemployment benefit	30	20	10
Sickness benefits	269	92	177
Retirement pension, dependents pension	34	13	21
War service pension	2	-	2
National Insurance, other	27	15	12
Child maintenance, maintenance of spouse	82	46	36
Adoption	7	4	3
Child welfare	66	48	18
Kindergartens	8	7	1
Guardianship, assistant guardian	9	7	2
Marriage, separation, divorce	3	2	1
Name cases	3	2	1
Family and personal issues, other matters	12	10	2
Other	10	7	3

	Total	Rejected	Processed
<b>Resource and environmental administration, planning and building, expropriation, outdoor life</b>			
<i>Isolated case processing issues</i>			
Case processing time, failure to reply	82	27	55
Freedom of information, duty of confidentiality, access to documents	7	5	2
Legal costs, compensation	10	5	5
Case processing, other	41	27	14
Energy	6	3	3
Environmental protection	38	19	19
Refuse collection, street sweeping	16	6	10
Water supplies and drains	17	5	12
Resource and environmental administration, other matters	1	-	1
Maps and division of plots	11	7	4
Planning matters	84	37	47
Exemption from planning, coastal zones	87	23	64
Other building matters	190	77	113
Processing fees	10	5	5
Plan and building, other matters	15	11	4
Expropriation	10	7	3
Outdoor life	2	1	1
Other	6	3	3
<b>Business and industry, communications, regional development fund, the Housing Bank, competition, price</b>			
<i>Isolated case processing issues</i>			
Case processing time, failure to reply	36	16	20
Freedom of information, duty of confidentiality, access to documents	21	6	15
Legal costs, compensation	5	1	4
Case processing, other	14	13	1

	Total	Rejected	Processed
Fishing and hunting	19	8	11
Agriculture, forestry, reindeer husbandry	68	38	30
Industry, crafts, trading	4	-	4
Shipping, air transport	5	3	2
Tourism, hotels and restaurants, licensing	6	2	4
Transport licence, motorized transport in outlying land	11	3	8
Business and industry, other matters	12	6	6
Transport (roads, rail, ports, airports)	46	31	15
Postal services	1	1	-
Telephone, broadcasting	10	8	2
Road traffic (drivers licence, parking permits etc.)	39	23	16
Public transport	1	1	-
Regional development	4	1	3
The Housing Bank etc.	8	3	5
Competition matters, prices	5	2	3
Other	6	4	2
<b>Taxation,</b>			
<i>Isolated case processing issues</i>			
Case processing time, failure to reply	30	4	26
Freedom of information, duty of confidentiality, access to documents	7	5	2
Legal costs, compensation	2	-	2
Case processing, other	21	8	13
Assessment of taxable income	87	23	64
Remission	9	4	5
Other tax issues	83	41	42
Customs and excise	16	3	13
Value added tax, investment tax	23	4	19
Special taxes	19	6	13

	Total	Rejected	Processed
<b>Law, foundations, immigration cases</b>			
<i>Isolated case processing issues</i>			
Case processing time, failure to reply	115	33	82
Freedom of information, duty of confidentiality, access to documents	16	4	12
Legal costs, compensation	7	-	7
Case processing, other	23	15	8
The Ombudsman (complaints against)	1	1	-
The Courts	24	24	-
The Public Prosecutor and Police	104	59	45
The Correctional Services	110	67	43
Legal aid	22	11	11
Enforcement, debt repayment schemes	13	10	3
Official registration	5	5	-
Public compensation schemes	23	14	9
Other law matters	12	9	3
Foundations	3	1	2
Asylum cases	42	17	25
Visas	9	1	8
Residential and work permits	83	29	54
Deportation	8	4	4
Citizenship	13	5	8
Other immigration issues	23	9	14
<b>Public registers, public procurements, public property, the Defence Forces, foreign affairs</b>			
<i>Isolated case processing issues</i>			
Case processing time, failure to reply	5	1	4
Freedom of information, duty of confidentiality, access to documents	18	5	13
Other case processing	4	3	1

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	Total	Rejected	Processed
Public registers	28	12	16
Public procurements	3	1	2
Public properties	19	7	12
The Armed Forces	7	6	1
Foreign affairs	3	2	1
Other	10	2	8

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# The Ombudsman's access to bring the attention of public administration to errors in acts, regulations and in practice.

When processing complaints and cases taken up on own initiative, I am from time to time made aware of deficiencies in acts, regulations or in administrative practice. Pursuant to the provisions of section 11 of the Ombudsman Act, I may draw the attention of public administration bodies to such matters. Such cases must be included in the Annual Report to the Storting, cf. section 12 second subsection of the Directive to the Ombudsman. The access to report such deficiencies shows that the Ombudsman, in addition to processing individual cases, may also take on the role of a *system controller* in relation to public administration agencies.

By system control I mean a control function that will bring to light any general practices in public administration that contravene against general administrative principles and that can lead to repeated failure in relation to citizens. In addition to reporting deficiencies pursuant to section 11, the Ombudsman's system control function is exercised through a combination of access to take up cases on own initiative; carry out systematic investigations and to report to the Storting on problems that frequently recur in public administration.

The systematic and general control of public administration is first and foremost exercised by public administration's own control bodies, i.e. the municipalities control committee, the County Governor's supervision of municipalities in several areas, county and municipal audits and the centralized supervisory authorities that control the activities of public agencies. Moreover the Auditor General carries out systematic audits in public administration. Public

administration agencies are also subject to parliamentary control by the Storting.

// By system control I mean a control function that will bring to light any general practices in public administration that contravene against general administrative principles and that can lead to repeated failure in relation to citizens

The intention of using the Parliamentary Ombudsman as a system controller is directly attributed to the provisions of section 75 littera 1 of the Constitution where it is stated that the Ombudsman shall "ensure that no injustice is done against the individual citizen" in relation to the individual citizen. The wording indicates that it is the Ombudsman's role to prevent injustice against the individual in the future. This is borne out in Innst. O. No. 15 (1979-1980):

«The committee wishes to emphasize that the Ombudsman has a special function in the office of the Parliamentary Ombudsman for Public Administration. This means that his assignment to protect citizens in public administration cases is not limited to taking up complaints of injustice that have possibly taken place, he should also seek to correct situations which could lead to injustice in the future. In the opinion of the committee this would provide the Storting with improved opportunities for controlling public administration [my translation].»

During the course of 2009 I have in 27 cases requested public administration agencies to consider amendments or supplements to Acts (4 cases), and regu-

lations (8 cases), or the reorganizing of administrative practice (15 cases). 18 of these cases are referred to in chapter V of the Annual Report. A summary of all the

cases in 2009 in which I have pointed out deficiencies in acts, regulations or in practice are provided in chapter IV of the annual report.

# Cases of general interest

## 1. Introduction

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Pursuant to Section 12 of the Ombudsman's Directive, the Annual Report to the Storting shall contain "a survey of the processing in the individual cases which the Ombudsman feels are of general interest". Normative for selecting cases for inclusion in the report is whether the case can be considered to be representative for the type of case, if it is relevant as an example of maladministration, if the case is of public importance and is clarifying with regard to the law, and whether the case deals with principle issues of protection afforded by the law.

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

Cases are also published consecutively on the Ombudsman's website, [www.sivilombudsmannen.no](http://www.sivilombudsmannen.no) and are also transferred en bloc to the Lovdata website, [www.lovdata.no](http://www.lovdata.no), once yearly.

The day-to-day work on individual cases and my contact with public administration has provided me with general insight into case processing and general procedures in public administration. There is a risk that my work on the individual cases can give a distorted impression of case processing in public administration in general. Complaints arise from situations in which citizens feel that they have been unfairly treated.

Based on the contact I have with public administration through visits and inspections, it is my impression that the cases I have included in this annual report are representative of the aforementioned criteria.

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

### **Slow case processing in the Norwegian Labour and Welfare Service (NAV) – insufficient resources in public administration**

Many of the complaints received by this office concern slow case processing by public agencies. It is my impression that in recent years, citizens have become more conscious of their rights and place high demands with regard to processing of their cases by public administration agencies. In 2009, the Norwegian Labour and Welfare Administration (NAV) in particular has been the subject of complaints of this type. Quite frequently, I find that case processing time by NAV far exceeds the maximum limit that the service itself has fixed as its objective. If NAV, following an enquiry from this office states that the delay is due to the large number of cases and lack of capacity, such complaints will put the Ombudsman in a difficult dilemma.

The main rule in section 11a of the Public Administration Act states that cases concerning an individual decision shall receive a provisional reply if it is not possible to reply in full during the course of one month after the receipt of the request. The provisional reply shall

explain why the complaint cannot be dealt with earlier and if possible shall indicate when a reply can be expected. Unfortunately, it is common knowledge that NAV does not always comply with these instructions. I believe that many complaints could have been avoided if, as a general practice, all inquiries were provisionally replied to and information on delays were given during the case processing. It is a particular source of frustration for citizens if they hear nothing whatsoever after spending time and effort in preparing a claim or an application.

**/// I believe that many complaints could have been avoided if, as a general practice, all inquiries were provisionally replied to and information on delays were given during the case processing**

In cases where I see that case processing is not within the limits fixed by the Labour and Welfare Directorate, and where the user should at least have received information, my office will normally contact the NAV office concerned requesting status of the case and an explanation for the delay. Such enquiries may be by letter or even more practically, by means of a telephone call to the executive officer dealing with the case. Every now and again it transpires that a case has been mislaid or similar and in such cases an enquiry from the Ombudsman will contribute towards speeding up the process. Far more often however I find that the reason for the delay is connected with the work situation at the public agency and lack of resources in general. Requests from this office should not result in cases being processed "out of turn". Other cases where complaints *have not* been sent to the Ombudsman may have been pending even longer without being processed. Handling such cases can be problematic. On the one side, we have a situation in which a citizen is left without any financial support for months solely because

NAV take so long to process the matter. On the other hand it is difficult for the Ombudsman to speed up case processing when the delay is due to the work situation and cases are dealt with in strict sequence. If the Ombudsman fails to take action in individual cases, requesting NAV to give the case priority, he may be accused of being biased in favour of NAV.

The office of the Auditor General has recently also expressed concern with regard to the negative development of case processing time at NAV in respect of certain important case areas. See the report of the Auditor General dated 22 October 2009 concerning the audit of the Labour and Welfare service for the budget year 2008 – supplement 2 to document 1 (2009-2010). Among other things, the Auditor General analyses the development in case processing time and unprocessed cases in the different services.

The Ombudsman's remit as defined in the Act and in the directive is to intervene in the case of any maladministration or injustice by public administration agencies. When extended case processing time, is the result of underlying and fundamental situations such as lack of resources and capacity there is really little the Ombudsman can accomplish. It is up to other institutions, first and foremost the Ministry and the Storting to introduce measures that can overcome the substantial backlog of unprocessed cases. It is unfortunate when the Ombudsman must remain passive in such a situation as citizens can understandably form the impression that the Ombudsman is refraining from criticizing NAV.

### **The importance of third party conflicts in the Ombudsman's case processing**

In complaints submitted to the Ombudsman there are normally two parties involved; the citizen who is the complainant and the public administration agency

which is the subject of the complaint. If the Ombudsman finds that there is reason to investigate the matter, the case is taken up with the public administration agency concerned. Any criticism or any requests to reconsider a case will also be directed to the agency. As a party in the case, the complainant will have the opportunity of presenting his/her viewpoint and to comment on the report of the agency.

However, there are also a number of complaints of a different type that can be of importance for the general public, so called “third parties”. Such cases include persons who are favoured by the public administration decision which is the subject of the complaint, or that are in other manner affected by the decision. Other examples of third parties are persons who have been granted a building permit that a neighbour has complained of, or one of the parents in a child maintenance case where the complaint concerns the amount of maintenance. A person who has been appointed in a position where the complainant is of the opinion that he/she has been passed over will be defined as a third party by the Ombudsman. As shown in these examples, complainant and the third party will normally have conflicting interests in the case.

Possible third party conflicts have a limited effect on the processing of cases at the Ombudsman’s office. Third parties are not included as a party in the Ombudsman’s case and are not therefore notified that the Ombudsman is dealing with the case. This means that a third party who for example has been granted a building permit may be unaware that the question of the validity of the decision is being processed at this office. Should a third party be at some point aware that the Ombudsman is dealing with a case that may affect the person concerned and contact the office, the third party will be informed that he/she is not considered to be a party in the

case and will not therefore receive any further information on the case.

## // Possible third party conflicts have a limited effect on the processing of cases at the Ombudsman’s office

As the Ombudsman’s statements take the form of recommendations, cf. section 10 of the Ombudsman Act, my statement will not in itself deprive a third party of any rights. If, in a case of appointment I find that there is doubt whether the third party who is actually appointed to the position was better qualified than complainant for the relevant position, this in itself will have no effect on the appointment decision. See for example case no. 36 (2009/378) in this chapter. In such cases, the appointment decision will normally remain valid in respect of the successful candidate even if my investigations should find that the decision was incorrect in relation to complainant. There are therefore seldom any grounds for taking special consideration to third parties in the processing of appointments.

On the other hand, strong third party interests may in certain cases mean that the threshold for accepting cases for processing must be raised. In special cases it can also be relevant to reject such cases if this means that they are unsuitable for processing at this office, cf. the provisions of section 6 fourth subsection of the Ombudsman Act. However as case processing at this office is mainly unaffected by any third party conflict, I annually process numerous cases that also involve third parties. The Ombudsman’s area of operation would be significantly limited if such cases were never taken up. Case no. 58 (2009/1620) in this chapter is an example of a case that to a great extent concerned a third party. In this case, the leading question was which income should be taken as a basis in a maintenance case. The party paying

maintenance had complained against the stipulated maintenance sum as he was of the opinion that the party entitled to maintenance has undeclared income that was not included in the calculation.

Despite the fact that third party conflicts usually have little impact on case processing at this office, a conflict of interests could however affect my conclusion. I will often show more reluctance in stipulating invalidity should such a decision affect third parties. When a public administration agency is requested to re-process a case, the agency must consider any amendment of the original decision in accordance with the regulations in section 35 of the Public Administration Act. Inasmuch as public administration agencies are not always aware of this, I insert a reminder when closing certain cases where third parties are involved. In case no. 87 (2008/1561) in this chapter I point out for example that should the County Governor find that the decisions in the case are invalid, an overall appraisal must be made of whether the decisions should be reversed, cf. section 35 first subsection, litra C of the Public Administration Act. As a rule, I will also emphasise to the public agency that third parties must have the opportunity of making a statement in connection with the renewed processing.

## **2. An overview of cases included in the annual report**

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### **The Ombudsman's area of operation**

1. Overturning of a decision concerning allocation of salmon fishing rights on Finnmarkseiendommen

### **General Public Administration Law**

2. The question of whether a note to the vehicle regulations is also defined as a regulation
3. Failure to reply to enquiries from a patient ombud on the part of Health South/East RHF
4. Agreements concerning rental of berths for boats – definition of individual decision
5. Rejection of application for leave of absence from operating agreement on physiotherapy
6. Reversal of approval of organization as lottery beneficiary – case processing, report to the Police and statements to the media
7. Rejection of claim for allocation of sales location – the question of right to appeal
8. Case processing time by the Tax Office when preparing an appeal to the Taxation Complaints Board
9. A case concerning exclusion from a swimming pool
10. Change in practice for allocation of living expenses by the loan fund for students - discrimination
11. Loss of right to drive – calculation of loss period when a driving licence is not handed in

### **Freedom of information, access and duty of confidentiality**

12. Access by the parties in a child welfare case
13. The question of access by the parties to underlying material for a report
14. Right of access for the involved party in the case – internal memorandum
15. Processing of requests for case documents by the Directorate of Immigration – access for the parties concerned
16. Access to documents – duty of confidentiality and the requirement for

- specification in a request for access
17. Access to documents concerning climate quota projects – advance commitment to confidentiality
  18. Access to generalization request – information on persons and business
  19. Access to documents at Oslo Stock Exchange – duty of confidentiality and case processing time
  20. Access to internal documents – technical study of draft act
  21. Rejection of application for access to documents – internal documents
  22. Access to documents – e-mail sent from a municipality to a private contending party
  23. Rejection of application for access – document sent to a control body
  24. Access to list of applicants for the position of personnel manager
  25. Inadequate case processing of application for access to complete lists of applicants
  26. Case processing time in cases concerning access
  27. The question of confidentiality – information on a complaint to the equality and anti-discrimination ombud
  28. Open meetings and the taking of minutes -the meeting concept in the local government act
  29. Case concerning open meetings – appointment of chief administrative officer

### **Appointment in the civil service**

30. Announcing positions in connection with reorganization
31. Insufficient announcement of the position of chief administrative officer
32. Appointment of executive officer at the refugee office
33. Appointment of municipal refugee officer – preferential right

34. Appointment of chief culture officer
35. Appointment of comptroller
36. Case concerning appointment of legal practitioner – the qualification principle
37. Appointment in a parking company organized as a joint stock company – passing over and access to extended list of applicants
38. Case concerning disciplinary penalty
39. Case concerning misbehaviour of a municipal civil servant
40. Processing of a personnel case in the Ministry of Defence

### **Registration**

41. Registration of SMS messages

### **Subsidies, licences and duty to occupy and work**

42. Complaint against rejection of application for allocation of a radio frequency
43. Allocation of agreement authorization for medical specialist – senior policy
44. Rejection of application for a licence to operate a seaplane base
45. Rejection of application for permission to take over an agricultural property – doubt as to whether the reasoning in the rejection was encompassed by the framework of the Concession Act
46. Licence to operate a mine – information in the case
47. Conditions for duty to occupy and work – application for modification

### **Education, financing of studies**

48. Driving to school – assessment of acceptable time schedule for a primary school pupil

49. Remuneration for driving to school – discrimination between primary school pupils and secondary school pupils
50. Use of exemption from duty to provide free transport to school on the part of the county
51. Processing of complaint against average marks in secondary school
52. The school informed pupils of another pupil's use of violence against a teacher and subsequent expulsion – a question on breach of confidentiality provisions
53. Living allowance – special line involving extended hours at secondary school

### **National insurance and child maintenance (NAV)**

54. Rights of persons with impaired vision at meeting with NAV
55. Failure to reply by local NAV office in case concerning payment of child supplement
56. Case processing by the local NAV officer in a case concerning delayed payment of disability pension
57. Duty of guidance and reasoning in the case of child maintenance with a foreign party
58. Investigation obligation on the part of public administration when the income of a receiver of maintenance is to be fixed

### **Prison conditions**

59. Follow up of visits to Tromsø prison
60. Processing of application for leave of absence from prison in connection with a funeral
61. The responsibility of public administration for providing sustenance

to prisoners when appearing at Court meetings.

### **Immigration cases**

62. Discontinuation of residence permit due to extended absence from the country – the relationship between law and regulations etc.
63. The Ombudsman's investigation of protection of civil liberties following visit to Lier waiting reception centre
64. Trial release of foreign inmates, reserving the right to effectuate deportation
65. Requirements concerning documentation of identity in family reunion case
66. Case processing by the Police in connection with extradition of a Norwegian minor to Sweden

### **Tax, tax assessment, customs duty and fees**

67. Tax settlement in arrears when switching to stricter granting practice in May 2006
68. Tax on marine engines calculated in arrears – the tax basis
69. Updating of tax lists on the internet, published by the press
70. Import of goods – the question of whether marketing expenses shall be included in "customs value"
71. Property tax in Kragerø Municipality – differing evaluation methods for holiday homes and ordinary housing
72. Decision on property tax – lack of reasoning
73. Property tax rates – initial taxation
74. Property tax in Vågsøy Municipality
75. Property tax – case processing in Tranøy Municipality
76. Fines for late submission of annual report and annual statement

## **Planning and building**

77. Conclusion of development contract prior to planning permission and private financing of case processing
78. Processing of an application for building permit – “the small house plan” in Oslo Municipality
79. Assessment of contention of unfair differentiation in a case concerning exemption from the Plan and Building Act
80. Calculation of distance to neighbouring boundary
81. Exemption from the rules concerning minimum distance to neighbouring boundary
82. Exemption from the provisions of section 70 no. 2 of the Plan and Building Act
83. Incomplete assessment in a case of exemption from the distance regulations in section 70 no. 2 of the Plan and Building Act
84. Demolition and building of an extension in Grimstad Municipality – the importance of private law in case processing by the building authorities
85. Building a garage, a question of access – a private law action
86. Calculation of fee for processing of private regulation proposal was in accordance with the self cost principle
87. The building authority’s access not to use sanctions against illegal building

## **Fish, fish farming**

88. Sami reindeer herdsman’s right to salmon fishing – payment to property in Finnmark
89. Scaling down of allocation of structural quotas
90. Understanding of fish quota regulations and access to discretionary confiscation of catch value

91. Confiscation of catch value and processing of the question of compensation of expenses by two instances
92. Infringement fee pursuant to the Aquaculture Act

## **Legal costs and damages**

93. Rejection of claim for legal costs following waiving of conditions for release from earlier citizenship
94. A question of what can be regarded as “necessary” legal costs pursuant to section 36 of the Public Administration Act
95. The State’s compensation liability for invalid decisions – temporary use of vehicle registered abroad
96. Compensation in a maintenance case for loss of access to set off amounts as a result of incorrect case processing
97. Participation in a veterinary standby scheme – compensation for extended case processing
98. Calculation of compensation for loss from predatory animals

## **Water and drainage, roads and refuse collection**

99. The Municipalities maintenance obligation for municipal roads
100. Connection fee resulting from building of extension – the question of legal authority
101. Holiday cottage refuse collection – claim for exemption from enforced refuse collection
102. Lack of legal authority when fixing subscription fee

## **Other**

103. Recall of security guard approval – evaluation of suitability
104. Kautokeino Municipality’s exemption practice in cases concerning motorized transport

## 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.<sup>1</sup>

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<sup>1</sup> Addendum by Constitutional provision dated 23 June 1995 No. 567.

# Act of 22 June 1962 No. 8 concerning the Storting's Ombudsman for Public Administration<sup>1</sup>

## § 1.

### *Election of Ombudsman.*

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

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

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

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

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

## § 2.

### *Directive.*

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

## § 3.

### *Purpose.*

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

## § 4.

### *Scope of Powers.*

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

- a) matters on which the Storting or Odelsting has reached a decision,
- b) decisions adopted by the King in Council of State,
- c) the functions of the Courts of Law,
- d) the activities of the Auditor General,
- e) matters which, as prescribed by the Storting, come under the Ombudsman's Board or the Ombudsman for

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

National Defence and the Ombudsman's Board or the Ombudsman for Civilian Conscripts,

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

The Storting may stipulate in its Directive to the Ombudsman:

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

§ 5.

*Basis for acting.*

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

§ 6.

*Further provisions regarding complaints and time limit for complaints.*

Any person who believes he has been subjected to injustice by the public administration may bring a complaint to the Ombudsman. Any person who is deprived of his personal freedom is enti-

tled 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

# Directive to the Storting's Ombudsman for Public Administration<sup>1</sup>

*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.

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

§ 4.

*Exceeding the time limit for complaints.*

(Re § 6 of the Ombudsman Act.)

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

§ 5.

*Terms and conditions for complaints proceedings.*

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

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

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

the only complaints instance open to the complainant.

§ 6.

*Investigation of complaints.*

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

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

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

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

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

§ 7.

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

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

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

§ 8.

*Cases taken up on own initiative.*

(Re § 5 of the Ombudsman Act.)

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

§ 9.

*Termination of the Ombudsman's proceedings.*

(Re § 10 of the Ombudsman Act.)

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

§ 10.

*Instructions for the staff.*

(Re § 2 of the Ombudsman Act.)

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

§ 11.

*Public access to documents at the office of the Ombudsman*

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

§ 12.

*Annual report to the Storting.*

(Re § 12 of the Ombudsman Act.)

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

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

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

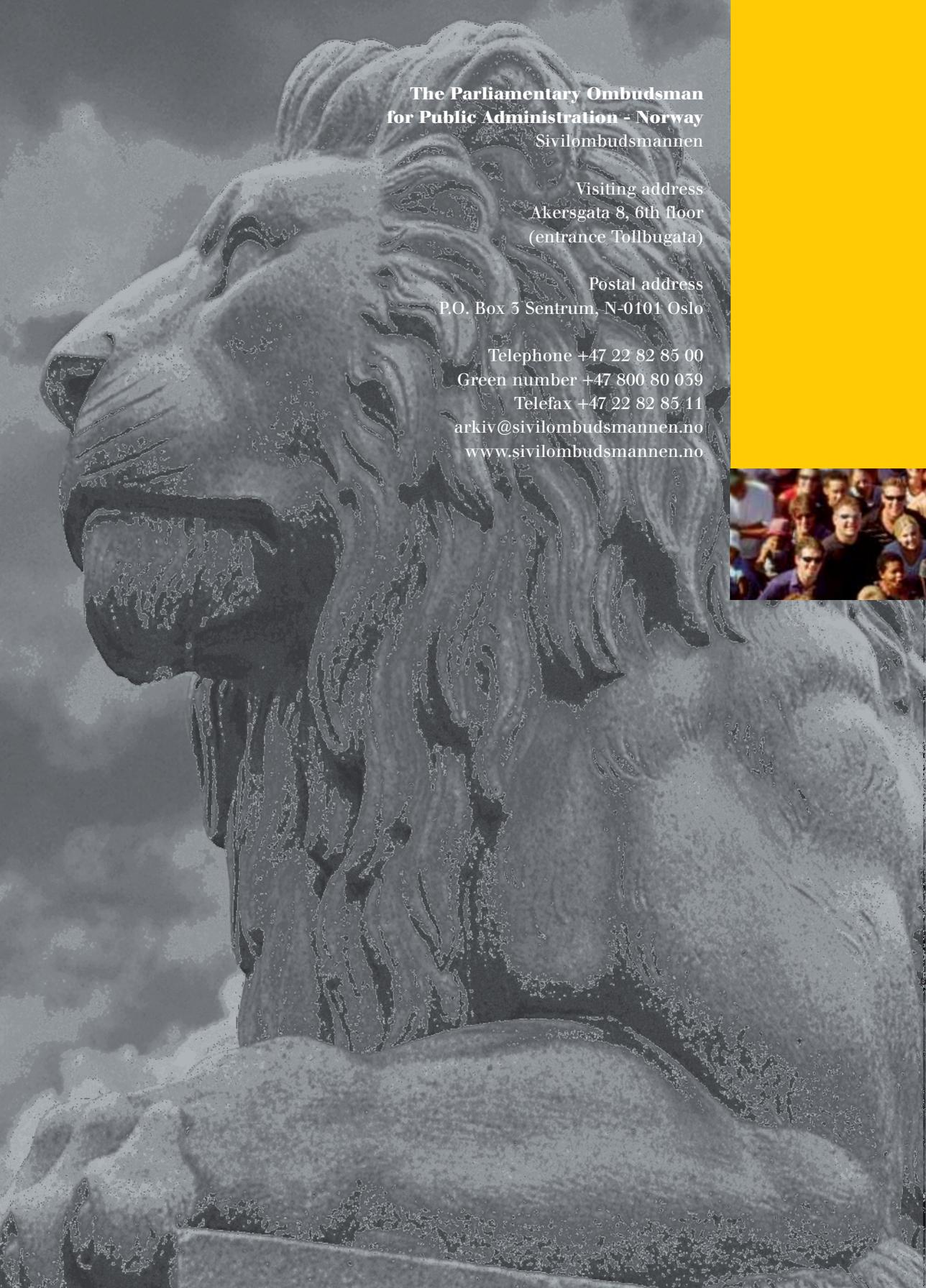
Any description of cases where the Ombudsman has expressed his opinion as mentioned in § 10 second, third and fourth paragraph of the Ombudsman Act, shall contain an account of what the administrative agency or public official concerned has stated in respect of the complaint, cf. § 6 first paragraph,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

§ 13.

*Entry into force.*

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





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

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