



FOLKETINGETS
OMBUDSMAND



The Danish Parliamentary Ombudsman has been elected by Parliament. His task is to help ensure that administrative authorities act in accordance with the law and good administrative practice, thus protecting citizens' rights vis-à-vis the authorities. The Ombudsman investigates complaints, opens cases on his own initiative and carries out monitoring visits.

Annual Report 2023

The Danish Parliamentary Ombudsman

Gammeltorv 22
DK-1457 København K

Phone +45 33 13 25 12
www.en.ombudsmanden.dk
www.ombudsmanden.dk
post@ombudsmanden.dk

Dear Reader,

In accordance with the Ombudsman Act, the Danish Parliamentary Ombudsman submits an annual report on his work to the Danish Parliament. This international edition of the 2023 Annual Report of the Danish Parliamentary Ombudsman seeks to share information and experiences internationally with colleagues and others with a special interest in ombudsman work. It contains elements from our Danish report but also elements that are unique to this international edition.

On the following pages, I will cover some of our most important cases in 2023. E-government and digitalisation have been given special attention in the Ombudsman's work since 2019, and as will be seen from the following pages, we also processed several cases about digitalisation in 2023. This report also contains three articles which we hope will be of interest to an international audience: The first article describes some general principles set out by the Ombudsman to be followed by authorities when developing new IT systems. The other two articles concern international aspects of the Ombudsman's work. One describes how the Ombudsman is involved in international activities in several respects and interacts with a variety of international players; the other explains how EU law is to an ever-increasing extent a natural part of the Ombudsman's review.

Because of the great diversity of ombudsman institutions around the world, we have included an appendix which will enable readers with a special interest to get a deeper understanding of the Danish Ombudsman institution.

Enjoy the read!



Niels Fenger
Parliamentary Ombudsman

Published by

The Danish Parliamentary Ombudsman
Gammeltorv 22
DK 1457 København K

Printed by

Stibo Complete lager og logistik, Copenhagen
E mail: kundeservice@stibocomplete.com

Printed in Denmark 2024

Also available in PDF format
on www.en.ombudsmanden.dk

Graphic design

Conduce
Umamo (infographics on pages 11, 14, 17, 28, 30, 36, 38-39, 44, 50 and 76-77)

Photographers

Jasper Carlberg (cover and pages 7, 48, 52 and 90-91)
Jakob Dall (pages 12, 45, 58, 79, 83, 87, 95 and 106-107)
BR&U/EU (page 55)

ISSN 1902-0120

Contents

2023 at the Ombudsman Office	
Niels Fenger, Parliamentary Ombudsman	4
About the cases	
Complaint cases	14
Own-initiative investigations	28
Monitoring activities	36
Articles	
Good IT systems require good preparation	
Lise Puggaard, Senior Consultant, and Vibeke Lundmark, Deputy Head of Division	48
The Danish Ombudsman and the world	
Klavs Kinnerup Hede, Director of International Relations	52
The Danish Ombudsman and EU law	
Niels Fenger, Parliamentary Ombudsman	58
Brief overview of the year	
The year in figures	70
Extracts from news items from the Ombudsman	80
Statement of revenue and expenditure 2023	84
Organisation	88
Whistleblowing system	95
Appendix	
General information about the Danish Parliamentary Ombudsman and about monitoring visits under the OPCAT mandate	96

2023

**at the Ombudsman
Office**

By Niels Fenger, Parliamentary Ombudsman

The year 2023 was a historically busy year for the Ombudsman Office. We opened 6,167 new cases, which is the highest number ever in the history of the Office. Thanks to a great effort from the Ombudsman's staff – and a much appreciated additional appropriation from Parliament – the increase in the number of cases has not had a significant impact on our case processing times.

The marked increase in the number of complaints raises the question whether the quality of the authorities' work has deteriorated in general. Fortunately, however, there are few indications that this is so. The reason is partly that the increase in the number of complaints can to some extent be attributed to specific case fields, including particularly cases concerning the preliminary property assessments, and partly that the share of cases in which I express criticism of the authorities has actually fallen a bit.

With over 6,000 cases, it can be difficult to select the most important. Some affect a lot of people. Some point to more general problems with one or more authorities. And lastly, there are cases which made a special impression due to their nature or the fate of the people involved. I will start with two cases in the latter category and then turn to the two first categories.

Was refused a sleeping bag

In February 2023, a homeless citizen complained to me because the City of Copenhagen had suspended payment of his cash benefits on the grounds that he no longer had a NemKonto (a bank account for payments from primarily the public sector). Also in February 2023, the citizen had applied to the municipality for funds to buy a sleeping bag with reference to the fact that he did not have any money, but the municipality had rejected his application. The reason given by the municipality for the rejection was that the citizen

did not have cash benefits, which would be paid to him if only he opened a bank account again or accepted that the money would be paid to another person who could then give him the money.

Or put in another way: A homeless man who – solely because the municipality refused to pay out his state benefits in cash – was left without the means to support himself could not even get help to buy a sleeping bag in the middle of winter.

It must be possible for a citizen to receive payments from public authorities even though the citizen does not have a bank account. The City of Copenhagen should therefore have been much faster in finding a way to pay out the man's cash benefits, for instance by paying out the money in cash.

One of the greatest joys of being Ombudsman is to help vulnerable citizens who have been caught in the system, and I am therefore glad that the municipality accepted my criticism. The municipality has now arranged for a member of staff to meet with the homeless man so that the two of them can withdraw the money for him together (Case No. 2023-40).

Another significant case in 2023 about vulnerable groups concerned conditions in Jyderup Prison. This prison has been a women's prison since 2021, and a few young children have for periods of time stayed in the prison together with their mothers.

During a monitoring visit, we found among other things that requests from inmates to have their child with them in prison had not been processed in accordance with the rules. We also found that the physical environment for the children was not good enough and that the prison's framework and measures for ensuring due care for the children should be improved. The prison

received our recommendations positively, and they are now in the process of being implemented. Among other things, the prison has recently acquired a new playground. The monitoring visit is also mentioned on page 42.

A look in the engine room

The year 2023 in the Ombudsman Office has been particularly marked by the field of taxation. Thus, in 2023 we saw close to a tripling of the normal number of complaints in this field. Among other things, we received about 450 complaints regarding the Danish Property Assessment Agency – over ten times more compared to the previous year. In addition, we received many complaints about the Danish Debt Collection Agency. Lastly, we opened a number of general investigations on our own initiative, among other things on the basis of the complaint cases.

Several of the cases gave me cause to lift the lid on the engine room of the tax authorities and take a look at their IT systems.

One of the most important cases is still pending and concerns the Property Assessment Agency's rollout of the preliminary property assessments. The rollout led to assessments which the Minister for Taxation characterised as 'very disproportionate' and 'wildly off the mark', and the Property Assessment Agency subsequently amended about 100,000 preliminary assessments. A high number, which, however, must be seen in the context of about 1.8 million properties in total.

As Ombudsman, I have no special qualifications for evaluating what a property is actually worth. But I can investigate whether the model calculations on which the property assessments are based comply with the legislative basis. I have therefore asked the Property Assessment Agency to explain the processes and quality assurance which preceded the release in September 2023 of the preliminary property assessments. This case will undoubtedly feature heavily in 2024.

Of other major cases regarding the Property Assessment Agency I will especially mention a case on the possibility of changing information in the Building and Housing Register (BBR) for use in the fixing of a property assessment (Case No. 2023-28) and a case on processing routines and processing times in cases on party access to files with the Property Assessment Agency (Case No. 2023-34). The cases are also mentioned in the section on own-initiative investigations on pages 28-35.

Focus on the collection of child support

Another group of cases which has taken up a lot of my attention concerns the Debt Collection Agency's collection of child support from debtors both in Denmark and abroad.

With regard to collection of child support in Denmark, I have previously characterised the mounting debt of debtors in this field as very unsatisfactory. In 2023, I found to my regret that, despite the Agency to a higher degree than previously having started to collect the debt by means of withholding pay, the total debt concerning child support not paid in advance had risen from about DKK 517 million in 2022 to about DKK 529 million in the middle of 2023.

Child support is of great importance to the financial situation in many homes. The affected families suffer when the money is not collected. Based on the severity of the issue, the authorities' information on status and on the ongoing measures and their time frame, I have asked the Debt Collection Agency to send me a new statement in August 2024 on the status of the collection at that point in time.

In so far as collection abroad is concerned, a status report from the Debt Collection Agency from the end of 2022 showed that about 12,500 individuals residing abroad owed a total of about DKK 2.3 billion in child support and spousal support.



My investigation showed that, since it was created in 2018, the Debt Collection Agency had in real terms not done much to collect this money. Following my criticism, the Debt Collection Agency stated that the Agency had launched several initiatives in the field. That is of course good, but in 2023 I found that up to September 2023, the Agency had actually only sent a very limited number of requests for assistance to authorities abroad. I have therefore asked for a new status in 2024 in which the Agency must among other things explain how the regard for the affected families is prioritised in the task of collecting debt abroad.

The cases on collection of child support in Denmark and abroad are also mentioned on page 32.

‘Generation 0’ problems

I must conclude that parts of the Debt Collection Agency’s problems with debt collection are connected with the Agency’s computer systems. For one thing, the Agency has some tidying up to do after the suspension of collection in the EFI system (the system which was designed to contain all collection of public debts in one system), and for another, the Agency’s systems are not designed for cases on collection of debts abroad.

When I became Ombudsman in 2019, I decided that digitalisation of the public sector – with all its benefits and pitfalls – would be the subject of special attention. Somewhat naively, I thought that many of the cases would be about difficult legal issues, such as profiling or the use of AI.

Those cases are sure to come. But up until now, the majority of the cases on possible errors in the public digital systems we investigate still concern what might be called generation 0 problems and issues. With that I mean that the issue in by far the majority of the cases is that the systems have been designed in a way that violates both

elemental and fundamental rules of administrative law. And that the errors are obvious but unfortunately often not discovered until the systems have been put into operation – and in some instances have been running for quite some time.

One of the issues is citizens being unable to be represented by others in a large number of the IT systems of the Danish Tax Agency. In 2021, I criticised that five of the Danish Tax Agency’s digital systems did not allow citizens the possibility of using party representatives such as lawyers or accountants to help them with cases regarding for instance tax liability or debt. The Tax Agency then started the work of rectifying this issue, and it turned out that the problem was larger than first uncovered: Citizens could have problems with using party representatives in as many as up to 32 of the Tax Agency’s IT systems. In addition, the tax authorities had difficulties in immediately rectifying the errors. In 2023, I found the overall scale and duration of the problems a matter for criticism, and I also found that the time schedule for the legalisation of the systems gave cause for concern.

Another case concerned the digital application form which a foreign national must fill in on the website of the Agency for International Recruitment and Integration (SIRI) in order to apply for a residence permit in Denmark according to the Labour Market Attachment Scheme. The application form could only be submitted if the applicant entered his or her passport number and the passport’s expiry date. However, a number of applicants did not have a passport, and it is not a requirement in the aforementioned scheme that you have a passport in order to get a residence permit. The digital user interface was thus designed in such a way that a foreign national without a passport could only apply if the person entered a different passport number and thereby ran the risk of criminal prosecution

for giving false information. You cannot put an applicant in such a position, and on that basis I brought about a change in the application procedure (Case No. 2023-3).

In both cases – as in a number of other cases mentioned in this annual report – the issue was a matter of foot faults and neither difficult nor complicated legal issues. Generation O problems, plain and simple.

IT errors are difficult to rectify

In the Ombudsman Office, we have generally observed that digital systems are sometimes put into operation without the authorities having sufficiently ensured that the systems function correctly.

Examples include the cases from 2023 on the errors in the National Police's new weapons register and the intermunicipal IT system Kommunernes Ydelsessystem (KY – the municipal payment system).

A common characteristic of these cases is that they concern IT systems which have been put into operation even though they had significant deficiencies. That had serious consequences for citizens in terms of due process issues. By way of example, the errors in KY led to a good-sized number of citizens on cash benefits having these wrongfully reduced and thereby having their basis for living cut. According to Local Government Denmark, the errors meant that the municipalities had to pay back overall about DKK 13 million to between 500 and 1,000 citizens (Case No. 2023-15).

Regardless of whether the IT system errors are banal or of a more fundamental nature, they often share a common feature, namely that they can be very troublesome to rectify. Once an IT system has been put into operation, it can be

immensely resource-heavy to 'code backwards' and find the error (or errors) and rectify the system.

Read more about errors and flaws in the authorities' IT systems in the article 'Good IT systems require good preparation' on pages 48-51.

Tivoli Passes for politicians

In 2023, it also emerged that several Copenhagen City Council members had received a Tivoli Pass as a gift from Tivoli Gardens. That caused me to ask questions of the municipality, and the reply was that the group of political chairpersons on the Copenhagen City Council had assessed that municipal politicians could not accept a Tivoli Pass from Tivoli.

I agreed with this assessment. The rules on accepting gifts are important because they help ensure that there can be no doubt about the objectivity and impartiality of public authorities. Subsequently, the case caused several municipalities to change their practice in relation to accepting gifts and other benefits. And it thereby illustrates that the importance of an Ombudsman statement often extends further than the individual case and results in a more general change in behaviour.

These were just a few of the most important cases from the past year. Many more are mentioned on the next pages – together with both other information and statistics on our work.

Enjoy the read.

> The cases mentioned in the article are published (in Danish) at www.ombudsmanden.dk

About the cases



**Complaint
cases**



**Own-initiative
investigations**



**Monitoring
activities**



3
POLARISVEST
SINTELSVAND

115



Cases opened in 2023¹⁾

6,167

Own-initiative investigations

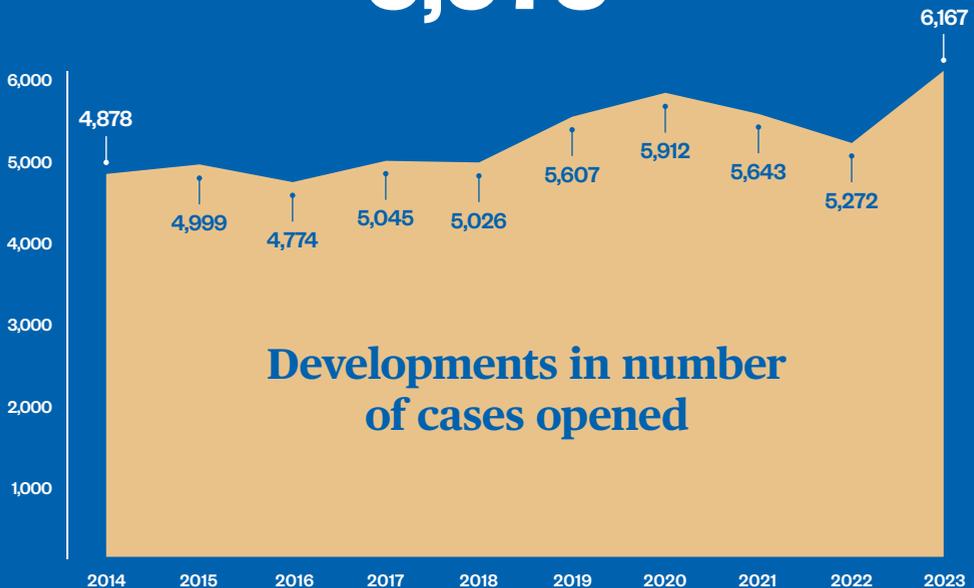
128

Monitoring cases

66

Complaint cases

5,973



1) Administrative cases are not included. In addition, cases selected for collective review in connection with general own-initiative investigations are not normally included.



Complaint cases

Who: In general, anybody can complain to the Ombudsman, and it is not necessary to be a party to a case to lodge a complaint with the Ombudsman. A complainant cannot be anonymous.

What: The Ombudsman considers complaints about all parts of the public administration and in a limited number of situations also about private institutions, an example being complaints about conditions for children in private institutions.

The Ombudsman does not consider complaints about courts, nor about tribunals which make decisions on disputes between private parties.

When: The Ombudsman's task is to ensure that the authorities have observed the applicable rules. For this reason, the Ombudsman cannot consider cases before the authorities; he can consider a complaint only if the case has been considered by the relevant authority – and by any appeals bodies.

There is a deadline of one year for complaints to the Ombudsman.

How: When the Ombudsman receives a complaint, he first determines whether it offers sufficient cause for investigation. In some cases, the Ombudsman is unable under the Ombudsman Act to consider a complaint – for instance if the one-year deadline for complaints has been exceeded or if the case has not been considered by the relevant appeals body. In other cases, the Ombudsman chooses not to open an investigation, for instance because he would not be able to help the citizen achieve a better outcome.

In a large proportion of complaint cases, the Ombudsman helps the citizen by providing guidance or by forwarding the complaint to the relevant authority, for instance in order that the authority will be able to consider the complaint or give the citizen more details of the grounds for a decision which it has made.

In a number of cases, the Ombudsman discontinues his investigation because the authority chooses to reopen the case, for instance after being asked for a statement on the matter by the Ombudsman.

In some complaint cases, the Ombudsman carries out a full investigation, in which, among other things, he asks the authority to send him a statement on the matter. The investigation may result in the Ombudsman criticising the authority and recommending that it make a new decision.

What are the complaints about?

Children

Complaints concerning children and young people are lodged particularly by parents or by other relatives or caregivers. Many complaints are about support measures for children and young people. The Ombudsman also receives complaints about, for instance, family law matters and matters relating to schools.

Social benefits and services

The majority of complaints involve municipalities, Udbetaling Danmark (an authority responsible for a number of public benefits), Labour Market Insurance or the National Social Appeals Board and are about, for instance, occupational injuries, pensions, home help, cash benefit, accompaniment or technical aids.

Taxation

Complaints are received from both citizens and businesses, including professional representatives of complainants, such as practising lawyers specialised in tax law and accountants. Examples of the subject matter of complaints include tax assessments, debt collection, property assessments and long processing times.

Environment and building

Many of these complaints are made by dissatisfied neighbours. Complaints may be about, for instance, loss of privacy due to overlooking from a building, smells from a pig farm or noise. Other complaints are about wind turbines or solar panel installations. The complaints typically concern issues relating to compliance with rules on environmental protection or building and planning legislation.

Business and energy

Several complaints concern energy subsidies. In 2023, some of the complaints were about refusals of applications for a one-time cash payout to mitigate extraordinary heating price increases. The Ombudsman also received a number of complaints about repayment of COVID-19 subsidy in 2023.

Access to public records under the Access to Public Administration Files Act, the Environmental Information Act etc.

Complaints are primarily about refusals by authorities to give access to information or documents or about processing times. A large proportion of the complaints are against the central government.

Institutions for adults

The institutions complained about include prisons, psychiatric wards and institutions for adults with disabilities. As residents and inmates typically spend 24 hours a day in the institutions, the complaints cover all aspects of life, for instance relations with staff, feelings of unsafety with other residents/inmates or contact with relatives and friends.

Criminal cases and police etc.

Many of these complaints are made by citizens who are discontented because the police have dismissed a report or stopped an investigation. Complaints may also concern police handling of other types of cases or police conduct.

The health sector

Complaints are made by, among others, citizens who are dissatisfied with treatment they have received in the healthcare system, including the psychiatric healthcare system. Another common theme for complaints is long processing times, for instance in complaint or licensing cases.

Personnel matters (including freedom of expression)

Many of these complaints are from public employees who are dissatisfied with a negative reaction from their employer, such as dismissal, a warning or a reprimand. Other complaints relate to the freedom of expression of public employees.

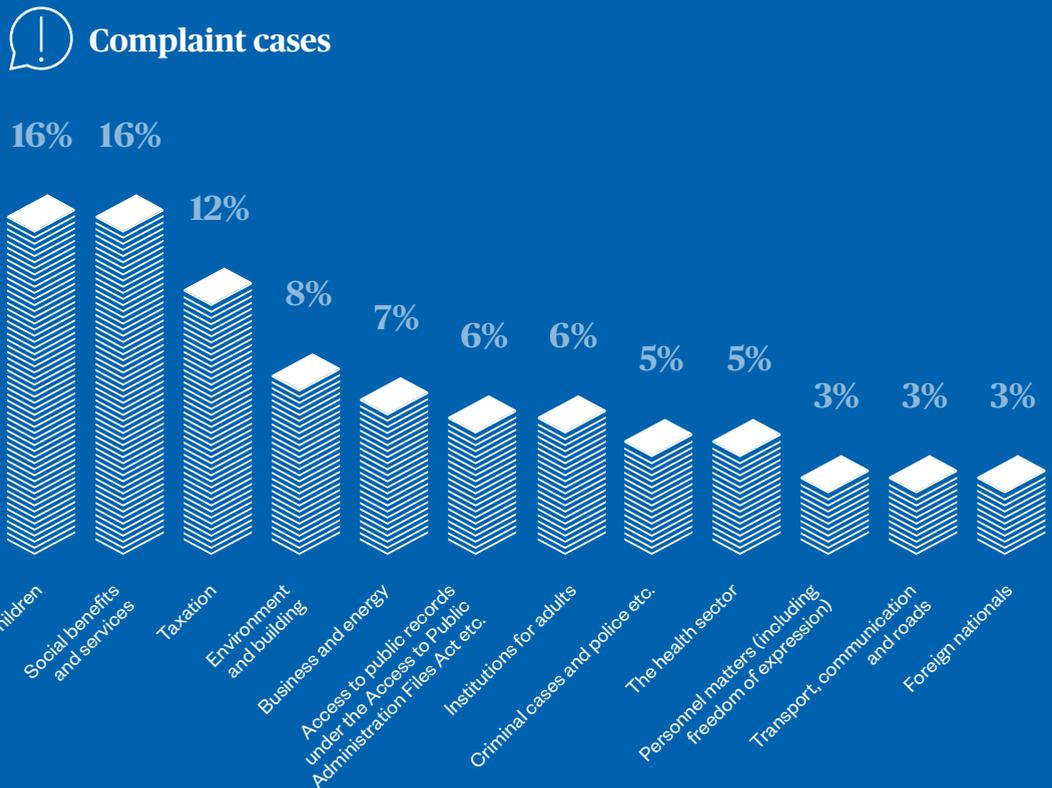
Transport, communication and roads

Many of these complaints concern public roads or private communal roads and arise from, for instance, disputes between neighbours or

dissatisfaction with an order by a municipality to maintain or provide access to a private communal road. Other complaints are from citizens who have problems with public digital self-service solutions.

Foreign nationals

A number of complaints are about long processing times. In addition, the Ombudsman receives complaints about, among other things, refusals of family reunification, visas and permanent residence permits.



Selected subject areas of complaints as percentages of all complaints received by the Ombudsman in 2023

Conflicts of interest in municipalities and the National Tax Tribunal

Disqualification: The Ombudsman has processed various cases in which questions have been raised regarding disqualification due to, among other things, friendships and enmities. The Ombudsman has also processed a case on whether a municipality was disqualified when granting itself a dispensation.

Municipality granted dispensation to itself

Favrskov Municipality wanted to put up a fence and let cattle graze on a plot of land belonging to the municipality. However, the plot was closer to the urban zone than legislation allowed. A team in the municipality therefore applied for and was granted dispensation by another team in the same department.

As applicant, the municipality was a party to the case and therefore disqualified according to the rules on administrative disqualification. Since it was not possible to move the processing of the case to another authority, the municipality had to make the decision after all. However, the municipality should have considered whether special measures should be taken to mitigate the conflict of interest. As this had not happened, the Ombudsman recommended that the municipality resume processing of the case and make a new decision.

No disqualification in relation to sister's boyfriend and colleague

When Læsø Municipality hired a new employee for a position in the municipality, a citizen complained because in his opinion, two members of the hiring committee were disqualified. One member had a sister who was in a relationship with the person who got the position and, in addition, both members had been colleagues for many years with that man.

The Ombudsman did not find that there were any disqualification problems with the hiring committee. Ordinary connections with colleagues do not

activate disqualification according to Section 3(1)(v) of the Public Administration Act, so neither of the two members of the hiring committee were in the Ombudsman's assessment disqualified due to their connections with the applicant as colleagues.

The Ombudsman took for his basis that the applicant and the sister of one of the hiring committee members were in a private relationship with each other but were neither married nor living together. They did not share a household, either. In addition, there was no appreciable or significant private social connection between the applicant and the hiring committee member. Thereby, the hiring committee member was for that reason not so closely connected to the applicant that it resulted in disqualification according to Section 3(1)(ii) and (v) of the Public Administration Act.

Issue of disqualification in the National Tax Tribunal

During a court hearing in the National Tax Tribunal, a party raised the issue of whether one of the members of the Tribunal was disqualified from making a decision in the case. The party believed that the tribunal member was on bad terms with a close friend of the party.

The National Tax Tribunal did not find that the tribunal member was disqualified. The relevant member did not participate in the decision on the subject but was present in the room while the two other members discussed the issue.

The Ombudsman did not find grounds for criticizing the National Tax Tribunal's disqualification assessment. Generally, there will be no conflict of interest solely on the basis that an administrative authority employee might be on bad terms (or friends) with a friend of a party to the case. However, the tribunal member in question should have left the room while the other members considered and decided on the issue of his disqualification.

Consultation of neighbours cannot be omitted with reference to construction law

Consultation of parties: In recent years, the Ombudsman has investigated a number of cases on municipalities' practice regarding consultation of neighbours in construction cases. In the cases, the municipalities had written to the citizens that there is no consultation of parties when a building project complies with construction law.

The duty to consult the parties according to the Public Administration Act presumes the completion of a concrete and overall assessment of

whether neighbours etc. have a substantive and individual interest in a case. The Ombudsman has therefore emphasised that it is not in accordance with the duty to consult parties to generally omit consultation with neighbours etc. solely because construction law has been observed. Consultation with neighbours in construction cases is intended to safeguard that the neighbour can look after his or her own interests in the case and that the municipality can make its decision on a sufficiently informed basis.

Hospital should have advertised job before hiring

Recruitment: Positions in the public sector must be filled with the most qualified applicant. The general rule for public employers is therefore that all positions must be advertised.

While Hospital Sønderjylland was seeking a head of PR, a communications consultant position also became available at the hospital. Instead of advertising the communications consultant position, the hospital filled the position with one of the candidates that had applied for the PR job.

The Ombudsman found that the communications consultant position was so different from the head of PR position that it could not be assumed that a separate advertisement would not have attracted other applicants for the communications consultant position than those that had applied for the PR position. This meant that the communications consultant position should have been advertised.

➤ **The general rule for public employers is that all positions must be advertised.**

Criticism of case processing times at the Ministry of the Interior and Health

No reply: A citizen complained to the Ombudsman that he had not received a reply from the Ministry of the Interior and Health to his complaint to the Ministry about lack of supervision of a doctor. He had also not received a reply from the Ministry to a request for access to files in the case.

The Ombudsman stated that it was very regrettable that the Ministry had spent a total of 12 months on processing the citizen's complaint.

The Ombudsman also found it regrettable that the Ministry at no point notified the citizen of the status of the case processing.

Lastly, the Ombudsman stated that the case processing time (a total of 9 months) and the lack of notification in the access case was criticisable.

Also complex law must be processed within reasonable time

Case processing times: A trade association complained about the Tax Agency's processing times in a large set of cases. The cases arose from the 2014 judgment by the Court of Justice of the EU in the ATP case concerning VAT claims which resulted in many repayment claims. In the spring of 2023, more than 600 cases were still not concluded, and in over 300 cases, the processing had not begun.

The Ombudsman found that a preliminary case processing time of 9 years was completely unacceptable. He was also concerned that it could still take a long time before all cases were concluded. The fact that the cases concerned complex legal issues could not change that the authority had to finish its deliberations and conclude the cases within a reasonable amount of time.

➤ **A preliminary case processing time of 9 years was completely unacceptable.**

No authority for in-house complaint recourse at university

In-house two-stage system: At University of Copenhagen, student complaints were processed via an in-house two-stage complaint system before they reached the Agency for Higher Education and Science as appeals body – meaning that complaints about decisions made by a faculty or institute were processed at a higher in-house level before they were sent to the Agency. That could take quite some time.

The system was based on a guidance note from the Agency for Higher Education and Science but the executive orders in the field did not give access to demanding that complaints be processed in several stages at the university. When the Ombudsman pointed this out, the Agency decided to amend the guidance note and bring attention to the fact that universities' processing of student complaints should take place within a reasonable time frame.

The National Social Appeals Board should not have rejected complaint from homeless person about eviction

Jurisdiction: A homeless shelter evicted a homeless person because he, according to the staff, had behaved threateningly towards another resident and had not complied with the staff's instructions. The National Social Appeals Board did not find that it could consider evictions caused by violations of the homeless shelter's house rules but only in cases where the citizen was no longer in the target group of the specific accommodation type. Therefore, the National Social Appeals Board rejected the citizen's complaint.

The question in the case was whether the word 'discharge' in the provision on complaints in the Social Services Act also covers the situation where a citizen is evicted due to his behaviour.

The Ombudsman found that the National Social Appeals Board interpreted the provision too narrowly and that the Appeals Board did not have grounds for rejecting the complaint. The National Social Appeals Board therefore cancelled its substantive decision about the matter and at the same time reopened the homeless person's case as well as 24 other cases that had been decided in the same way.

➤ **The Ombudsman found that the National Social Appeals Board interpreted the provision too narrowly.**

Citizen understood guidance as a binding advance ruling

Guidance: A citizen believed that during a telephone conversation with the municipality he had received a binding advance ruling that he would get planning permission for a loft extension on his property. The municipality subsequently prohibited the construction of the loft extension.

The Ombudsman did not find that the municipality had given the citizen a binding advance ruling. He emphasised in particular that the telephone conversation had to be considered a guidance talk

on what was missing in the application and that the conversation took place at a time when there was not as yet any final material as basis for the application.

However, the case did illustrate how important it is for an authority to ensure that the guidance appears solely as just that and is not erroneously perceived as a decision or a binding advance ruling that the citizen can rely on.

➤ **The Ombudsman did not find that the municipality had given the citizen a binding advance ruling.**

Complainant could not be refused with reference to acquiescence resulting in the forfeiture of rights

Acquiescence resulting in the forfeiture of rights: The Equal Treatment Board believed that a citizen had waited too long to complain about unlawful discrimination and had thereby lost the right to have the complaint investigated. The complaint was submitted about one year after the episode where the alleged discrimination took place.

The citizen complained to the Ombudsman, who asked the Equal Treatment Board to explain the statutory basis for refusing to investigate the complaint. The Ombudsman pointed out that, as a starting point, there are no non-statutory complaint deadlines within the public administration.

The Equal Treatment Board decided to change its practice so that the Board no longer used considerations of acquiescence resulting in the forfeiture of rights and of limitation of time to refuse to investigate whether or not a citizen had been the subject of unlawful discrimination. The Board then investigated the citizen's complaint and informed other complainants affected by the former practice of the possibility of having their case reopened.

Healthcare sector was responsible for practical help for in-home treatment

Principle of sector responsibility: A woman with a disability complained to the Ombudsman because no authority would take responsibility for her need for help in handling a so-called CPAP mask for treatment of sleep apnoea at night. The National Social Appeals Board believed that it was the responsibility of the Region, as the healthcare authorities had assessed that the CPAP mask was part of a continued hospital treatment and was meant to prevent a deterioration of a treatment result. The Region disagreed and did not think that it was a regional task to provide help for handling of the CPAP mask.

The Ombudsman agreed with the National Social Appeals Board that the healthcare sector (the Region) was responsible for the woman's treatment and the related tasks.

It is a prerequisite for support pursuant to the Social Services Act that the support is not covered by other legislation – this follows from the so-called principle of sector responsibility and the principle that support pursuant to social services legislation is subsidiary to support pursuant to the legislation for other sectors. The Ombudsman therefore could not criticise that the municipality had refused to provide support pursuant to the Social Services Act when the Region had the responsibility for providing the woman with the necessary support.

The Ombudsman recommended that the Region assess the woman's current treatment and support needs. In that connection, the Region could consider if there were cause to seek to enter into an agreement with the municipality regarding the handling of practical support.

Refusal to give dispensation for reexamination was a decision

The decision concept: Two complaints from university students brought attention to the distinction between decisions and actual administration activities. In both cases, the Agency for Higher Education and Science had refused to consider the students' complaints about examinations on the grounds that the Agency could only consider decisions while the conduct of examinations had to be considered an actual administration activity.

In one of the cases, a student had complained that she had not been allowed to take her personal belongings with her when she left a written examination before it had ended. The Ombudsman did not find that this was a decision.

In the other case, the complaint concerned a university's refusal to grant a student dispensation to register for a reexamination after the deadline had expired. Here, unlike the Agency, the Ombudsman found that this was a decision. The issue in the case did not concern the actual administration activity of conducting an examination but, on the contrary, whether the student was allowed to sit the reexamination that was being conducted.

Utility company included illegal consideration in access case

Access to files: A citizen complained to the Ombudsman about a rejection of access to files from the municipally owned utility company SK Energi A/S. In its rejection, the company had written that there was no other new material or internal documents to which it was possible to gain access.

In fact, the company was in possession of an internal document that was covered by the request, but decided not to say so. The company assumed that a board member had leaked the internal document. The company was hoping that the rejection of access would make the citizen state that he was already in possession of the internal document, so the company could report the board member to the police.

The Ombudsman found that SK Energi A/S had included a consideration that could not legally be included according to the Access to Public Administration Files Act.

➤ **The company was in possession of an internal document that was covered by the request, but decided not to say so.**

Cases on formation of contracts are not ministerial advice and assistance

Act on Access to Public Administration Files: In Case No. 2022 30, a citizen had asked the Ministry of Immigration and Integration for access to material on the State's purchase of the property Holmegaard on the island of Langeland to be used as a return centre for rejected asylum seekers. The Ministry exempted a number of documents pursuant to, among others, Section 24 of the Act on Access to Public Administration Files.

It appears from Section 24(1) of the Act on Access to Public Administration Files that the right of access to files does not include so-called ministerial advice and assistance documents, meaning documents drawn up by members of the civil service with a view to giving advice or assistance

to a minister. According to the legislative history, the provision is intended for 'the political ministerial advice and assistance'. From Section 24(3)(ii) it appears that the ministerial advice and assistance provision does *not* apply in cases concerning formation of contracts.

The citizen was dissatisfied because the Ministry had not given him all the documents he had asked for. He complained to the Ombudsman who directed the Ministry's attention to the provision in Section 24(3)(ii). The Ministry then reopened the case and in the spring of 2023 handed over a number of documents about the purchase of Holmegaard pursuant to the provision in Section 24(3)(ii).

Letters to citizens dated incorrectly

Date jumble: Authorities must ensure that their letters are dated correctly. It is crucial for the citizens' rights in relation to consultation deadlines, complaint deadlines and other deadlines.

In several complaint cases, the Ombudsman found that authorities had sent letters with incorrect dates to citizens. Either due to IT errors, human errors or both.

Consultation letters got a new date

The date in the Energy Agency's consultation letters changed to the current date every time the document was opened. In addition, the Agency's decisions had in some cases not been dated on the day they were sent. Part of the reason was that the Agency used Word files that automatically updated the letter date to the current date every time the document was opened. The Agency has now changed its procedures so letters are no longer sent as Word files. At the same time, the Agency ensures that all letters are dated correctly.

➤ **The date changed to the current date every time the document was opened.**

Employees had to correct date themselves

Letters from Odense Municipality to a citizen were dated on the day they were created in the municipality's IT system – not the day they had actually been sent. This was because the municipality's electronic case and document management system automatically provided documents with the date they were created in the system. Case officers would then have to change the date themselves when sending the letters. In connection with the Ombudsman's investigation, the municipality emphasised to the employees that they had to remember to correct the date. The municipality would also move the case processing to a new IT system that ensures that letters are dated correctly when sent.

New module led to wrong dates

A journalist complained to the Ombudsman about the Ministry of Health's processing time in connection with a request for access to files. The journalist pointed out that the Ministry had created a draft reply to him on 23 August but had not sent it until more than two months later. It turned out that, due to a technical error, the reply – and all other newly created letters for almost four months – had been registered as having been created the day before the implementation of a new case processing module in the Ministry. In reality, the draft reply for the journalist had been created on the same day that it was sent. The Ministry ensured that documents' creation date would no longer be registered automatically but had to be filled in manually until the technical error had been rectified.

Setting limits for outsiders' special access to an authority

Confidential information: A journalist complained to the Ombudsman because there were no internal documents in the Prime Minister's Office in a case in which an author had been given access to the Office for a period of time in order to write a book about the Prime Minister. The case did not give the Ombudsman cause for criticism.

The Ombudsman did, however, make some general comments on the considerations which can be wise for an authority to make before a person outside the public administration is given special access to the authority. This could be for instance setting limits for the visitor's access to rooms, meetings and data. This can help ensure that confidential information is not passed on without authority. It can also reduce the risk of uncertainty afterwards on what information the visitor has obtained.

Digital complaint took four hours to arrive

Complaint deadline: A citizen sent a complaint about a municipal decision by Digital Post via e-Boks at 23:43. The deadline for complaint expired at midnight on the same day. The municipality did not receive the complaint until more than four hours later, and the National Social Appeals Board subsequently refused to consider the citizen's complaint about the municipality's decision because the complaint had been received too late. The National Social Appeals Board stated that citizens must expect a certain delivery time when sending messages via Digital Post.

However, due to questions from the Ombudsman, the Agency for Digital Government stated that a service target has been laid down that in 95 per cent of cases there must be a maximum time lapse of 20 seconds from a message is sent via Digital Post from the sender's outbox till it is available for the authority's receiving system – and that this target has been met since September 2022.

On that background, the National Social Appeals Board stated that it must be presumed in future that Digital Post delays are due to obstacles that are not the sender's fault. The National Social Appeals Board decided to reopen the citizen's case, and the Board has also posted a new substantive decision about the issue.

Forwarding may lead to new view on a case

A second look: Every year, the Ombudsman helps citizens achieve a better legal position by forwarding their complaints to the authorities. The Ombudsman often emphasises elements in the case that he finds the authorities should have the opportunity to consider. Maybe the authorities have not previously considered the elements or maybe there are questions that seem unclarified.

Severe fear of needles

A citizen with diabetes sought help to buy a glucose meter that he could use to measure his blood glucose levels without doing a finger prick test. The citizen suffered from a severe fear of needles and experienced shaking, ringing in the ears and blurred vision when he needed to do finger prick tests, which he had to do several times a day. This made the blood glucose measuring very time consuming and made his daily life difficult.

➤ In the National Social Appeals Board's opinion, the pensioner should know that she was not single according to the Pensions Act.

The citizen's home municipality rejected the application, and the rejection was upheld by the National Social Appeals Board on the grounds that a glucose meter would not be able to help alleviate the permanent consequences of the citizen's illness or improve his life considerably.

The citizen complained to the Ombudsman, who forwarded the case to the National Social Appeals Board with a request that the Appeals Board explain in more detail to the citizen why it found that a glucose meter would not be able to improve his life considerably. The National Social Appeals Board reopened the citizen's case and granted him the aid.

Decision on repayment of state pension changed

The National Social Appeals Board upheld a decision by the Public Benefits Administration (Udbetaling Danmark) that a pensioner was to pay back a part of her state pension. The National Social Appeals Board found that, during a period, the pensioner had received too much state pension by being registered as single. In the National Social Appeals Board's opinion, the pensioner should know – or have known – that she was not single according to the Pensions Act when she received the money.

However, the Appeals Board had previously with drawn a similar claim against the pensioner's former spouse. And the pensioner believed that her and her former spouse's cases should be processed, assessed and decided in the same way.

The Ombudsman forwarded the pensioner's complaint to the National Social Appeals Board to give the Appeals Board an opportunity to consider her objections and clarify to her some questions about the scope of the Appeals Board's decision. The National Social Appeals Board reopened the case and made a new decision that the pensioner was not obligated to repay the state pension after all.



Own- initiative investiga- tions

What: Opening investigations on his own initiative is a high priority for the Ombudsman.

The Ombudsman may open the following types of investigation on his own initiative:

- investigations of specific cases
- general investigations of an authority's processing of cases

The Ombudsman mainly opens own-initiative investigations of themes and within areas with one or more of the following characteristics:

- There is an aspect of fundamental public importance.
- Serious or significant errors may have been made.
- They concern matters which raise special issues in relation to citizens' legal rights or are otherwise of great significance to citizens.

Why: A main objective is to identify recurring errors made by authorities. This can have a great impact on authorities' case processing, thus helping a large number of citizens at the same time.

The focus is not only on errors that the authority may already have made – but also on preventing errors being made in the first place.

In addition, the Ombudsman opens investigations on his own initiative of specific cases of a more one-off nature.

From where: Specific complaint cases or monitoring visits may give rise to suspicion of recurring errors etc. and be the launch pad for an own-initiative investigation. Media coverage of a case may also cause the Ombudsman to open an investigation on his own initiative. The Ombudsman monitors both local and national media.

Further, external parties – such as professional committees for practising lawyers or accountants or interest groups – can be useful sources of knowledge about recurring errors etc.

In addition, the Ombudsman chooses some general themes each year for the institution's monitoring activities in relation to adults and children and for the Taxation Division.

How: Own-initiative investigations have the common denominator that the focus is usually expanded beyond specific problems to a more general level, with emphasis on any general and recurring errors or problems and on how the authorities involved can handle and rectify them.

In some own-initiative investigations, the Ombudsman reviews a number of specific cases from an authority. In others, the Ombudsman asks an authority for a statement about, for instance, its administration, interpretation of the law, practice or processing times within a specific area.

The Ombudsman is working on an ongoing basis on a variety of own-initiative investigations where he considers, based on, for instance, specific complaint cases, legislative changes or media coverage, whether there is a basis for further investigation of a matter.

In some cases, the Ombudsman's own investigation leads to the assessment that there is no cause to contact the authorities involved, and the case is closed without a full Ombudsman investigation. The Ombudsman may also decide to close a case without a full investigation after contacting the authorities.

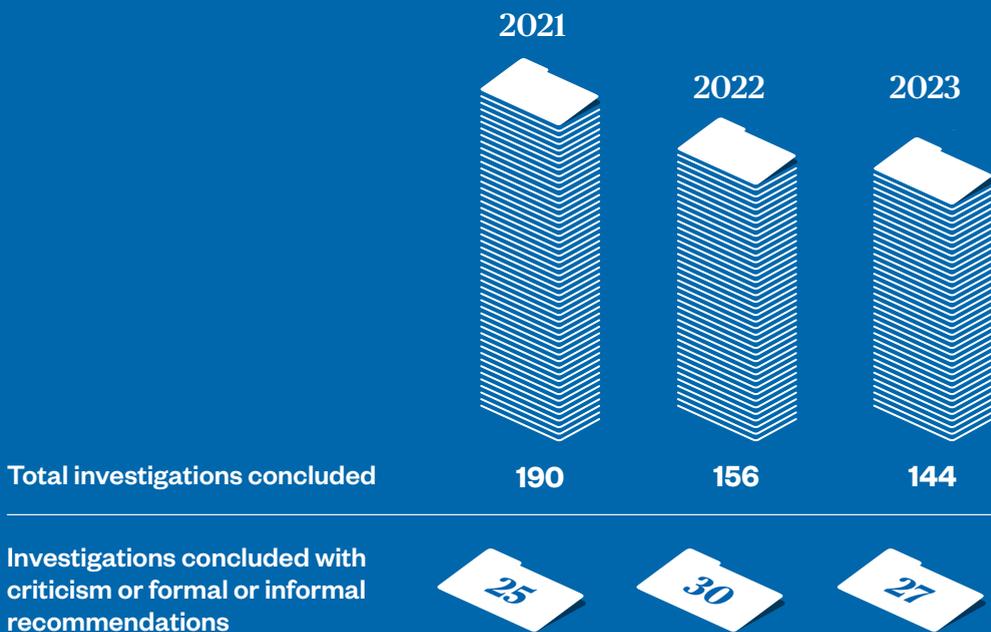
Problems with Digital Post

Communication: In connection with an access to files case, the Ombudsman became aware that the Ministry of Climate, Energy and Utilities had problems receiving messages sent via Digital Post.

The Ombudsman started an investigation of the Ministry's handling of the problems with Digital Post. The investigation showed that about two months passed from the discovery of the problem before it was solved, and another four months passed before all affected messages had been received in the Ministry.

The Ombudsman stated that citizens and businesses have a right to communicate with public authorities via Digital Post, and that the technical problems in the Ministry had suspended this right in the period until the problem was solved. On that basis, the Ombudsman agreed with the Ministry that the process was regrettable.

Own-initiative investigations



Case processing times

Effect of authorities' initiatives: When the Ombudsman finds that an authority takes too long to process cases, it may not only lead to criticism. Often, the Ombudsman also requests that authorities give an account of whether the initiatives they are implementing to remedy the issues have had the desired effect.

Requested notification from the Prime Minister's Office

In 2023, the Prime Minister's Office told the Ombudsman that the Office had improved processing times in access cases considerably and essentially met the deadlines set out in the Access to Public Administration Files Act. The Ombudsman had previously criticised the Prime Minister's Office for not meeting the deadlines for processing in a number of access cases. And he had asked to be notified of the Office's initiatives to process the cases more quickly. After the Prime Minister's Office's statement, the Ombudsman has not asked for more notifications from the Office.

Concluded investigation of health authorities

Also the Ministry of Health and the Patient Complaints Agency informed the Ombudsman in 2023 that they had considerably reduced the average time for processing requests for access to files.

An Ombudsman investigation had shown that both the Ministry and the Agency were frequently exceeding the deadlines set out in the Access to Public Administration Files Act and the Environmental Information Act for processing of requests for access to files.

Based on the new notifications, the Ombudsman concluded his investigation of the two authorities' case processing times.

Not there yet

The Ombudsman is focusing on the Environment and Food Board of Appeal's handling of requests for access to files. Information provided by the Board of Appeal in 2023 led the Ombudsman to the conclusion that the Board of Appeal's processing times in cases under the Environmental Information Act must be seen as incompatible with the prerequisites for case processing in such cases. The Ombudsman has asked to receive a new statement from the Board of Appeal in 2024.

The Ombudsman wants more answers about collection of child support and spousal support

Debtors abroad: An investigation of the Debt Collection Agency's work with collecting child support and spousal support from debtors residing abroad showed that about 12,500 individuals residing abroad owed a total of about DKK 2.3 billion in child support and spousal support.

The investigation also showed that since it was created in 2018, the Debt Collection Agency had in real terms not done much to collect this money. Not until 2022 did the Agency begin to request authorities abroad for help with collecting child support and spousal support from debtors residing abroad.

Following the Ombudsman's criticism, the Debt Collection Agency stated that the Agency had launched several initiatives in the field.

However, the Agency added that it still had problems with its IT systems, among other things, and the international agreements on which the Agency based its cooperation were varied and allowed for varied assistance from authorities abroad. The Agency had also exempted a number of debt items from collection attempts because they might be time-barred.

The Ombudsman found that, up until September 2023, the Agency had only sent a very limited number of requests for assistance to authorities abroad. The Ombudsman asked for a new status in 2024. Here, the Agency must among other things explain how the regard for the affected families is prioritised in the task of collecting debt abroad.

The Debt Collection Agency's collection of child support in Denmark

The Ombudsman has also asked the Agency to give a new status in 2024 for its work with collecting child support from debtors in Denmark. New figures in 2023 showed that the total debt concerning child support payments that had not been paid in advance by the public authorities as of 30 June 2023 had increased to about DKK 529 million in spite of the fact that the Agency to a greater extent than previously had started to collect the debt through withholding of pay.

The Ombudsman has previously referred to the increasing debt in this field as very unsatisfactory and has therefore asked for a new status.

➤ **The Ombudsman found that, up until September 2023, the Agency had only sent a very limited number of requests for assistance.**

Rollout of the new property assessments

Preliminary property assessments: At the end of 2023, the Ombudsman asked the Property Assessment Agency a number of questions about the preliminary property assessments. The questions concerned among other things the accuracy, the IT system and the model calculations behind the assessments, the Agency's subsequent changes of the published preliminary assessments and the Agency's case processing times in connection with enquiries from property owners about the assessments.

Four weeks to make changes in the Building and Housing Register (BBR)

Earlier in the year, the Ombudsman focused his attention on the special so-called declaration procedure of four weeks, during which the Property Assessment Agency consults proper

ty owners on the data that the Agency will base its property assessments on. The Ombudsman took a closer look at the problem that could arise where an owner believed that the BBR contained incorrect information about the property but where the municipality could not manage to approve the owner's corrections before the expiry of the declaration deadline of four weeks.

The Ombudsman agreed with the Property Assessment Agency that it was unlikely to have been the legislators' intention that the Agency should extend the deadline, even though this meant that the owners risked that incorrect BBR data was used as the basis for the property assessments if the municipalities did not manage to approve the BBR corrections in time before the expiry of the deadline.

IT systems had not been tested sufficiently prior to implementation

Functionality: On several occasions in 2023, the Ombudsman criticised that the authorities had put IT systems into operation even though they were impaired by substantial flaws. The Ombudsman pointed to the negative consequences that it had for the citizens in terms of due process issues.

Weapons register impaired by errors and flaws

Based on complaints and media coverage, the Ombudsman investigated the police's new weapons register and the processing of cases regarding weapons. The investigation showed that the authorities had put the new weapons register into operation without it sufficiently being able to support case processing and function correctly. This had happened even though the National Police had been aware that the system was impaired by errors and flaws when put into operation.

In addition, the Ombudsman had to assume that the system had been put into operation specifically in order to avoid treaty infringement proceedings at the EU Court of Justice. Besides, planned tests had not been completed in full despite the challenges of the system. The Ombudsman expressed criticism about the process.

Put into operation without sufficient testing

The Ombudsman also initiated an investigation of unjustified reduction of cash benefits to citizens due to errors in the intermunicipal IT system Kommunernes Ydelsessystem (KY – the municipal payment system). The investigation stemmed from media coverage of precisely the IT problems with handling the stricter requirements relating to cash benefits.

In the Ombudsman's opinion, the errors of the IT system raised the question of whether the authorities had put the system into operation before sufficiently ensuring that it would be able to support a lawful administration. Among other things, this applied to the interaction between automated system actions and the manual case processing.

Lack of representation in IT systems

A comprehensive mapping of the Tax Administration's IT systems revealed that there might be inadequate support for party representation in 32 IT systems, including those supporting advance and annual tax assessments, and the Danish Public Property Assessment Portal (Vurderingsportalen). This meant that in these systems, citizens might be obstructed from being represented by advisers or experts.

The Tax Administration informed the Ombudsman that it was working on solving the problem but that it was complicated and was going to take a long time. The Ombudsman criticised the extent of the problem, and he also found that the time schedule for the legalisation caused concern. The Ombudsman requested information in 2024 about the Tax Administration's continued work.

Digital application solution did not ensure that everybody entitled to it was able to apply

When foreign nationals apply for a residence permit in Denmark according to the Labour Market Attachment Scheme, they have to use a digital application form on the website of the Danish Agency for International Recruitment and Integration (SIRI).



When the Ombudsman in the autumn of 2022 initiated an investigation of SIRI's application solution, it was mandatory to fill in sections on passport number and expiry date of the passport on the form. SIRI had recommended to applicants without a passport to type in other digits in the passport number section. The Ombudsman did not find that this procedure was acceptable, partly because it appeared that it was punishable to state wrong information.

➤ **The National Police was aware that the system was impaired with errors and flaws when it was put into operation.**

Furthermore, it is not a requirement in the Labour Market Attachment Scheme to have a valid passport in order to get a residence permit.

After the Ombudsman's recommendation in the case, SIRI changed the digital application form so that it is no longer mandatory to type in passport information.

Read more about digitalisation in the article 'Good IT systems require good preparation', pages 48-51.

News item 15 May: SIRI changes digital application form after Ombudsman statement (published at www.en.ombudsmanden.dk)

Taxpayers could not pay defective debt

Statutory area of law: A number of citizens could not pay their debt to the State because the Danish Debt Collection Agency was in the process of clearing up a defective debt mass. According to the media, this meant that because of even relatively small debts, these citizens could have problems in taking out banks loans or getting overpaid tax refunded.

The Ombudsman found that to all intents and purposes this is a statutory area of law. And the Ombudsman's jurisdiction does not extend to the contents of laws passed by Parliament.

However, the Ombudsman stated that the long – and in some instances inconclusive – waiting times kept citizens in an unacceptable and untenable situation, even though they had both the means and the will to become free of the debt. The law has been amended subsequently so that the so-called trifle limit for debt depreciation has been increased to DKK 2,000.



Monitoring activities

Where: The Ombudsman carries out monitoring visits to places where there is a special need to ensure that citizens are treated with dignity and consideration and in accordance with their rights by the authorities – for instance because the citizens are deprived of their liberty or otherwise in a vulnerable position.

Monitoring visits are made to a number of public and private institutions etc., such as

- Prison and Probation Service institutions
- psychiatric wards
- social residential facilities
- residential institutions for children and young people

In addition, the Ombudsman monitors

- forced deportations of foreign nationals
- forced deportations arranged by other EU member states at the request of the European Border and Coast Guard Agency, Frontex

Finally, the Ombudsman monitors the physical accessibility of public buildings, such as educational establishments or health institutions, to persons with disabilities.

Why: The Ombudsman's monitoring obligations follow from the Ombudsman Act and from the rules governing the special responsibilities which the Ombudsman has been assigned:

- The Ombudsman carries out monitoring visits in accordance with section 18 of the Ombudsman Act, especially to institutions where people are deprived of their liberty.
- The Ombudsman has been designated 'National Preventive Mechanism' (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights (IMR), which contribute with medical and human rights expertise.
- The Ombudsman has a special responsibility to protect the rights of children under the UN Convention on the Rights of the Child etc.

- The Ombudsman has been appointed to monitor forced deportations.
- The Ombudsman monitors developments regarding equal treatment of persons with disabilities at the request of Parliament.

How: Each year, the Ombudsman chooses one or more themes for the year's monitoring visits to institutions etc. for adults and children, respectively. A large proportion of the monitoring visits carried out during the year are to institutions etc. where one of the themes is relevant.

Monitoring visits to institutions etc. are physical visits by a visiting team, who speak with users, staff and the management and look at the physical environment.

The monitoring of a forced deportation involves a member of the Ombudsman's staff being present during the whole or part of the deportation. In addition, the Ombudsman's monitoring of forced deportations includes a review of the case files of a number of the deportation cases concluded during the preceding year.

The Ombudsman may make recommendations to the institutions etc. visited and to the responsible authorities. Issues from the visits may also be discussed with the responsible authorities or dealt with in own-initiative investigations, and every year, the Ombudsman publishes a separate report on the visits relating to each of the themes chosen for visits carried out during the preceding year to institutions etc. for adults and children, respectively.

Who: Monitoring visits are carried out by Ombudsman staff, in many cases with participation of external collaborative partners or consultants. Depending on the type of monitoring visit, the Ombudsman collaborates with

- medical doctors from DIGNITY – Danish Institute Against Torture
- human rights experts from the Danish Institute for Human Rights
- two accessibility consultants, who both have a disability

Where did we go in 2023?



Monitoring visits etc. – adults



31 within the Prison and Probation Service, incl. monitoring of 21 transports of inmates



5 police detention facilities



2 psychiatric wards



2 social residential facilities



1 departure centre

› Read about the individual monitoring visits etc. at www.en.ombudsmanden.dk/visits_adults



Monitoring visits – children



9 psychiatric
wards



1 Prison and Probation
Service institution

› Read about the individual monitoring visits at
www.en.ombudsmanden.dk/visits_children

Themes

Theme in 2023 – adults

Transport of inmates in the Prison and Probation Service

In 2023, the Ombudsman's thematic visits (adults) were aimed at transport of inmates in the Prison and Probation Service.

As part of the theme, the Ombudsman visited three local prisons and two state prisons. In addition, the Ombudsman visited the Prison and Probation Service's three transport and guard units in Copenhagen, Kolding and Hobro.

In connection with the visits, the Ombudsman followed a total of 21 transports and carried out other relevant observations related to the transport of inmates in the Prison and Probation Service.

Focus areas

During the thematic visits in 2023, the monitoring teams focused on the following in connection with the transport of inmates:

- interventions – particularly use of handcuffs, coercion and body search
- shielding and discretion
- health-related matters
- the importance of safety considerations
- internal cooperation in the Prison and Probation Service and between the Service and the police, including exchange of relevant information about inmates
- preparation of inmates prior to transport
- the practical execution of transports, including means of transport, toilet visits, ventilation and access to food and drink
- prioritisation of transports according to purpose (court hearings, transfer, treatment and leave etc.)

Examples of recommendations

The three transport and guard units under the Prison and Probation Service are assembled in a consortium, 'Koncern Transport og Bevogtning', which is part of the Department of Prisons and Probation. The task of the consortium is to handle transport of inmates, and it was therefore particularly the visits to the three transport and guard units which gave rise to recommendations on measures etc. within the year's theme – for instance, the Ombudsman recommended that the consortium's management ensure

- that staff are familiar with the rules on body search, and that the rules are observed
- that the use of handcuffs during healthcare treatment of inmates takes place according to a concrete assessment
- that in connection with outpatient treatment there is focus on not unnecessarily showing that the patient is an inmate
- that confidentiality between doctor and patient is respected as far as possible
- that there is focus on remedying language barriers during transport, including making use of interpreters to the extent necessary

Follow-up

In the course of 2024, a thematic report will be published, which summarises the main conclusions of the thematic visits. In addition, the thematic report will contain the Ombudsman's general recommendations based on the monitoring visits.

The thematic report will be discussed with key authorities in the Prison and Probation Service.

Theme in 2023 – children

Children and young people in the psychiatric sector

In 2023, the Ombudsman's thematic visits (children) were aimed at children and young people in the psychiatric sector.

As part of the theme, the Ombudsman visited all nine child and adolescent mental health inpatient units in Denmark.

Focus areas

During the thematic visits in 2023, the monitoring teams focused on

- information for custodial parents
- immobilisation etc.
- house rules and seclusion in own room
- inclusion of children and young people

Examples of recommendations

In connection with the visits, recommendations were given to the psychiatric wards – for instance, the Ombudsman recommended that the wards

- be aware of ensuring that the required information is given to custodial parents of a child under the age of 15 about the possibility of waiving the right to decide on use of force or coercion towards the child

- be focused on record-keeping, including in connection with documentation of follow-up interviews
- continue to focus on follow-up interviews, including with parents of children under 15, being held in accordance with applicable rules on interviews following cessation of forcible measures and coercion in psychiatric wards
- ensure that the mandatory review of forced immobilisations takes place in accordance with the time restrictions stipulated in Section 21(4) of the Mental Health Act.

Follow-up

In the course of 2024, a thematic report will be published, which summarises the main conclusions of the thematic visits. In addition, the thematic report will contain the Ombudsman's general recommendations based on the monitoring visits.

The thematic report will be discussed with the relevant authorities in the sector.

Conditions for children at Jyderup Prison should be improved

Monitoring visit: The Ombudsman's monitoring visit to Jyderup Prison in 2023 focused on the conditions for children staying in the prison with their mothers.

The visit showed that requests from inmates to have their child with them in prison had not been processed in accordance with the rules.

The visit also showed that the staff paid attention to the children's wellbeing but found it difficult to assess their wellbeing and that there was uncertainty as to the staff's tasks in relation to inmates with children.

The visiting team also found that there was still not sufficient access to age-appropriate indoor and outdoor facilities for children.

The Ombudsman recommended a number of measures to ensure better conditions for children at Jyderup Prison. The prison was recommended, among other things, to draw up guidelines for case processing and to ensure that requests to have your child with you are processed according to the rules, to ensure that staff have the necessary knowledge in the field, and to ensure that children have access to age-appropriate facilities both indoors and outdoors.

News item 28 June: The Ombudsman recommends measures to ensure better conditions for children at Jyderup Prison (published at www.en.ombudsmanden.dk)

Local prisons must ensure inmates' access to toilet visits – also during the night

Cell calls: During monitoring visits to five local prisons in Central and North Jutland, inmates at several locations told the Ombudsman's staff that there was a long waiting time if you called a prison officer in order to go to the toilet, also at night. Some had been handed urine bottles without having requested them. Several inmates had the impression that it was inconvenient if they called during the night because the staffing level was low and the staff had to sleep.

The information caused the Ombudsman to point out that inmates must count on being able to go to the toilet when they need to and that it can be experienced as humiliating to be asked to use a urine bottle.

On that basis, the Ombudsman recommended that management in several local prisons ensure that cell calls are answered as quickly as possible and within a reasonable amount of time, and that urine bottles are not handed out to inmates unless they request it.

➤ **Several inmates had the impression that it was inconvenient if they called staff during the night.**

Pedagogical measures at secure residential institutions must not go too far

Secure residential institutions: In connection with monitoring visits to the secure residential institutions Grenen and Koglen in the Central Denmark Region, the Ombudsman examined the institutions' use of so-called pedagogical measures towards the children and young people placed there. The objective was to clarify whether the measures were in accordance with the Act on Adult Responsibility.

According to the Act, the manager of a secure residential institution must draw up written house rules containing certain obligatory rules. The staff can lay down appropriate reactions if the children and young people violate the obligatory rules. Grenen and Koglen used various pedagogical measures as appropriate reactions towards the children and young people.

The institutions also had rules about use of a call button on the children's and the young people's rooms, which left the impression that the children and young people could not contact an adult or leave the room during the day without having used the call button.

The Ombudsman concluded that the pedagogical measures covered by the monitoring can be used when children and young people violate the obligatory rules in the house rules at a secure residential institution. However, it presupposes that a concrete and individual assessment is made. In addition, a number of other requirements must be met. For instance, segregation from others can only be used for short periods. Moreover, it cannot be required that the children and young people must use a call button and wait for staff before they can leave their rooms during the day.

The Ombudsman recommended that the Central Denmark Region ensure that the rules were followed and that it be clearly communicated to the children and young people that use of a call button during the day is voluntary.

Unsafe for inmates in local prison

Good tone: During a monitoring visit to Randers Arrest, many inmates said that some officers spoke in a harsh and condescending manner to the inmates and were confrontational. It felt unsafe in the local prison when those officers were present.

The Ombudsman took up with management the issue of culture in the local prison and the tone of individual officers. The Ombudsman recommended that management introduce the necessary measures to ensure a safe culture and that inmates are addressed in a respectful manner.

After the Ombudsman's monitoring visit, management introduced a number of measures focusing on, among other things, deescalating conflict and ensuring proper communication with inmates. At the same time, management introduced a high degree of management presence in the local prison.

The purpose of the Ombudsman's monitoring visits is to help ensure that people attending or residing in institutions are treated with dignity, consideration and in accordance with their rights.



Monitoring visits to investigate accessibility for persons with disabilities

The Ombudsman monitors the accessibility of public buildings and their outside areas etc. for persons with disabilities.

During monitoring visits to investigate the accessibility of buildings etc., the Ombudsman focuses on whether the requirements of the building regulations on accessibility for persons with disabilities have been met. The Ombudsman is assisted during the visits by two accessibility consultants, who both have a disability.

Monitoring visits in 2023

The Ombudsman has decided that the accessibility of healthcare centres is to be the theme for his monitoring visits to investigate accessibility, and in 2023, the Ombudsman carried out three monitoring visits with this focus, more specifically to Sundhedscenter Vital Horsens in Horsens Municipality, Brørup Sundhedscenter in Vejen Municipality and the healthcare centre of Nyborg Municipality. The Ombudsman has now visited a total of six healthcare centres, and in 2024, the Ombudsman will conclude the theme of the accessibility of healthcare centres by publishing a report of the key findings from the visits.



Monitoring of forced deportations

Participation in forced deportations

The Ombudsman monitors forced deportations of foreign nationals, among other things by Ombudsman staff being present during the whole or part of a number of deportations. In 2023, a member of the Ombudsman's staff was present at ten deportations carried out by the Danish authorities and at two Frontex operations.

The Ombudsman expressed no criticism in any of the cases where a member of the Ombudsman's staff was present at the deportation.

Annual review of concluded cases

In addition to a member of the Ombudsman's staff being present during the whole or part of a number of deportations, the Ombudsman's monitoring of forced deportations includes a review of the case files of some of the deportation cases concluded during the preceding year.

In 2023, the Ombudsman reviewed the case files of 29 deportation cases which had been concluded by the authorities in 2022 – seven cases involving use of force and 22 cases where no force was used. None of the cases gave rise to comments.

› Read more at

www.en.ombudsmanden.dk/equal_treatment_of_persons_with_disabilities
www.en.ombudsmanden.dk/forced_deportations





Articles



Lise Puggaard, Senior Consultant
Vibeke Lundmark, Deputy Head of Division

Good IT systems require good preparation

When there are errors in public authorities' IT systems, it can affect thousands of citizens before the errors are found and rectified. Based on his investigations of the authorities' IT systems, the Ombudsman has set out some general doctrines to be used by the authorities when they launch new systems.

Denmark has one of the world's most digitalised public sectors, and it is hard to imagine a Danish authority that solely uses analogue and manual administrative procedures without some kind of IT assistance.

There are good reasons for this. Digitalisation can increase efficiency, standardise work procedures and optimise case processing. Automatic processes are speedy and contribute to the minimisation of human errors in case processing.

However, it takes planning to implement digital processes. Poor preparation and time optimism may lead to errors and flaws in the IT systems that can have big consequences for citizens' legal rights. Because when there are errors in an IT system, these errors will typically not affect just one citizen. The damaging effects will multiply because the flaws continue to be present in the IT system until they are rectified. And once a flawed IT system has been put into operation, it can be both difficult and expensive to set straight.

Prevention decreases the risk of errors

The Parliamentary Ombudsman has set out some general principles that the authorities ought to include in the development phase in order to lessen the risk of errors.

The Ombudsman endeavours to extend the general principles on an ongoing basis and in this way set a framework for the development phase itself that is in accordance with good administrative practice.

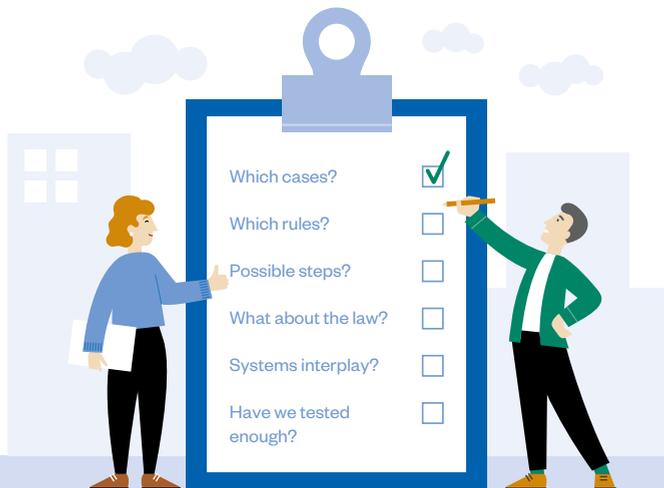
Proper planning of the development of new IT systems implies that the authorities ensure that both formal and material requirements for case processing are incorporated and that the requirements are met in the various steps the cases might undergo.

Investigations put focus on the importance of testing the system

In two new investigations, the Ombudsman has emphasised the importance of the authority making sure to test that the system actually functions as desired prior to it being put into operation. In this regard, it is especially important that the authority takes the necessary time to do this.

One of the investigations (Case No. 2023-7) concerns the police's new weapons register. The register was developed because the EU Firearms Directive III from 2017 expanded the requirements for the member states' registration of weapons and weapons components. Denmark's deadline for implementing the Directive was December 2019.

It was not until 2019 that the National Police really began work on the IT project about the expanded registration of weapons and weapons components. So the project was not ready within the implementation deadline. In January 2022, it was decided to put the new IT system into operation even though it was known that it was not yet fully functional, and even though the planned test cycles had not been completed to their full extent.



Proper planning of the development of IT systems for the public sector implies, among other things, that the authority

- from the beginning forms a general view of the types of cases and processes to be included in the new IT system
- fully realises which formal and material rules apply in the processing of the relevant cases, including a possible need to change the underlying rules in an area in order to better support automated case processing
- is diligent when deciding on the specific design of the new IT system so that the system complies with the said rules in the various steps that the cases might undergo
- has the relevant legal expertise available throughout the essential stages of the process, for instance when drawing up requirement specification and design and when running tests etc.
- considers if – and if so, how – the IT system has to interact with other IT systems or other case processing in order to enable the relevant legislation to be observed
- has investigated if the system works in the intended context by testing it to the relevant extent

The Ombudsman criticised *that* the system had been put into operation despite the knowledge of its unresolved errors and flaws, *that* time factors meant it had not been tested as planned, and *that* here was no alternative plan to support case processing in a transitional period if the IT system did not work.

After the deployment of the IT system, it took several more months before it was in stable operation. In the meantime, the unprocessed cases concerning weapons had accumulated, and some of the cases had to be resolved using manual, time-consuming case steps.

The Ombudsman found it most regrettable that the circumstances of the deployment of the new weapons register had led to unreasonably long case processing times for the affected citizens and business owners.

The other investigation (Case No. 2023-15) concerns Kommunernes Ydelsessystem (KY – the municipal payment system). The system was meant to be helping the municipalities with digital case processing of the so-called 225-hour rule. Pursuant to the rule, cash benefits were to be reduced if a citizen had received benefits for a total of one year or more within a period of three years and had not had 225 hours of regular work within the last 12 months.

The Ombudsman focused on two main issues. One was that in a number of cases, KY had sent out unwarranted consultation letters to citizens with the notification that their cash benefits were to be reduced. Subsequently, this had led to erroneous decisions with the cash benefits being reduced even when there were no grounds for this. The other was that in a number of cases, KY had reduced citizens' cash benefits without sending the citizen a decision letter on the reduction prior to or simultaneously with the reduction.

In the Ombudsman's opinion, the amount and the nature of the errors found raised serious questions as to whether the IT system had been put into operation before it was sufficiently ensured that it was going to support lawful administration of the 225-hour rule.

The investigation also illustrates the extensive consequences that errors in IT systems can have. Cash benefits were the basis for living of the citizens in question, and here, several thousand citizens had their cash benefits reduced in consequence of errors in an IT system.

Pending investigation of preliminary property assessments

In the autumn of 2023, the Ombudsman initiated an investigation in the wake of the Danish Property Assessment Agency's publication of preliminary property assessments for 2022. The publication led to media debate about the quality and accuracy of the assessments.

The preliminary property assessments are based on model calculations and are automatically generated without manual processing. On that basis, the Ombudsman is investigating some of the preceding processes and quality assurance. This includes the extent of prior tests of the IT solution in order to avoid or minimise incidents of very disproportionate preliminary assessments.

Also in future, the Ombudsman will be focusing on digitalisation of case processing in the public administration, both in relation to existing solutions and to the authorities' development and deployment of new IT systems.

› The cases mentioned in the article are published (in Danish) at www.ombudsmanden.dk



Klavs Kinnerup Hede
Director of International Relations

The Danish Ombudsman and the world

Ever since the Parliamentary Ombudsman Office was established in Denmark in 1955, its varying ombudsmen have travelled the world and told the story about the Danish Ombudsman Office and its work ensuring legal rights and citizens' fundamental rights.

While this work has been consolidated on an ongoing basis through the years, the Ombudsman's other international activities have changed in nature. Today, international matters play a different and bigger role in the Ombudsman's work across the entire institution:

The Ombudsman has become more involved in international activities in other respects, and further, international law is to an ever-increasing extent a natural part of the legal basis on which the Ombudsman assesses the authorities' decisions.

International law

In many parts of the world, ombudsman institutions are today part of the international institutional structure meant to protect human rights on a national level.

In practice, the interaction between the Ombudsman and international law is expressed in the Ombudsman's work in two ways in particular: partly by the Ombudsman applying international law in his assessment of specific cases, partly by the Ombudsman contributing with information for various international bodies for the purpose of their assessment of matters in Denmark.

International law as part of the Ombudsman's national basis of assessment

The Ombudsman was among the first review bodies in Denmark to incorporate international human rights law in the assessment of specific public administration cases, and this of course still applies.

Of particular practical importance are the right to freedom of expression, respect for private and family life and the prohibition of torture and other degrading treatment under the European Convention on Human Rights.

The Ombudsman also includes other international human rights instruments, including conventions that are not incorporated by law.

Examples of such are the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child. In addition, in his monitoring activities with prisons and psychiatric institutions etc., the Ombudsman has since the 1970s included international rules and non-binding guidelines.

Naturally, EU law is also today of significant importance. Originally, the Ombudsman had a cautious and reticent assessment of Danish authorities' application of EU rules. Today, EU law is a natural basis for review in the same way as Danish rules.

For instance, this applies to Directive 2003/4 on public access to environmental information – the EU legislative act that the Ombudsman most often includes in his assessment basis.

The Ombudsman and international bodies

In several contexts, the Ombudsman contributes with information to various international bodies for the purpose of assessment of matters in Denmark.

For example, in 2023, the Ombudsman contributed for the second time to the UN's Periodic Review of Denmark in relation to the UN Convention against Torture etc. Prior to the Review, the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment invited the Ombudsman to share relevant information for the use of the Committee's review of Denmark.

The background to the invitation was that Parliament has appointed the Ombudsman as Danish National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). As part of that role, the Ombudsman, in cooperation with the Danish Institute for Human Rights

and DIGNITY – Danish Institute Against Torture, regularly visits places where people are deprived of their liberty.

Similarly, the Ombudsman helps ensure and monitor the implementation of children's rights according to the UN Convention on the Rights of the Child. On that background, the Ombudsman contributes to the review of Denmark by the UN Committee on the Rights of the Child.

In addition to the UN, there are also other international bodies that contact the Ombudsman to obtain information about matters within different areas of law. In 2023, for instance, the Ombudsman met with three monitoring mechanisms under the Council of Europe. These were the Council of Europe's Commissioner for Human Rights, the Committee of Social Rights and the Advisory Committee on the Framework Convention for the Protection of National Minorities.

The Nordics and the Baltics

The first ombudsman institutions were established in the Nordics, and it has been an established tradition for many years that the ombudsman institutions from Denmark, Finland, the Faroe Islands, Greenland, Iceland, Norway and Sweden meet up and exchange experience and knowledge for mutual inspiration and use. The topics of the meetings have been many and varied, and they have covered themes such as prioritisation of cases, own-initiative projects, monitoring activities, digitalisation of the public administration and handling of administrative tasks.

In recent years, the Nordic ombudsman institutions have also held meetings with colleagues from Estonia, Latvia and Lithuania, the so-called Baltic-Nordic Ombudsman Network. In 2023, the Danish Parliamentary Ombudsman hosted the meeting.



Ombudsman Niels Fenger at an EU ombudsman meeting in Brussels

With support from the Nordic Council, ombudsman institutions from Estonia and Lithuania also came to Denmark for a study visit in 2023. The focus of both visits was the Ombudsman's monitoring activities in relation to the psychiatric sector and the Prison and Probation Service.

EU – The European Ombudsman

The Ombudsman participates in the European Network of Ombudsmen, which includes more than 95 institutions from 36 European countries, including the national and regional ombudsmen and similar bodies such as the European Ombudsman and the Petitions Committee of the European Parliament.

One of the Network's most important activities is to exchange information about EU legislation and best practices. This takes place at, for instance, the Network's conferences. In 2023, one of the themes was the possibilities and challenges in using artificial intelligence in the public administration, where the Ombudsman gave a presentation based on Danish experience.

Help with questions about EU law

The Network has also developed a scheme for submitting requests to the European Ombudsman and the EU institutions about the application of EU law.

Ombudsman institutions cannot seek guidance from the Court of Justice of the EU when assessing whether administrative authorities have complied with applicable EU law. Instead, a special procedure was implemented in 2007 – on the initiative of former Danish Ombudsman Hans Gammeltoft-Hansen – by which members of the European Network of Ombudsmen can submit requests to the European Ombudsman concerning issues which have arisen as part of an investigation and which concern EU legislation.

The European Ombudsman assists by obtaining expert assessments from the relevant EU institution, typically the European Commission. The Danish Ombudsman has used the scheme in several cases concerning the Directive on Access to Environmental Information and in a case on free movement.

EU – Frontex

In 2011, the Ombudsman was tasked with monitoring Danish authorities during forced returns of foreign nationals who are staying in Denmark illegally. The task is part of the implementation of the EU Return Directive 2008/155.

The Ombudsman's monitoring has since been expanded, and today the Ombudsman is part of a pool of monitors that supervise forced returns organised by the European Border and Coast Guard Agency (Frontex). The monitoring takes place in accordance with Article 51 of Regulation 2019/1896 on the European Border and Coast Guard Agency.

In this way, the Ombudsman is authorised to monitor other EU countries' authorities in connection with forced returns which they organise with support from Frontex. As a monitor, the Ombudsman supervises whether returns are in accordance with the fundamental rights and principles of EU

law and with international law requirements on, among other things, protection of the rights of refugees and children.

The world outside of the EU

The Danish Ombudsman Office has a long tradition of participating in bilateral cooperation on establishing, developing and consolidating ombudsman institutions around the world. Since the year 2000, there has been a cooperative agreement between the Ministry of Foreign Affairs and the Ombudsman.

The agreement makes it possible for the Ombudsman to participate in international activities and concrete cooperation projects directed at developing democratic institutions, good governance and good administrative practice. The Ombudsman has done so in such diverse countries as Ghana, Albania, Jordan, Vietnam, Uganda, Tunisia, Kyrgyzstan, Zimbabwe and Indonesia.

The Ombudsman's international work usually takes place based on requests from ombudsman institutions and authorities in other countries. The purpose is not 'systemic export' of the Danish ombudsman model, but exchange of knowledge and experience. Also in this context, the Ombudsman works in an unpolitical way. Among other things, this means that it is not the Ombudsman's job to assess other countries' systems or advise other countries about how they should organise their systems.

Increased international interaction

Overall, there has been a development where the interaction with international law and cooperating partners from abroad has increasingly become part of the Ombudsman's work for citizens' legal rights and for a culture within authorities that builds on principles of rule of law and respect for human rights.



From the course in Bogor, Indonesia

Course in Jakarta as part of the cooperative agreement with the Ministry of Foreign Affairs

'What do you do when a blind person contacts you? And what do you do when a blind person arrives at the Ombudsman Office in a wheelchair?' These questions were asked during a course in Bogor, a little outside of Jakarta. Here, the Indonesian ombudsman institution held a two-day course for 28 members of staff who receive citizens arriving at the office in Jakarta.

At the course, the staff were introduced to new guidelines for how they can in practice assist citizens with disabilities who seek help. The guidelines were written on a pamphlet, which included photos and text with simple instructions and advice and had been created with assistance from the Danish Association of the Physically Disabled and the Danish Ombudsman.

The course was part of an international partnership called Exchange of Experience on Accessibility and Inclusion of Persons with Disabilities. Together with the Danish Association of the Physically Disabled, the Ombudsman entered into a partnership with the Indonesian ombudsman institution and local organisations for disabled persons. The purpose was to prepare the Indonesian ombudsman institution's work with respect to ensuring inclusion and accessibility for persons with disabilities.

Frontex returns in 2023

In 2023, the Ombudsman monitored two forced returns organised by the German authorities with support from Frontex. Both returns took place with specially chartered planes from the airport in Frankfurt. They involved, respectively, 119 and 83 persons, including several families with young children who were to be returned to different countries in the Balkans.

In both cases, a legal case officer from the Ombudsman was present at the airport when the persons were handed over by officers from different police districts in Germany. The persons were led to the waiting areas that had been set up for each destination. Since the waiting time was long and there were many children, the Ombudsman recommended during the first return that the German police made the waiting areas more child-friendly by, for instance, setting up an area with games and toys. At the second return, the Ombudsman noted that the German police had followed this recommendation.

At both returns, the Ombudsman observed that the whole course of events from the reception at the airport to the arrival in the receiving country generally took place calmly and without unnecessary use of force.

After each monitored return, the Ombudsman prepares a report, which is sent to the body responsible for fundamental rights and the national authorities in all Member States involved in the return. In the reports on the two mentioned returns, the Ombudsman concluded that the returned persons were all treated with respect and in accordance with their fundamental rights.



Niels Fenger, Parliamentary Ombudsman

The Danish Ombudsman and EU law

1. EU law and administrative law

According to Section 21 of the Act on the Danish Parliamentary Ombudsman, the Ombudsman must assess whether authorities or persons falling within his jurisdiction act in contravention of existing legislation or otherwise commit errors or derelictions in the discharge of their duties. 'Existing legislation' also covers EU law, and since a large part of the rules applied by administrative authorities are rules and provisions in Danish law implementing EU legislation, it becomes an important task for the Ombudsman to ensure that the Danish administration interprets and applies EU law correctly.¹

2. Development in Ombudsman practice

The Ombudsman's approach concerning the Danish administrative authorities' application of EU law has undergone significant changes over the years. Originally, Denmark's membership of the EC did not significantly affect the Ombudsman Office. In 1981, the Ombudsman stated that

the fact that the legal basis of a complaint consisted of EU law did not in principle prevent him from considering the complaint. However, he found it necessary:

'(...) to show some caution in this area, since the office of the Ombudsman in my opinion must generally be considered a less suited forum for clarifying matters of dispute concerning the scope of EU rules. In particular, I noted in this regard that the Ombudsman is unable to bring such matters before the European Court of Justice for a preliminary ruling, as is the right – and to some extent the obligation – of national courts according to Article 177 of the EC Treaty. I further stated that caution on the part of the Ombudsman is especially indicated when, simultaneously with the Ombudsman's processing of a complaint, a procedure has been initiated that may result in an authoritative decision of the matters of dispute raised by the case.'²

1 The focus in this article is on the Ombudsman's review of the administrative authorities' application of EU law. I do not deal with the fact that the Ombudsman Office itself is subject to EU law and applies EU rules in its own activities on a daily basis. For example, this could be notification of collection of personal data under the General Data Protection Regulation, the layout of the Ombudsman's website with respect to observing Directive 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies or the design and administration of the Ombudsman's whistleblowing system under Directive 2019/1937 on the protection of persons who report breaches of Union law.

2 Case FOB 1981.12. See also Cases FOB 1985.97, FOB 1989.148 and FOB 1991.65.

A similar reason had previously been advanced by none other than Denmark's first judge at the European Court of Justice, Max Sørensen, in a commemorative article for the first Danish Ombudsman.³ However, soon the cautious review standard became criticised.

First, also in cases concerning Danish law, the Ombudsman risks being overruled by the courts. Second, also most administrative appeal boards are not able to make a reference for a preliminary ruling.⁴ Finally, we know today – in the unbearably clear light of hindsight – that the Ombudsman's view was incompatible with the principle of equivalence in EU law, according to which any national authority must apply EU law as vigilantly as it applies national law, even if the authority concerned is not competent to make a preliminary reference to the Court of Justice.⁵

If one were in a teasing mood, one might say that the Ombudsman's statement concerning his engagement with EU law unintentionally confirmed his fear that he might not always be able to apply EU law correctly.

At the same time, it must be acknowledged that a proper review of the administration's application of EU law requires that the Ombudsman possesses sufficient expertise within EU law. After all, the opinions of the Ombudsman are not binding and thus possess only argumentative value. To a significant extent, the respect for the Ombudsman and his opinions stems from the quality of his legal argumentation. This respect

could be jeopardised through statements that expose a lack of expertise within the legal field in question.

Perhaps because of the above-cited statement, but probably mainly for other reasons, there were only very few Ombudsman cases concerning Community law before the turn of the millennium. Still, in Case FOB 1985.97, the Ombudsman criticised that a ministry did not comply with the requirement to state reasons under Directive 64/221 on the coordination of special measures concerning the movement and residence of foreign nationals. Another example is Case FOB 2000.142, where the Ombudsman overruled the administration's interpretation of Regulation 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in that State.

In 1996, the Ombudsman Act was revised, and in the preparatory works it was stated that the number of EU rules had now reached such an extent that the reticent approach to EU law hitherto applied by the Ombudsman implied a risk that his control with administrative authorities would be undermined. For that reason, EU law should be applied in the same manner as national law.⁶

In the years following the revision of the Act, the Ombudsman still did not receive many complaints about EU law. Moreover, some legal scholars argued that, in practice, the Ombudsman continued not to apply EU law on an equal footing with Danish law. According to those scholars,

3 Max Sørensen in Jon Palle Buhl, Alfred Bexelius & Stephan Hurwitz (eds.): *Festskrift til Folketingets Ombudsmand Stephan Hurwitz*, 1971, p. 499, 513f.

4 This especially applies after the Court of Justice of the EU's newer practice, cf. Morten Broberg and Niels Fenger, *The European Court of Justice's transformation of its approach towards preliminary references from Member State Administrative Bodies*, *Cambridge Yearbook of European Legal Studies* 2022, p. 1.

5 Case C-349/17, *Eesti Pagar*, ECLI:EU:C:2019:172, Case C-378/17, *Workplace Relations Commission*, ECLI:EU:C:2018:979, and Case C-177/20, *Grossmania*, ECLI:EU:C:2022:175.

6 Cf. FT 1995-96 (the Office of the Folketing Hansard), *tillæg A*, question 1712f., and report 1272/94 on the revision of the Ombudsman Act, p. 21 and 113ff.

the Ombudsman was not only reluctant to open cases concerning the interpretation and application of EU law. He also – sometimes openly, other times more indirectly – applied a more cautious review standard in the cases he did take under substantive investigation.⁷

Purely quantitatively, it was indisputable that EU law did not take up much space in the published practice. However, quite significantly, the critical scholars did not point to any specific case where, according to them, the Ombudsman had applied EU law incorrectly or too hesitantly. Nor did the critics bring forward any examples of justified complaints concerning compliance with EU rules that the Ombudsman had refused to take up. And indeed, the claim that the Ombudsman continued to take an unduly cautious approach to EU law was refuted by the Ombudsmen Hans Gammeltoft-Hansen and Jørgen Steen Sørensen.⁸

3. The situation today

3.1. Standard of review

Whatever one might think about the Ombudsman's practice in the years following the revision of the Ombudsman Act in 1996, this discussion has been obsolete for years.

Today, EU law is a basis for review in basically the same way as Danish rules. Thus, independently of arguments from the parties, the Ombudsman includes EU law where relevant to the assessment of the case.⁹ Moreover, in his interpretation of EU rules and Danish implementing rules, the Ombudsman refers to the case law of the Court

of Justice (and sometimes also suggestions from Advocates-General) in basically the same way as he refers to judgments from Danish courts or from the European Court of Human Rights.¹⁰ Recent practice also shows that the Ombudsman is aware of the increasing significance of the preparatory works to an EU rule and of the need to include all language versions as well as Commission notices and opinions to the European Parliament.¹¹

No particular reticence is exercised when reviewing the authorities' application of EU rules. The lack of access to the preliminary referencing procedure thus no longer leads the Ombudsman to be cautious in setting aside the authorities' abstract interpretation of EU law. In addition, the margin of appreciation that the Ombudsman accords the administration in the concrete application of EU law is the same as the one found in cases that only concern Danish law.

According to Section 23 of the Danish Ombudsman Act, the Ombudsman may recommend that a complainant be granted legal aid so that the case can be resolved by the courts instead of finding its solution with the Ombudsman. I cannot rule out that the Ombudsman may, one day, make use of this procedure if faced with a case where the interpretation of EU law gives rise to particular doubt. Indeed, such an approach could be appropriate in cases where it is found that the question of interpretation ought to be clarified by the Court of Justice through a reference for a preliminary ruling. But so far it has not happened.

⁷ Michael Gøtze, *The Danish ombudsman – A national watchdog with selected preferences*, *Utrecht Law Review*, 2010, p. 33.

⁸ Hans Gammeltoft-Hansen in Jens Hartig Danielsen (ed.): *Max Sørensen 100 år*, 2013, p. 525, 533ff., and Jørgen Steen Sørensen, 'Ombudsmanden anno 2012', *Juristen*, 2012, p. 169, 174.

⁹ Cases FOB 2023-37, FOB 2021-15 and FOB 2021-12.

¹⁰ For examples of the latter, read Cases FOB 2021-21, FOB 2021-6, FOB 2020-19, FOB 2020-16 and FOB 2019-15.

¹¹ Respectively Cases FOB 2017-22, FOB 2021-8, FOB 2022-24 and FOB 2021-21.

The activities of the Danish Parliament (and the Legislator as such) fall outside the Ombudsman's jurisdiction. Therefore, pursuant to Danish law, the Ombudsman does not have competence to review whether a Danish statutory provision is in accordance with EU law.¹² This means that the Ombudsman cannot fully comply with the Court of Justice's case law according to which the effects of the principle of primacy of EU law are binding on all the bodies of a Member State, without, *inter alia*, provisions of domestic law relating to the attribution of jurisdiction, including constitutional provisions, being able to prevent that.¹³ The Ombudsman has not yet had the occasion to assess whether EU law itself confers upon him a power to disapply, for the purpose of giving his opinion in a specific case, a Danish legislative provision that he believes to be contrary to EU law.¹⁴

In any event, the Ombudsman may proceed under the same rules as those that would apply if he found that a piece of Danish legislation violated the Danish Constitution or the European Convention on Human Rights, namely to notify Parliament according to Section 12 of the Ombudsman Act that there may be doubts as to whether the legislative act in question complies with the Constitution or Denmark's international obligations. So far, it has not been necessary to use this approach in relation to EU rules, which could possibly be combined with

the above-mentioned option to recommend free legal aid.

In a recent case, the Ombudsman chose, instead, to write to the Danish Minister of Labour, drawing the Minister's attention to the fact that a provision in an Act on social assistance raised issues in relation to the Union rules on free movement. This led the minister to propose a bill for Parliament changing the said provision. Moreover, the Ministry sent a letter to the local authorities advising them not to apply the provision in question where this could be in conflict with EU law.¹⁵

It often happens that the Ombudsman finds in favour of the citizen basing his opinion solely on Danish law even if EU law also applies to the case, but where EU law does not add anything (certain) to the solution of the case, for instance because EU law seems to require less of the authorities than what already follows from Danish administrative law. A typical example is EU law's unwritten principles of procedural law regarding the obligation to hear a party before an administrative decision is taken, the parties' right of access to documents and the obligation of the administration to state the reasons for their decisions.¹⁶

Some might argue that there is a supplementary informative value in emphasising EU law and its importance to the administrative bodies.

12 Case FOB 2023-19.

13 Joined cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, *Asociația 'Forumul Judecătorilor din România*, ECLI:EU:C:2021:393, and Case C-497/20, *Randstad Italia SpA*, ECLI:EU:C:2021:1037. The restrictions on the Ombudsman's competence also mean that he cannot assess whether an EU rule is in conformity with the Danish Constitution. Therefore, in Case FO 22/04056, the Ombudsman declined to pronounce a view on whether Council Regulation 833/2014, which ordered telecommunications companies to block websites from the Russian media Russia Today and Sputnik, was in conformity with Section 77 of the Danish Constitution relating the right to free speech. The Ombudsman noted that it was not a case of assessing the legality of an act or omission on the part of a Danish administrative authority.

14 Cf. in this respect Case C-378/17, *Workplace Relations Commission*, EU:C:2018:979, Case C-824/18, *A.B.*, EU:C:2021:153, and Case C-33/22, *Österreichische Datenschutzbehörde*, EU:C:2024:46.

15 Case FO 22/05128.

16 Respectively Case C-39/20, *Jumbocarry Trading*, ECLI:EU:C:2021:435, Case C-298/16, *Ispas*, ECLI:EU:C:2017:843, and Case C-54/18, *Cooperativa Animazione Valdocco*, ECLI:EU:C:2019:118.

However, whereas the Ombudsman, in relation to Danish law, is expected to develop unwritten principles of good administration and, moreover, has an important role in clarifying existing legislation, he does not have the same leading role in relation to EU law. Furthermore, there is normally no need for the Ombudsman to express himself on tricky legal issues not yet resolved by the courts if the right result can be achieved by using more prosaic legal sources. This pragmatic approach is especially well-founded in the not so few cases where it may be more difficult to apply vague and flexible European legal principles than more unequivocal national legislation. The Ombudsman should not risk undermining his own authority by offering answers to undetermined legal questions that are without concrete importance for the protection of the citizens and the resolution of the case at hand and where his conception of law may turn out to be overruled by the Court of Justice.

3.2. The number and nature of cases relevant to EU law

3.2.1. Examples from practice

In the last decade, not only the standard of review has changed. Also the number of Ombudsman cases concerning EU law has been increasing.¹⁷

Directive 2003/4 on public access to environmental information is by far the EU legislative act that the Ombudsman has most frequently considered.¹⁸ Another legislative act that the Ombudsman often interprets is Regulation 883/04 on the coordination of social security systems (and the previous Regulation 1408/71).¹⁹ As regards the General Data Protection Regulation, these cases are typically solved by the Danish Data Protection Agency, but the Regulation's rules on, *inter alia*, access have been subject to interpretation in numerous cases.²⁰

In a number of cases on working conditions in the public sector, the Ombudsman has referred to the Transfer of Undertakings Directive, Directive 1999/70 concerning the framework agreement on fixed-term work and Directive 2000/78 establishing a general framework for equal treatment in employment and occupation.²¹ The same applies to EU rules on age discrimination.²²

In Case FOB 2017-22, the central point of the case was Regulation 261/2004 establishing common rules on, *inter alia*, compensation of passengers in the event of cancellation of, or a long delay to, a flight. In Case FOB 2021-8, the main question was whether the Ministry of Transport had acted illegally when not supporting an application for EU aid under Regulation 1316/2013 establishing the Connecting Europe Facility. In Case FOB 2019-34, the Ombudsman interpreted

17 For recent examples of non-published opinions concerning EU law see Case FO 19/00308 regarding a complaint that an administrative tax tribunal refused to make a preliminary reference to the Court of Justice, Case FO 19/00166 on the rejection of a CITES certificate for sale of rhinoceros horn, Case FO 15/00207 on Article 24 b in Regulation 4/2009 relating to maintenance obligations, which aims at ensuring the effective and swift recovery of maintenance, and Case FO 21/01862 on whether rules on storage of boats on the beach constituted an unjustified restriction on the free movement of goods.

18 Cases FOB 2023-13, FOB 2022-24, FOB 2021-13, FOB 2021-12, FOB 2020-5, FOB 2020-1, FOB 2019-21, FOB 2019-20, FOB 2019-8, FOB 2018-34, FOB 2018-17, FOB 2018-4, FOB 2018-2, FOB 2017-29, FOB 2017-28, FOB 2017-6, FOB 2016-6, FOB 2014-27, FOB 2014-8, FOB 2014-4, FOB 2012-21, FOB 2011 14-5, FOB 2011 11-2, FOB 2011 11-1, FOB 2009 9-4, FOB 2009 9-1 and FOB 2006.529.

19 Cases FOB 2021-21 and FOB 1988.32.

20 Cases FOB 2023-37, FOB 2021-18 and (concerning the Personal Data Directive) FOB 2009 5-2.

21 Cases FOB 2012-22, FOB 2012-15, FOB 2009 8-1, FOB 2008 4-5, FOB 2006.578 and FOB 2005.507.

22 Case FOB 2009 8-1.

the rules concerning information of available remedies in Article 22 of the EU Customs Code, cf. Regulation 952/2013. And in Case FOB 2015-1, the main issue concerned Directive 2003/98 on the re-use of public sector information. In Cases FOB 1996.75 and FOB 1997.432, the EU competition rules' importance to the competence requirements was examined.

Also in his monitoring activities, the Ombudsman includes EU rules. For example, in Case FOB 2016-40 on accessibility to train stations, Regulation 1300/2014 on the technical specification for interoperability relating to disabled people and people of reduced mobility in the EU's rail system formed part of the legal basis for the Ombudsman's assessment.

In multiple recent cases, the Ombudsman examines unwritten EU law principles, sometimes because they are important to the result of the case, other times in order to establish that EU law does not regulate the issue in question.²³

The Ombudsman has also dealt with many cases where the administrative authorities acknowledged that they had applied EU law or Danish implementing rules incorrectly and where the question before the Ombudsman was restricted to the legal consequences of this misapplication. In these cases, the relevant legal basis has primarily been Danish law, such as the Danish rules on period of limitation or the unwritten administra-

tive principles on reopening of wrongly decided cases.²⁴ The same applies in relation to cases concerning information and guidance on EU law and to cases on the requirement that the administrative authorities inform the public about changes to their administrative practice due to amended EU rules and new case law from the Court of Justice.²⁵

The Ombudsman has also delivered opinions concerning the administration's application of Danish rules on access to information in cases relating to EU legislative acts. And he has expressed his views in cases concerning self-incrimination in relation to information exchanged under Directive 2003/48 on taxation of savings income in the form of interest payments and in cases relating to the length of administrative proceedings in disputes where EU law was applicable.²⁶

3.2.2. Reflections on caseload

As already indicated, the number of complaint cases concerning EU law has risen substantially in recent years. However, it is still low considering how significant a part of the total Danish legislation originates directly or indirectly from Brussels.

One may speculate about the possible reasons for the small number of cases. However, an investigation from 2005 showed that the situation in Denmark is in no way unique.²⁷

23 Cases FOB 2021-15, FOB 2021-8 and FOB 2016-24. See also Case FOB 2023-37 concerning Article 8 of the Charter on Fundamental Rights.

24 Cases FOB 2021-15 and FO 21/01491.

25 Cases FOB 2018-9, FOB 2016-24, FOB 2008.238, FOB 2007.289 and FOB 2003.309.

26 Cases FOB 2017-11, FOB 2019-33 and FOB 1984.27.

27 The role of ombudsmen and similar bodies in the application of EU law, 5th Seminar of the National Ombudsmen of EU Member States and Candidate Countries, 2005, General Report of the Seminar, Annex III; QK7606674ENC.en (1).pdf.

Moreover, if one compares the situation in Denmark with that in Sweden or in Norway, one will see that the Danish Ombudsman engages much more with EU law (EEA law) than his Scandinavian colleagues.²⁸

One of the main reasons for the small number of cases concerning EU law is probably that much EU law is business-related. The Ombudsman only rarely has cases in this field, also in relation to purely Danish law. It is probably also relevant that one may complain directly to the European Commission and the SOLVIT service. Thus, the EU has alternative control bodies that can be used for free and which, as far as the SOLVIT service is concerned, will typically process the complaint at least as quickly as the Ombudsman.

If a complaint to the Ombudsman concerns an issue that has already been brought before the European Commission, the Ombudsman will normally either decline to take up the case or postpone his assessment until after the Commission has taken a position.²⁹ However, I doubt that this practice keeps many from going to the Ombudsman with complaints about EU-relevant issues.

I can rule out, though, that the small number of cases is related to a lack of attention on possible EU elements in a case. On the contrary, as mentioned above, it is a natural part of the Ombudsman's review to consider on his own initiative if a case raises EU law aspects, even if these are not mentioned by the parties in the case.

So far, the Ombudsman has not started general own-initiative investigations concerning issues pertaining specifically to EU law.³⁰ However, this has not been a choice of principle. It is merely a reflection of the fact that the Ombudsman's resources are limited due to a still increasing number of complaint cases. The Ombudsman therefore usually only opens own-initiative cases in areas where he – through the processing of complaint cases or by other means of information – has reasons to suspect that an investigation will reveal errors or derelictions. So far, that has not been the case in situations where the legal basis has only or mainly pertained to EU law.

4. Cooperation with EU bodies

4.1. Requests for preliminary rulings

As already implied in item 2 above, the Ombudsman is not a 'court' according to Article 267 TFEU. Therefore, the Ombudsman cannot seek guidance from the Court of Justice when he is to assess whether administrative authorities have complied with existing EU law.

As a substitute, a special procedure has been implemented – on the initiative of former Danish Ombudsman Hans Gammeltoft-Hansen – by which the members of the European Network of Ombudsmen can submit requests to the European Ombudsman concerning issues which have arisen during an investigation and which concern EU legislation and politics.³¹ More specifically, the European Ombudsman assists by retrieving expert assessments from the relevant EU institution, typically the European Commission.

28 Some illustrative Norwegian cases are SOM-2018/4638 and SOM-2018-3193 on breach of case processing times set out in Directive 2004/38 and SOM-2018-4518 on the principle of aggregation under Regulation 883/2004.

29 Case FO 20/03476.

30 In Case FOB 2019-34, the legal basis pertained partly to EU law, partly to purely Danish law.

31 Statement adopted at the Sixth Seminar of the National Ombudsmen of EU Member States and Candidate Countries held in Strasbourg on 14-16 October 2007. Read more about the Network in item 4.2 below.

At first glance, the procedure seems akin to the preliminary reference procedure in Article 267 TFEU. In practice, however, it is more similar to the cooperation procedure established in Article 15 of Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. According to this provision, the courts of the Member States can, in connection with cases under Articles 101 and 102 TFEU, request the European Commission to give statements on questions concerning the application of EU competition rules.

Contrary to what applies under Article 267 TFEU, the reference procedure to the European Ombudsman can also be used where the requesting ombudsman is not resolving a concrete dispute but is dealing with the case in the context of a general own-initiative investigation. The scheme is also different from the preliminary reference procedure in that the opinion from the European Commission and the European Ombudsman is not binding for the requesting ombudsman. At the same time, it is important to note that the opinion is not delivered by an independent and impartial court, but, in reality, by the European Commission. Moreover, one cannot be certain on which level the Commission's statement has been processed and thus whether the reply necessarily reflects the opinion of the College of Commissioners.

Lastly, when reading the opinion, it should be kept in mind that the European Commission is making its assessment without having heard the parties in the case, including the affected Member State. Therefore, there might occasionally arise issues in relation to the right to a fair hear-

ing as well as doubts as to whether the opinion is based on a full understanding of the facts of the case and the context of national law.

Still, there is no doubt that the Commission's assessments can be very useful for the requesting ombudsman. Furthermore, the scheme is nice and quick as the requesting ombudsman can expect a reply within a few months.

The Danish Ombudsman has used the scheme with good results in several cases concerning the Directive on Access to Environmental Information³² and in a case on free movement.³³ In this connection, it might be worth pointing out that the Danish Ombudsman is one of the ombudsmen in the EU who most frequently makes use of the reference procedure. Indeed, the Danish Ombudsman has not only relatively but also in nominal figures referred more questions to his colleagues in Brussels than, for instance, the German and French ombudsmen. So also in this respect, he has shown his readiness to take a European perspective in his monitoring activities.³⁴

4.2. Other cooperation

As mentioned, the Ombudsman is part of the European Network of Ombudsmen.

In addition to the reference scheme described above, one of the Network's most important activities is to exchange information about EU legislation and best practice. A number of joint events are arranged every year, and mechanisms have been implemented by which the members of the Network (the ombudsmen) can obtain information from the other members concerning pending cases or the state of law in other jurisdictions.

³² Cases FOB 2012-21, FOB 2018-34 and FOB 2020-1.

³³ Case FOB 2000.142.

³⁴ The total annual number of requests from all members of the Network was 5 to 9 from 2017 to 2021. For comparison, the Court of Justice received 556 references for preliminary ruling in 2020.

Furthermore, complainants can be referred from an ombudsman who does not have jurisdiction in the relevant case to the ombudsman – national or European – who has jurisdiction to process the case.

Through parallel investigations, the European Ombudsman and members of the European Network of Ombudsmen occasionally cooperate in dealing with issues concerning shared administration between the EU institutions and the national administrative bodies. Moreover, the Danish Ombudsman has on several occasions replied to enquiries from the European Ombudsman for the purpose of her own-initiative investigations of EU institutions.³⁵

Lastly, the Ombudsman has since 2017 participated in a pool of monitors that supervise forced returns organised by Frontex in accordance with (now) Article 51 of Regulation 2019/1896 on the European Border and Coast Guard Agency.

5. Conclusion

Looking back at the development in the Ombudsman's application of EU law, it is remarkable how similar it has been to the development in the administrative authorities' and the courts' approach to EU law.

In the first decades since Denmark joined the European Community, only few authorities were affected by European law. In those cases, evasive manoeuvres would sometimes be made to avoid deciding a case based on a set of rules that appeared complex and hard to predict.

Today, EU law claims a bigger share of the total amount of rules applied by both administrative authorities and review bodies. Moreover, EU law is much less seen as something alien that one might preferably avoid.

The same tendency can be seen in the Ombudsman's review. Originally, various ombudsmen were quite reticent in setting aside the administration's understanding and application of EU law. Through the years, there have been both a fundamental paradigm shift and a *de facto* intensification in the review of administrative authorities' application of EU law. Today, the Ombudsman consumes neither painkillers nor champagne when it turns out that a case includes EU law. EU law has become 'business as usual', albeit not 'very usual business'.

This is an updated, translated version of an article originally published in Danish in Ulla Neergaard and Karsten Engsig Sørensen (eds.), *Danmark og EU gennem 50 år – en milepæl* (in English 'Denmark and the EU through 50 years – a milestone') (2023), p. 349-361.

³⁵ E.g. in relation to the European Ombudsman's own-initiative investigation of the functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer (OI/5/2020/MHZ).

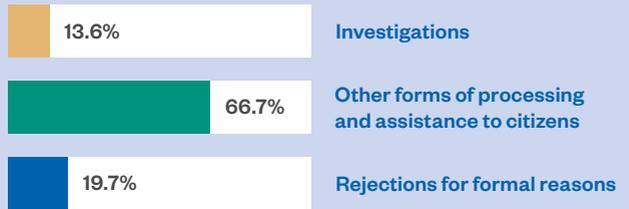
Brief overview of the year

The year in figures

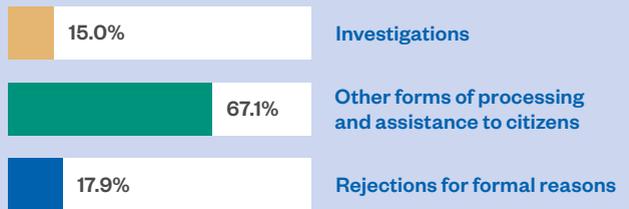
The following pages contain key figures for the cases processed by the Ombudsman in 2023. More information about the Ombudsman's work and the rules governing the Ombudsman's activities can be found on www.en.ombudsmanden.dk.

Concluded cases¹

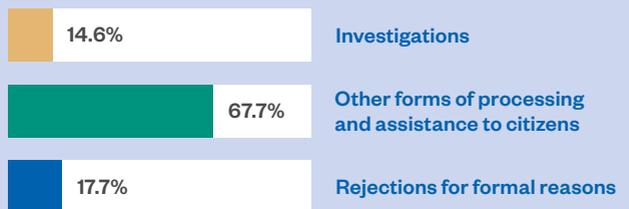
2023
6,064 cases



2022
5,258 cases



2021
5,587 cases



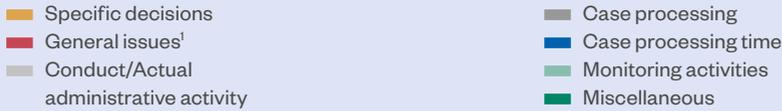
1) Administrative cases are not included. In addition, cases selected for collective review in connection with general own-initiative investigations are not normally included.

What was the outcome of the cases?

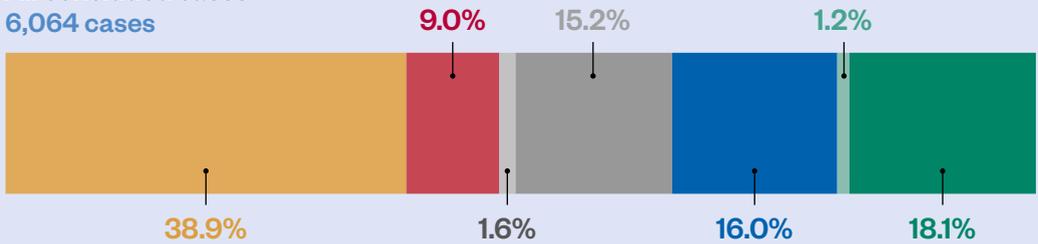
	Concluded cases
1. Investigations	
Full investigations	199
– of which cases with criticism, formal or informal recommendations etc.	92
Shortened investigations ¹	625
Investigations, total	824
2. Other forms of processing and assistance to citizens	
Various forms of intervention in cases where the avenues of processing by authorities had not been exhausted	2,323
– of which cases forwarded to authorities	1,231
Cases where the Ombudsman's review did not lead to further investigation	1,157
Answers to enquiries, guidance etc.	563
Other forms of processing and assistance to citizens, total	4,043
3. Rejections for formal reasons	
Complaints which were submitted too late to the Ombudsman	111
Cases where the complaint/appeal options to authorities had not been used – and could no longer be used	54
Cases which related to courts, judges or matters on which a court had made or could be expected to make a decision – and were thus outside the Ombudsman's jurisdiction	193
Cases which concerned matters relating to Parliament, including legislative issues, and were thus outside the Ombudsman's jurisdiction	77
Complaints which related to other matters outside the Ombudsman's jurisdiction, including private legal matters	319
Complaints which were not clarified sufficiently to be able to be processed and complaints which were withdrawn	343
Cases in which the Ombudsman declared himself disqualified	9
Anonymous approaches	91
Rejections for formal reasons, total	1,197
Total (1-3)	6,064

1) Shortened investigations comprise primarily cases in which the Ombudsman reviewed a complaint but decided not to obtain statements from the authorities because it was unlikely that a full investigation would result in criticism or recommendations. The category of shortened investigations also includes, among others, cases which were reopened by the authorities after the Ombudsman asked them for a statement (23 cases in 2023).

What did the cases concern?



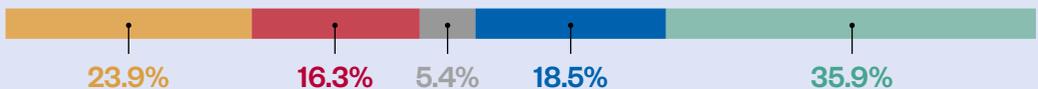
All concluded cases
6,064 cases



Investigations
824 cases



Cases with criticism, formal or informal recommendations etc.
92 cases



1) The category 'General issues' comprises, for instance, the overall conditions in an institution or questions such as whether an enabling act provides a sufficient legal basis for an executive order or whether an authority's general practice within a specific area is acceptable.

Which authorities etc. were involved?

Cases concluded in 2023 – by authority etc.

	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
A. Ministries and authorities etc. under them¹					
Ministry of Employment	4	9	79	19	111
Ministry of Urban, Rural and Ecclesiastical Affairs	1	5	26	2	34
Ministry of Children and Education	0	3	22	3	28
Ministry of Industry, Business and Financial Affairs	2	47	91	11	151
Ministry of Finance	1	3	7	1	12
Ministry of Defence	1	9	19	5	34
Ministry of the Interior and Health	3	46	107	11	167
Ministry of Justice	24	168	464	94	750
Ministry of Climate, Energy and Utilities	1	18	27	8	54
Ministry of Culture	0	18	42	2	62
Ministry of Environment	0	1	28	10	39
Ministry of Digital Government and Gender Equality	0	3	23	1	27
Ministry of Food, Agriculture and Fisheries	2	3	25	0	30
Ministry of Taxation	8	70	548	54	680
Ministry of Social Affairs, Housing and Senior Citizens	3	170	427	127	727
Prime Minister's Office	0	13	13	2	28
Ministry of Transport	3	15	61	5	84
Ministry of Higher Education and Science	3	13	54	13	83
Ministry of Foreign Affairs	2	6	24	4	36
Ministry of Immigration and Integration	1	33	98	26	158
Total	59	653	2,185	398	3,295

1) The cases have been classified under the ministries existing at the end of the year. Concluded cases relating to authorities which have been moved to another ministry, closed down or reorganised have as a general rule been classified under the ministries which had the remit for the relevant areas at the end of the year.

Cases concluded in 2023 – by authority etc.

	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
B. Municipal and regional authorities etc.					
Municipalities	12	61	1,175	169	1,417
Regions	13	8	81	12	114
Joint municipal or regional enterprises	0	2	6	1	9
Special municipal or regional entities	0	0	4	0	4
Total	25	71	1,266	182	1,544
C. Other authorities etc. within the Ombudsman's jurisdiction²					
Other authorities etc. within the Ombudsman's jurisdiction	8	8	94	33	143
Total	8	8	94	33	143
D. Authorities etc. within the Ombudsman's jurisdiction, total					
Ministries and authorities etc. under them, total (A)	59	653	2,185	398	3,295
Municipal and regional authorities etc., total (B)	25	71	1,266	182	1,544
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	8	8	94	33	143
Total	92	732	3,545	613	4,982
E. Institutions etc. outside the Ombudsman's jurisdiction					
Courts etc., cf. section 7(2) of the Ombudsman Act	0	0	0	110	110
Dispute tribunals, cf. section 7(3) of the Ombudsman Act	0	0	0	14	14
Other institutions, associations, enterprises and persons outside the Ombudsman's jurisdiction	0	0	14	376	390
Total	0	0	14	500	514
F. Cases not relating to specific institutions etc.					
	0	0	484	84	568
Grand total (A-F total)	92	732	4,043	1,197	6,064

2) The figures comprise cases involving private institutions which fall within the Ombudsman's jurisdiction in connection with OPCAT or in the children's sector and other institutions etc. which have been included under the Ombudsman's jurisdiction. In 2023, the Ombudsman decided in pursuance of section 7(4) of the Ombudsman Act that his jurisdiction was to extend to the Danish Standards Foundation and SK Energi A/S to the extent to which they are subject to the provisions of the Access to Public Administration Files Act.

Processing times



Complaint cases and



own-initiative investigations

Investigations

– of which cases about access to public records¹

12 months

Result: 97%
(Target: 90%)

6 months

Result: 85%
(Target: 70%)



40 days

Result: 92%
(Target: 90%)

20 days

Result: 73%
(Target: 45%)



Average
processing
time

3.8
months

15
working days²

- 1) Complaint cases about access to public records under the Access to Public Administration Files Act, the Environmental Information Act, the Administration of Justice Act etc., with the exception of cases about the right of a party to a case to obtain access to documents of the case.
- 2) Processing times for cases about access to public records are stated in working days – as in the Access to Public Administration Files Act. The number of working days is calculated from the date on which the Ombudsman has received replies from the citizen and the authorities and the case is ready for final processing (the 'maturity date').



Monitoring cases³

Other forms of processing and assistance to citizens and rejections for formal reasons

6 months
Result: 97%
(Target: 98%)



3 months
Result: 86%
(Target: 90%)

6 months
Result: 86%
(Target: 80%)



1.3
months

4.2
months

3) Concluded cases concerning monitoring visits made to institutions etc. for children and for adults, monitoring visits to investigate physical accessibility for persons with disabilities and monitoring of forced deportations of foreign nationals. The processing time for a monitoring case is calculated from the date of the monitoring visit or the deportation.

Other facts

The Ombudsman declared himself **disqualified** in nine cases in 2023. Parliament's Legal Affairs Committee assigned the processing of these cases to Henrik Bloch Andersen, High Court Judge, as **ad hoc ombudsman**. The Ombudsman's office provided secretariat assistance in connection with the processing of the cases.

The Faroese Lagting (the Parliament) did not ask the Ombudsman to act as ad hoc ombudsman for the Faroese Parliamentary Ombudsman in any cases in 2023. The Inatsisartut (the Parliament of Greenland) asked the Ombudsman to act as ad hoc ombudsman for the Ombudsman for Inatsisartut in six cases.



Extracts from news items from the Ombudsman

**of relevance for
international readers**

The following are extracts from news items from 2023 which were published on the Ombudsman's English website because they were considered to be of relevance for international readers. The news items can be read in full on www.en.ombudsmanden.dk.

If you wish to be notified every time news is published in English on www.en.ombudsmanden.dk, please follow us on X at [@DanishOmbudsman](https://twitter.com/DanishOmbudsman).

4 January

New book: EU cases call for neither painkillers nor champagne

'Today, the Ombudsman consumes neither painkillers nor champagne when it turns out that a case includes EU law.'

So says Parliamentary Ombudsman Niels Fenger in the chapter 'The Danish Ombudsman and EU law' (translated from Danish) in the book 'Danmark og EU gennem 50 år – en milepæl' (Denmark and the EU through 50 years – a milestone), published by Djøf Forlag. The book, which was edited by Professors Ulla Neergaard and Karsten Engsig Sørensen, is about Denmark's relationship with the EU on the occasion of the 50th anniversary of Denmark's entry into what was then known as the Common Market.

3 March

Digital application form did not ensure that foreign nationals without a passport could apply

When foreign nationals apply for a residence permit in Denmark according to the Labour Market Attachment Scheme, they have to use a digital application form on the website of the Danish Agency for International Recruitment and Integration (SIRI). The applicant needs to enter his or her passport number and its expiry date into the form, among other things. If the boxes are not filled in, the form cannot be submitted.

However, it is not a requirement in the Labour Market Attachment Scheme to have a valid passport in order to get a residence permit. Therefore, the Ombudsman has asked SIRI to ensure that also foreign nationals without a valid passport can apply.

15 May

SIRI changes digital application form after Ombudsman statement

When foreign nationals apply for a residence permit in Denmark according to the Labour Market Attachment Scheme, they have to use a digital application form on the website of the Danish Agency for International Recruitment and Integration (SIRI).

...

SIRI has now decided to change the digital application form (...). The change means that in future it will not be mandatory to fill in passport number and information about the passport's expiry date in the form.

This will help those foreign nationals who wish to apply for residence in Denmark according to the Labour Market Attachment Scheme and who are not in possession of a valid passport.

13 June

City of Copenhagen employees and politicians cannot accept a Tivoli Pass

The group of political party chairpersons of the City Council of the City of Copenhagen have determined that politicians cannot accept annual cards from the amusement park Tivoli Gardens.

The City of Copenhagen says so in a reply to the Parliamentary Ombudsman.

Last month, the Ombudsman asked the City of Copenhagen a number of questions regarding city employees' and City Council politicians' possible acceptance of an annual card from Tivoli Gardens, a Tivoli Pass. The Ombudsman's questions were due to media coverage that several City Council members had received a Tivoli Pass as a gift from Tivoli Gardens.

The Ombudsman has informed the City of Copenhagen that he agrees that it is not in accordance with the principles applying to public employees' acceptance of gifts and other benefits for City Council members to accept gifts of that nature.

14 June

The Ombudsman as protector of citizens' human rights

'It is practically the nature of the case that protection of human rights is an important part of the Ombudsman's task.' The Parliamentary Ombudsman, Niels Fenger, says so in a new article in the Danish Weekly Law Reports (Ugeskrift for Retsvæsen) on the Ombudsman's role as protector of human rights.

In the article, he analyses the overlap of human rights with the Ombudsman's tasks. He explains that the Ombudsman institution was not created with a view to promoting and protecting human rights. However, concurrently with the rules on human rights gaining in importance for the public administration's activities, the number of cases where it is relevant to include human rights have increased in the Ombudsman institution.

19 June

2022 Annual Report of the Parliamentary Ombudsman available in English

The Parliamentary Ombudsman visits psychiatric wards as part of his monitoring activities, and in that context he looks into the use of force and various forms of non-statutory interventions towards the patients.

In the Ombudsman's 2022 Annual Report, you will find more about the Ombudsman's focus on the legal framework for precisely the use of force and non-statutory interventions towards psychiatric patients.

27 June

Continued focus on new remand prisoners needed

In the field of institutions for adults, the Ombudsman's Monitoring Department has carried out a number of monitoring visits focusing on conditions for new remand prisoners.

These people may be in an uncertain and vulnerable situation after an arrest and placement in remand custody has turned their lives upside down. And there may be an increased risk that they will commit self-harming acts such as suicide attempts in the first few days after placement in remand custody.

28 June

The Ombudsman recommends measures to ensure better conditions for children at Jyderup Prison

The Ombudsman's Children's Division has been on a monitoring visit to Jyderup Prison, which has been a women's prison since 2021. A few young children have for periods of time stayed in the prison together with their mothers.

As an inmate, it is possible under certain conditions to have your young child with you during your imprisonment. This requires, among other things, that you can take care of the child and that the social authorities assess that the stay in the prison is compatible with the child's welfare.

29 June

Thematic report 2022: Private accommodation facilities must be better at documenting use of force

When children and young people are placed in accommodation facilities, staff have access, within the scope of the Act on Adult Responsibility, to use physical force and to impose other restrictions on the children and young people's right to self-determination, such as search of person or room.

In 2022, the Ombudsman's Children's Division carried out a number of monitoring visits to small private accommodation facilities in order to examine the staff's knowledge of the rules and use of the authority afforded by the Act on Adult Responsibility.



Statement of revenue and expenditure 2023

The Ombudsman's ordinary activities

	DKK
Revenue	
Revenue	42,000
Total revenue	42,000
Expenditure	
Wages and salaries, pension costs	79,958,000
Rent	6,494,000
Staff and organisation, including staff welfare	720,000
Continuing training/education	1,195,000
Books and library	76,000
Specialist databases	1,539,000
Newspapers and journals	226,000
Communication	656,000
Computer systems – operations and development	5,157,000
Computer hardware	1,096,000
Telephony and internet	449,000
Premises – repairs and maintenance	1,471,000
Furniture, fixtures and fittings	955,000
Cleaning, laundry and refuse collection	373,000
Heating and electricity	506,000
Premises – other expenditure	291,000
Travel	324,000
Entertainment and meals	92,000
Contribution to financial support scheme for trainees; etc.	496,000
Stationery and office supplies	206,000
Other goods and services	1,306,000
Total expenditure	103,586,000
Total expenditure (net)	103,544,000
Appropriation, inclusive of changes	105,000,000
Result for the year	1,456,000

Public service pensions

	DKK
Revenue	1,790,000
Expenditure	2,817,000
Result for the year	-1,027,000

Collaboration agreement with Ministry of Foreign Affairs

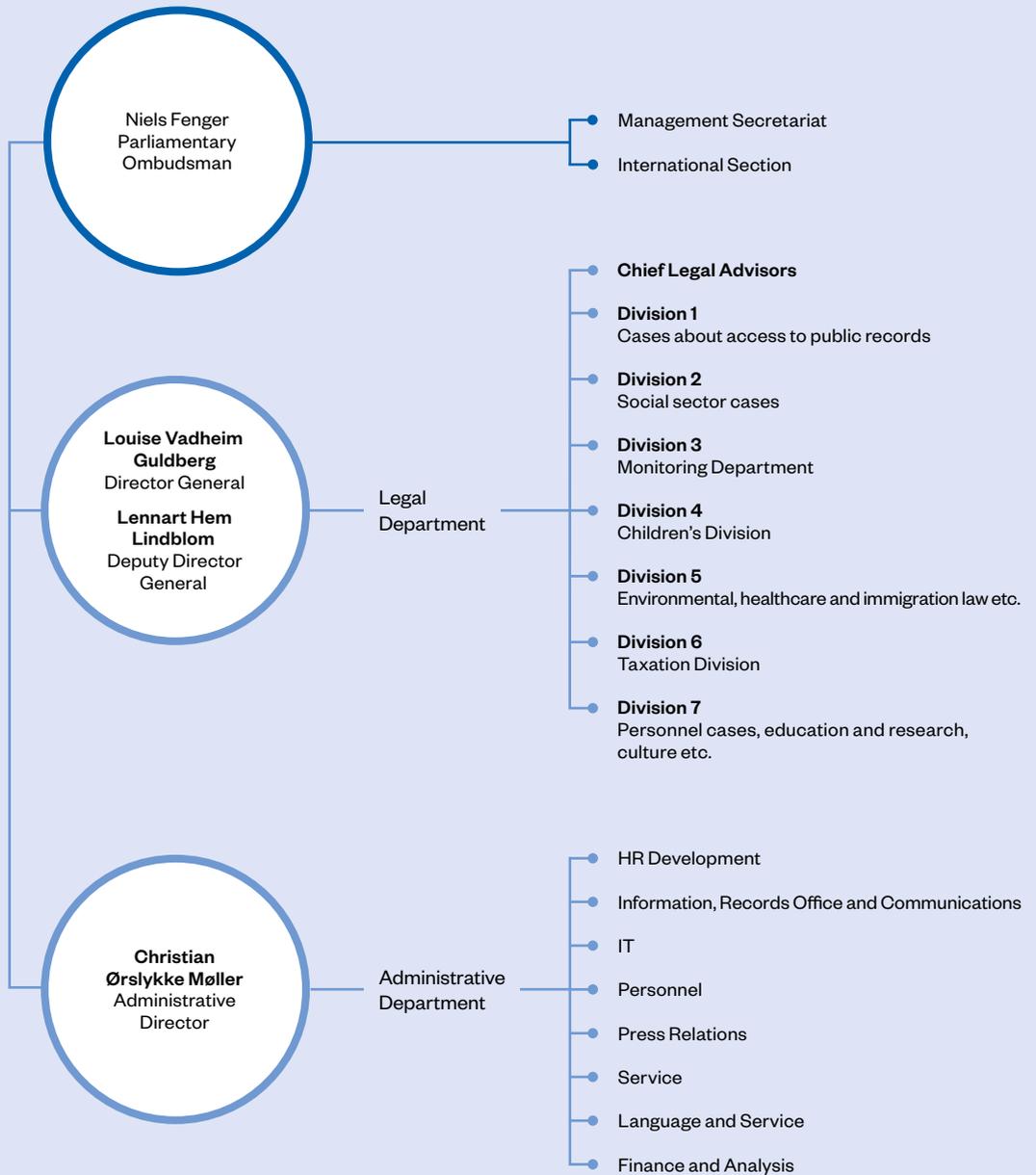
	DKK
Revenue	466,000
Expenditure	466,000
Result for the year	0

Note: Due to rounding, some totals may not correspond with the sum of the separate figures.



Organisation

As at 31 December 2023







Employees and core responsibilities as at 31 December 2023

Management

Niels Fenger, Parliamentary Ombudsman
Louise Vadheim Guldberg, Director General
Lennart Hem Lindblom, Deputy Director General
Christian Ørslykke Møller, Administrative Director

Management Secretariat

Mai Gori, Management Coordinator, Legal Case Officer
Cathrine Klinthøj Larsen, Executive Secretary
Nadia Nielsen, Executive Secretary

International Section

Klavs Kinnerup Hede, Director of International Relations
Camilla Schroll, Legal Case Officer

Legal Department

Chief Legal Advisors

Karsten Loiborg, Chief Legal Advisor
Morten Engberg, Chief Legal Advisor

Division 1

Cases about access to public records

Jacob Christian Gaardhøje, Senior Head of Division
Martin Dyhl-Polk, Deputy Head of Division
Pernille Bjørnholt, Deputy Head of Division
Klaus Tranbjerg Toftgaard, Special Legal Advisor
Emma Dencker Steenberg, Legal Case Officer
Nanna Flindt, Legal Case Officer
Neel Muus Larsen, Legal Case Officer
Yasaman Mesri, Legal Case Officer
Frederik Mathiesen, Legal Student Assistant
Mariam Moussa Rihani, Legal Student Assistant

Key subject areas of cases handled

- Cases about access to public records
 - The Access to Public Administration Files Act
 - The Environmental Information Act
 - The Radio and Television Broadcasting Act
 - Selected cases involving the Administration of Justice Act
 - Selected cases about press handling etc.

Division 2

Social sector cases

Johannes Martin Fenger, Senior Head of Division
Christina Ladefoged, Deputy Head of Division
Kristine Holst Hedegaard, Deputy Head of Division
Marte Volckmar Kaasa, Deputy Head of Division
Helle Sidenius, Special Legal Advisor
Anna Rechendorff Møller, Legal Case Officer
Franz Amdi Hansen, Legal Case Officer
Kirsten Broundal, Legal Case Officer
Stine Harkov Hansen, Legal Case Officer
Barbara Eyðfinsdóttir Saxov, Legal Student Assistant
Sarah Ahmed, Legal Student Assistant

Key subject areas of cases handled

- Social security and labour market law

Division 3

Monitoring Department

Lisbeth Adserballe, Senior Head of Division
Ann Thagård Gregersen, Deputy Head of Division
Jørgen Hejstvig-Larsen, Deputy Head of Division
Ulla Birgitte Frederiksen, Special Legal Advisor
Jakob Liebetrau, Legal Case Officer
Lucienne Josephine Lokjær Bak, Legal Case Officer
Marta Warburg Schmidt, Legal Case Officer
Mette Elisabeth Grumløse Hjelmsø, Legal Case Officer
Morten Bech Lorentzen, Legal Case Officer
Sabine Heestermans Svendsen, Legal Case Officer
Jeanette Hansen, Senior Administrative Officer
Caroline Jakobsen, Legal Student Assistant
Johan Klingberg Müller, Legal Student Assistant

The Monitoring Department is in charge of the Ombudsman's monitoring activities in relation to adults, which involve in particular

- State prisons
- Local prisons
- Halfway houses
- Police detention facilities for intoxicated persons
- Psychiatric wards
- Social and social psychiatric residential facilities
- Asylum centres
- Non-discrimination of persons with disabilities
- Forced deportations of foreign nationals

The Monitoring Department especially handles specific cases involving

- Sentence enforcement and custody
- Psychiatric healthcare and conditions for psychiatric patients
- Social institutions

**Division 4
Children's Division**

Louise Christophersen, Senior Head of Division
Lise Bitsch, Deputy Head of Division
Sidsel Kathrine Møller, Senior Consultant
Irene Rønn Lind, Special Advisor on Children's Issues
Mette Ravn Jacobsen, Special Legal Advisor
Camilla Holst-Andersen, Legal Case Officer
Lea Rosenlind Nielsen, Legal Case Officer
Marianne Halkjær Ebbesen, Legal Case Officer
Nikoline Halling-Overgaard, Legal Case Officer
Peter Kersting, Legal Case Officer
Tina Andersen, Legal Case Officer
Anna Caroline Hjorth-Larsen, Legal Student Assistant

The Children's Division carries out monitoring visits to public and private institutions etc. for children, such as

- Residential institutions and private accommodation facilities for children placed in residential care
- Foster families
- Asylum centres
- Hospital wards and psychiatric wards for children

The Children's Division especially handles specific cases involving

- Support measures for children and young people
- Social services for children
- Primary and lower secondary schools, continuation schools and private schools
- Institutions for children
- Other cases with a particular bearing on children's rights
- The law of capacity, the law of names, foundations and the law of succession

**Division 5
Environmental, healthcare and immigration law etc.**

Susanne Veiga, Senior Head of Division
Janne Lundin Vadmand, Deputy Head of Division
Stine Marum, Deputy Head of Division
Katarina Hvid Lundh, Senior Consultant
Anna Helene Stamhus Thommesen, Special Legal Advisor
Eva Vindsebæk Sjøgren, Special Legal Advisor
Hanne Nørgård, Legal Case Officer
Laura Ulrich Østergaard, Legal Case Officer
Mai Vestergaard, Legal Case Officer
Morten Pilgaard Pedersen, Legal Case Officer
Sebastian Dunge Rasmussen, Legal Case Officer
Frederikke Højgaard Abrahamsen, Legal Student Assistant
Nikita Risager Øbakke, Legal Student Assistant

Key subject areas of cases handled

- Environment and planning
- Building and housing
- Energy
- Food and agriculture
- Municipalities and regions etc.
- The non-psychiatric healthcare sector
- Foreign nationals
- The Guide for Authorities on the Ombudsman's website

**Division 6
Taxation Division**

Kirsten Talevski, Senior Head of Division
Mette Kildegaard Hansen, Deputy Head of Division
Stephan Andreas Damgaard, Deputy Head of Division
Lise Puggaard, Senior Consultant
Jeanett Dejgaard Stefansen, Special Legal Advisor
Rikke Ilona Ipsen, Special Legal Advisor
Sofie Hedegaard Larsen, Special Legal Advisor
Helene Qvist Petersen, Legal Case Officer
Marie Helqvist, Legal Case Officer
Signe Brehm Jensen, Legal Case Officer
Sverre Dehnfeld Kjeldgaard, Legal Case Officer
Andrea Viinblad Thuesen, Legal Student Assistant

Key subject areas of cases handled

- Direct taxes
- Indirect taxes, including value-added tax, etc.
- Levying and collection of taxes
- Cases within certain other fields, including transport, communication and roads

Division 7

Personnel cases, education and research, culture etc.

Adam Abdel Khalik, Senior Head of Division
 Anne Djurhuus, Deputy Head of Division
 Vibeke Lundmark, Deputy Head of Division
 Lise Brandi-Hansen, Senior Consultant
 Michael Gasbjerg Thuesen, Senior Consultant
 Anna-Sophie Bager, Legal Case Officer
 Marie Nyborg Kvist, Legal Case Officer
 Marjanne Kalsbeek, Legal Case Officer
 Pernille Helsted, Legal Case Officer
 Emilie Kroer Ludvigsen, Legal Student Assistant

Key subject areas of cases handled

- Public employment law, including public employees' freedom of expression
- Education and research
- The Prosecution Service and criminal cases etc.
- Traffic, passports, weapons etc.
- Elections, registration of individuals etc.
- Ecclesiastical affairs and culture
- Trade and industry etc.

Administrative Department

Core responsibilities

- Personnel
- Finance and analysis
- HR development
- Organisational development
- Information and communications
- Proofreading and other linguistic services
- Press relations
- IT
- Service and maintenance
- Records office

Christian Ørslykke Møller, Administrative Director

HR Development

Lisbeth Kongshaug, Head of HR and Development
 Mai Gori, Legal Case Officer
 Cathrine Klinthøj Larsen, Senior HR and Development Administration Officer
 Jannie Svendsen, Senior HR and Development Administration Officer
 Neel Aggestrup, Senior HR and Development Administration Officer

Information, Records Office and Communications

Karen Nedergaard, Head of Information, Records Office and Communications
 Anna Skov Foug, Librarian

Julie Gjerrild Jensen, Senior Communications Officer
 Eva Jørgensen, Senior Communications Officer
 Denise Schärfe, Senior Records Officer
 Harriet Lindegaard Hansen, Senior Records Officer
 Charlotte Charboe Andersen, Senior Records Assistant
 Julie Roland, Senior Records Assistant

IT

Seyit Ahmet Özkan, IT Administrator
 Kevin Pedersen, Systems Administrator
 Uffe Larsen, IT Officer
 Allan Sigge Bruun Andersen, IT Student Assistant
 Mikkel von Düring Lausen, IT Student Assistant

Personnel

Mette Vestentoft, Senior Consultant
 Lone Gundersen, Senior Personnel Officer
 Nadia Nielsen, Senior Personnel Officer
 Stine Holst Gamain-Nørgaard, Senior Personnel Officer

Press Relations

Martin Østergaard-Nielsen, Special Communications Advisor

Service

Jeanette Schultz, Head of Service
 Elisabeth Olsen, Receptionist
 Amalie Herløv Nielsen, Service Assistant
 Annitta Lundahl, Service Assistant
 Charlotte Jørgensen, Service Assistant
 Flemming Wind Lystrup, Service Assistant
 Ghenet Teklemicael Tesfaslasie, Service Assistant
 Katarzyna Sztukowska-Thomsen, Service Assistant
 Kirsten Morell, Service Assistant
 Niels Clemmensen, Service Assistant
 Suphaporn Nielsen, Service Assistant

Language and Service

Mette Vestentoft, Senior Consultant
 Lisbeth Nielsen, Senior Language Officer
 Marianne Anora Kramath Jensen, Senior Language Officer
 Sara Krogsgaard-Hjorth, Senior Language Officer

Finance and Analysis

Camilla Nexøe Klitgaard, Head of Finance and Analysis
 Jeanette Schultz, Head of Service
 Carl Andreas Kampmann, Finance and Analysis Student Assistant



> Whistleblowing system

In accordance with the Act on Protection of Whistleblowers (Act No. 1436 of 29 June 2021), the Parliamentary Ombudsman has established a whistleblowing system. The whistleblowing system is internal to the Ombudsman's office.

No concerns were reported to the whistleblowing unit of the Ombudsman's office in 2023.

Appendix

**General information
about the Danish
Parliamentary
Ombudsman and
about monitoring
visits under the
OPCAT mandate**

1

General information about the Danish Parliamentary Ombudsman

The task of the Parliamentary Ombudsman

The Danish Parliamentary Ombudsman was established in 1955 following a constitutional amendment in 1953. The general background to introducing a Parliamentary Ombudsman was a wish to improve the protection of citizens' legal rights vis-à-vis public authorities.

The primary task of the Parliamentary Ombudsman is to help ensure that administrative authorities act in accordance with the law and good administrative practice, thus protecting citizens' rights vis-à-vis the authorities. An additional function of the Ombudsman is to support and promote good administrative culture within the public administration.

The Parliamentary Ombudsman is not the National Human Rights Institution of Denmark. The Danish Institute for Human Rights carries out this mandate.

Relationship to Parliament and jurisdiction

The Parliamentary Ombudsman is governed by the Ombudsman Act.

The Parliamentary Ombudsman is organisationally linked to the Danish Parliament. After each general election and whenever a vacancy occurs, Parliament elects an Ombudsman. Further, Parliament may dismiss the Ombudsman if the person holding the office no longer enjoys

its confidence. However, the Ombudsman Act stipulates that the Ombudsman is independent of Parliament in the discharge of his functions.

Under the Ombudsman Act, the jurisdiction of the Parliamentary Ombudsman extends to all parts of the public administration: the state, the regions, the municipalities and other public bodies.

Parliament – including its committees, the individual members of Parliament, the Administration of Parliament and other institutions under Parliament – is outside the Ombudsman's jurisdiction. Thus, the Ombudsman is generally precluded from considering complaints regarding the isolated effects of a statutory provision or its compliance with the Constitution and international law. However, if any deficiencies in existing statutes or administrative regulations come to the Ombudsman's attention in specific cases, the Ombudsman must notify Parliament and the responsible minister. Further, the Ombudsman Act states that the Ombudsman must monitor that existing statutes and administrative regulations are consistent with, in particular, Denmark's international obligations to ensure the rights of children, including the UN Convention on the Rights of the Child.

Courts of justice are outside the Ombudsman's jurisdiction, and the same applies to court-like bodies and tribunals that make decisions on disputes between private parties. With a few exceptions, the Ombudsman cannot consider complaints about private establishments either.

The Danish Parliamentary Ombudsman is located in Copenhagen and has no branch offices. The Faroe Islands and Greenland both

have their own ombudsman, with jurisdiction in relation to issues falling under the remit of the home rule administration in the case of the Faroe Islands and the self-government administration in Greenland's case. Issues relating to the Faroe Islands and Greenland which fall under the remit of central administrative authorities of the Realm of Denmark are within the jurisdiction of the Danish Parliamentary Ombudsman.

Working methods

The Ombudsman investigates complaints, opens investigations on his own initiative and carries out monitoring visits. Investigating complaints from citizens is a core function of the Ombudsman.

Complaint cases

In general, anybody can complain to the Ombudsman, also if they are not a party to a case. Complaining to the Ombudsman is free. A complainant cannot be anonymous.

The Ombudsman considers complaints about all parts of the public administration and in a limited number of situations also about private institutions, an example being complaints about conditions for children in private institutions.

The Ombudsman does not consider complaints about courts, nor about court-like bodies or tribunals which make decisions on disputes between private parties.

The Ombudsman's task is to ensure that the authorities have observed the applicable rules. For this reason, the Ombudsman cannot consider cases before the authorities; he can consider a complaint only if the case has been considered by the relevant authority – and by any appeals bodies.

There is a deadline of one year for complaints to the Ombudsman.

When the Ombudsman receives a complaint, he first determines whether it offers sufficient cause for investigation. In some cases, the Ombudsman is unable under the Ombudsman Act to consider a complaint – for instance if the one-year deadline for complaints has been exceeded or if the case has not been considered by the relevant appeals body. In other cases, the Ombudsman chooses not to open an investigation, for instance because he would not be able to help the citizen achieve a better outcome.

In a large proportion of complaint cases, the Ombudsman helps the citizen by providing guidance or by forwarding the complaint to the relevant authority, for instance in order that the authority will be able to consider the complaint or give the citizen more details of the grounds for a decision which it has made.

In a number of cases, the Ombudsman discontinues his investigation because the authority chooses to reopen the case, for instance after being asked for a statement on the matter by the Ombudsman.

In some complaint cases, the Ombudsman carries out a full investigation, in which, among other things, he asks the authority to send him a statement on the matter. The investigation may result in the Ombudsman criticising the authority and recommending that it make a new decision.

Own-initiative investigations

As mentioned above, investigating complaints from citizens is a core function of the Ombudsman. However, opening investigations on his own initiative is also a high priority for the Ombudsman.

The Ombudsman may open the following types of investigation on his own initiative:

- investigations of specific cases
- general investigations of an authority's processing of cases

An example of a topic for a general investigation could be whether an authority's interpretation and application of specific statutory provisions or its practice in a specific area is correct.

Objectives of own-initiative investigations

One of the main objectives of also giving high priority to own-initiative investigations is to identify recurring errors made by authorities. Investigations of this type can have a great impact on the case processing by authorities, thus helping a large number of citizens at the same time.

In an own-initiative investigation, the focus is not only on errors that the authority may already have made – but also on preventing errors being made in the first place.

In addition, the Ombudsman opens investigations on his own initiative of specific cases of a more one-off nature if he finds cause to look further into a case.

Backgrounds to opening own-initiative investigations

In practice, the Ombudsman mainly opens own-initiative investigations of themes and within areas with one or more of the following characteristics:

- There is an aspect of fundamental public importance.
- Serious or significant errors may have been made.

- They concern matters which raise special issues in relation to citizens' legal rights or are otherwise of great significance to citizens.

Specific complaint cases or monitoring visits may give rise to suspicion of recurring errors etc. and be the launch pad for an own-initiative investigation. When the Ombudsman is investigating a specific case, his focus is therefore, among other things, on problems which characterise not only that particular case.

Media coverage of a case may also cause the Ombudsman to open an investigation on his own initiative. The Ombudsman monitors both local and national media.

Further, external parties – such as professional committees for practising lawyers or accountants or interest groups – can be useful sources of knowledge about recurring errors etc. on the part of authorities.

In addition, the Ombudsman chooses some general themes each year for the institution's monitoring activities in relation to adults and children and for the Taxation Division.

What characterises the Ombudsman's work on own-initiative investigations?

The Ombudsman's own-initiative investigations comprise a variety of activities with the common denominator that they are not centred on a complaint in a specific case as the focus is usually expanded beyond specific problems to a more general level, with emphasis on any general and recurring errors or problems.

Further, own-initiative investigations typically have a more forward-looking focus, centring on how the authorities involved can handle and rectify errors and problems.

In some own-initiative investigations, the Ombudsman reviews a number of specific cases from an authority.

In others, the Ombudsman asks an authority for a statement about, for instance, its administration, interpretation of the law, practice or processing times within a specific area.

The Ombudsman is working on an ongoing basis on a variety of own-initiative investigations where he considers, based on, for instance, specific complaint cases, legislative changes or media coverage, whether there is a basis for further investigation of a matter. Thus, the Ombudsman decides on an ongoing basis which issues or areas give cause for investigation and how to prioritise them.

In some cases, the Ombudsman's own investigation leads to the assessment that there is no cause to contact the authorities involved, and the case can be closed without a full Ombudsman investigation. The Ombudsman may also decide to close a case without a full investigation after contacting the authorities.

Monitoring visits

The Ombudsman carries out monitoring visits to places where there is a special need to ensure that citizens are treated with dignity and consideration and in accordance with their rights by the authorities – for instance because the citizens are deprived of their liberty or otherwise in a vulnerable position.

Monitoring visits are made to a number of public and private institutions etc., such as

- Prison and Probation Service institutions
- psychiatric wards
- social residential facilities
- residential institutions for children and young people

In addition, the Ombudsman monitors

- forced deportations of foreign nationals
- forced deportations arranged by other EU member states at the request of the European Border and Coast Guard Agency, Frontex

Finally, the Ombudsman monitors the physical accessibility of public buildings, such as educational establishments or health institutions, to persons with disabilities.

The Ombudsman's monitoring obligations follow from the Ombudsman Act and from the rules governing the special responsibilities which the Ombudsman has been assigned:

- The Ombudsman carries out monitoring visits in accordance with section 18 of the Ombudsman Act, especially to institutions where people are deprived of their liberty.
- The Ombudsman has been designated 'National Preventive Mechanism' (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights (IMR), which contribute with medical and human rights expertise.
- The Ombudsman has a special responsibility to protect the rights of children under the UN Convention on the Rights of the Child etc.
- The Ombudsman has been appointed to monitor forced deportations of foreign nationals.
- The Ombudsman monitors developments regarding equal treatment of persons with disabilities at the request of Parliament.

Monitoring visits to institutions etc. are physical visits by a visiting team, who speak with users, staff and the management and look at the physical environment.

The monitoring of a forced deportation involves a member of the Ombudsman's staff being present during the whole or part of the deportation. In addition, the Ombudsman's monitoring of forced deportations includes a review of the case files of a number of the deportation cases concluded during the preceding year.

Monitoring visits are carried out by Ombudsman staff, in many cases with participation of external collaborative partners or consultants. Depending on the type of monitoring visit, the Ombudsman collaborates with

- medical doctors from DIGNITY – Danish Institute Against Torture
- human rights experts from the Danish Institute for Human Rights
- Two accessibility consultants, who both have a disability

During monitoring visits, the Ombudsman often makes recommendations to the institutions. Recommendations are typically aimed at improving conditions for users of the institutions and in this connection also at bringing conditions into line with the rules. Recommendations may also be aimed at preventing, for instance, degrading treatment.

In addition, monitoring visits may cause the Ombudsman to open own-initiative investigations of general problems.

Powers

Tools of investigation

Under the Ombudsman Act, the Ombudsman has a set of tools at his disposal when carrying out investigations. Firstly, authorities etc. within the Ombudsman's jurisdiction are required to furnish the Ombudsman with such information and to produce such documents etc. as he

may demand. Secondly, the Ombudsman may demand written statements from authorities etc. within his jurisdiction. Thirdly, the Ombudsman may inspect authorities etc. within his jurisdiction and must be given access to all their premises.

Assessment and reaction

The Ombudsman's assessment of a case is a legal assessment. In connection with monitoring activities, however, the Ombudsman may also include universal human and humanitarian considerations in his assessment. The Ombudsman only considers the legal aspects of cases and not matters which require other specialist knowledge, such as medical matters. Further, the object of the Ombudsman's investigations is the acts or omissions of public authorities, not the acts or omissions of individual public servants.

Under the Ombudsman Act, the Ombudsman may express criticism, make recommendations and otherwise state his views of a case, typically by criticising a decision or recommending that the authority change or review its decision. The authorities are not legally obliged to comply with the Ombudsman's recommendations, but in practice, they follow his recommendations.

The Ombudsman may recommend that a complainant be granted free legal aid in connection with any matter within his jurisdiction.

If the Ombudsman's investigation of a case reveals that the public administration must be presumed to have committed errors or derelictions of major importance, he must notify Parliament's Legal Affairs Committee and the relevant minister or municipal or regional council.

Organisation

Under the Ombudsman Act, the Ombudsman engages and dismisses his own staff. The Ombudsman employed 128 people as at 31 December 2023, about 60 per cent of them law graduates.

The management of the institution consists of the Ombudsman, the Director General, the Deputy Director General and the Administrative Director. A management secretariat and an international section support the management.

The Ombudsman's office has two departments, a legal department and an administrative department, which are further divided into a number of divisions and units, respectively.

The Ombudsman's annual budget is approximately EUR 14 million.

2 General information about monitoring visits under the OPCAT mandate

In 2009 the Danish Parliament passed an amendment to the Ombudsman Act enabling the Ombudsman to act as National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). In the same year, the Ombudsman started carrying out the functions of the NPM.

Is the NPM independent?

The functions of the NPM are carried out as an integral part of the Ombudsman's work. The Ombudsman is independent of the executive power and is appointed by the Danish Parliament. The Ombudsman is independent of Parliament in the discharge of his functions.

Does the NPM have the necessary professional expertise?

The members of the Ombudsman's staff primarily have legal expertise. However, the Ombudsman's special advisor on children's issues participates in monitoring visits to institutions etc. for children. The Danish Institute for Human Rights contributes with human rights expertise, and DIGNITY – Danish Institute Against Torture contributes with medical expertise.

Does the NPM have the necessary financial resources?

The costs of exercising the functions of the NPM are financed via the overall appropriation for the Ombudsman.

Are monitoring visits carried out on a regular basis?

Approximately 30 monitoring visits to institutions for adults and 10 to 12 visits to institutions etc. for children are carried out per year.

What types of institutions are monitored?

The Ombudsman monitors, among others, the following types of institutions where adults may be deprived of their liberty:

State prisons are run by the Prison and Probation Service and receive convicted persons who are to serve a sentence. State prisons may be closed or open. Closed prisons are characterised by a high degree of security and control, whereas inmates in open prisons may be able to work or take part in training or education outside the prison. However, there are also clear limits to inmates' freedom of action in open prisons.

Local prisons are run by the Prison and Probation Service and receive arrestees, remand prisoners and in certain cases convicted persons

who are to serve a sentence. Local prisons are characterised by a high degree of security and control.

Halfway houses are run by the Prison and Probation Service and are used especially for the rehabilitation of convicted persons who are serving the last part of their sentence. Compared to prisons, halfway houses may have a high degree of freedom.

Immigration detention centres are run by the Prison and Probation Service and receive foreign nationals who are to be detained, as a general rule not for a criminal offence but for reasons relating to the Aliens Act.

Departure centres are run by the Prison and Probation Service and receive rejected asylum seekers, persons sentenced to deportation and persons with tolerated residence status. The residents are not under detention and are therefore free to come and go. As a general rule, however, they are required to reside at the centre, including to spend the nights there.

Asylum centres are run by municipalities and the Danish Red Cross and comprise, among others, reception centres, where asylum seekers stay the first weeks after arrival, and residential centres, where they stay while the authorities are considering their application for asylum.

Police detention facilities are used to detain persons who are unable to take care of themselves, for instance due to intoxication.

Police custody reception areas are used for detentions of very short duration without overnight stays of arrestees.

Psychiatric wards are run by the regions and receive psychiatric patients. Wards may be open (with unlocked outer doors), closed (with locked outer doors) or integrated (with outer doors or doors to certain sections being locked according to patients' needs). There are also forensic psychiatric wards, which receive, among others, patients sentenced to placement or treatment in a psychiatric ward.

Social residential facilities are run by regions, municipalities or private parties and receive persons with impaired cognitive or physical functioning. In addition, they receive persons sentenced to placement in a social residential facility. Outer doors are unlocked, except in secure units.

Care homes are run by municipalities or private parties and receive persons with an extensive need for personal care, healthcare and extra support in their daily lives.

The Ombudsman monitors, among others, the following types of institutions etc. where children and young people may be placed:

Open residential institutions are run by municipalities or regions and receive children and young people belonging to the target group for which the institution has been approved. The target group may be defined in terms of age but may also be defined in terms of needs, diagnoses or disabilities.

Partly closed residential institutions and partly closed units of residential institutions are run by municipalities or regions and receive children and young people with criminal behaviour, substance abuse or other behavioural problems. In these institutions and units, residents may be detained by periodic locking of windows and outer doors.

Secure residential institutions and high secure units of residential institutions are run by municipalities or regions and receive children and young people in order to prevent them harming themselves or others or for observation or treatment. These institutions and units may also receive, among others, young people to be remanded in non-prison custody during investigation of their case or convicted young people who are to serve a sentence. Windows and outer doors may be constantly locked, and placements of short duration in a seclusion room are permitted.

Accommodation facilities are run by private parties, such as foundations or enterprises, and receive children and young people belonging to the target group for which the facility has been approved.

Foster families are either general, reinforced, specialised or network foster families. A foster family may foster children and young people belonging to the target group for which it has been approved. Reinforced foster families may foster children and young people with moderate to high support needs, whereas specialised foster families may foster children and young people with high support needs.

24-hour units of child and adolescent psychiatric wards are run by the regions and receive children and young people for examination or treatment of psychiatric disorders.

Asylum centres for unaccompanied underage asylum seekers are run by municipalities and the Danish Red Cross and are residential centres where unaccompanied underage asylum seekers stay while the authorities are considering their application for asylum.

How are monitoring visits carried out?

A monitoring visit is a physical visit. Before or following the visit, the Ombudsman will ask for various information, for instance reports of incidents involving use of force, records of statements taken prior to the sanction of placement in a disciplinary cell being imposed, or information from parents or other relatives. During the visit, the Ombudsman's visiting team will speak with users, staff and the management.

The Ombudsman has designated the following general focus areas for his monitoring visits:

- use of force and other interventions and restrictions
- interpersonal relations
- work, education and leisure time
- health-related issues
- user safety
- sector transfers

The prioritisation of the individual focus areas depends on the institutions etc. visited. During specific monitoring visits, the Ombudsman may also focus on other issues, for instance buildings in a poor state of repair.

In most cases, recommendations are made to the management of the institution already during the monitoring visit.

Following the visit, the visiting team will prepare a memorandum of the visit, and the Ombudsman will subsequently send a concluding letter to the institution and the responsible authorities with his recommendations.

DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights normally take part in preparing, carrying out and following up on the monitoring visits.

Each year, the Ombudsman chooses, together with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights, one or more themes for the year’s monitoring visits to institutions etc. for adults and children, respectively. A large proportion of the monitoring visits carried out during the year are to institutions etc. where one of the themes is relevant. A theme could be, for instance, disciplinary cells or younger children placed in social care.

After the year’s monitoring visits have been carried out, the Ombudsman prepares a separate report on the year’s work in relation to each of the themes for the Ombudsman’s monitoring visits to institutions etc. for adults and children. The reports summarise and present the most important results in relation to the themes. Results may be general recommendations to the responsible authorities, for instance a recommendation to see that institutions draw up policies on prevention of violence and threats among residents. The reports are also used as a starting point for discussions with key authorities about general problems.

Monitoring visits may cause the Ombudsman to open cases on his own initiative, with, among others, the authorities which have the remit for the relevant areas. This may be the case, for instance, with general problems which affect not only the specific institution visited. An example of such a case opened on the Ombudsman’s own initiative was an investigation of whether it was permitted to initiate various types of interventions in relation to psychiatric patients without statutory authority.

Does the Ombudsman submit proposals and observations regarding existing legislation or drafts for legislation?

The Ombudsman monitors that the authorities observe the conventions within the framework of Danish legislation.

The more politico-legal and advisory tasks in relation to the legislature are carried out by other bodies, such as the Ombudsman’s collaborative partners in the discharge of his functions as NPM (i.e. the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture). According to an established practice, the Ombudsman does not submit consultation responses on bills, with the exception of bills affecting matters which relate to the Ombudsman’s office itself.

The Ombudsman may notify the responsible minister and Parliament if a statute or the state of the law in a specific area is not consistent with Denmark’s international obligations and a legislative change may therefore be required.

