Administration Research California

Institute of Governmental Studies
University of California, Berkeley

THE FIRST YEAR OF THE NORWEGIAN OMBUDSMAN*

By

Andreas Schei
Parliamentary Ombudsman, Norway
Formerly Supreme Court Justice

This article appeared in Nordisk Administrativt Tidsskrift 45(2): 134-42, 1964. It is based on a lecture given at the annual meeting of the Norwegian branch of the Nordic Association of Public Administration, February 24, 1964. The translation was prepared by Joan M. Torgersen.

Administrative law California

The establishment of the Ombudsman in Norway was not motivated by any lack of confidence in our administration. On the contrary, all those involved in its preparation have stated explicitly that we already had a good, effective administration. Our primary concern was with the legal rights of the individual, and the office of Ombudsman was established to help protect those rights. The main argument for the Ombudsman was that the activities of public administration had become so comprehensive and the power of the bureaucracy so great that the legal status of the individual needed additional protection. To a considerable extent, the legal rights of the individual vis-à-vis the administration had developed under quite different social conditions than those we have today.

The office of the Ombudsman opened January 1, 1963 and has been in operation well over one year. In 1963 a total of about 1,275 cases were registered. Of these cases, 1,257 came in as complaints while 18 were taken up on our own initiative. Actually the total number of complaints is somewhat

---

* The Swedish spelling of "Ombudsman" is employed here in place of the Norwegian "Ombudsmann," because the former has been accepted as conventional English usage.

(Note: The Institute of Governmental Studies, University of California, Berkeley, had this article translated and reproduced as a public service, because of widespread interest in Ombudsman-like institutions. Individual copies are available on request until the supply is exhausted.)

higher because often basically the same complaint could be traced to unrelated conditions and occasionally had been directed to more than one authority. In such situations the several complaints have been registered as <u>one</u> case and categorized by the principal complaint.

More than 1,250 complaints in one year appears disproportionately large, when compared with the figures for Denmark and Sweden. During the Ombudsman's first 12 months of operation in Denmark, 767 cases were registered--500 fewer than here. This is partly because the Ombudsman was introduced in Denmark in 1955; in the succeeding eight years the scope of activity of the administration has expanded considerably--and not least in the area of social services.

But this is only a part of the explanation. During the last few years the Office in Denmark has registered between 1,000 and 1,100 complaints yearly, that is to say, not much lower than the figures here. In Sweden last year the total came to 1,200 complaints--not quite as many as here.

One could have expected a larger number of cases in Denmark and Sweden than here in Norway because of the larger population and areas of jurisdiction involved. As for myself, I can only think that the number of complaints is disproportionately large because this institution is new here and that in due time the total will stabilize at a more moderate level.

Of the 1,250 complaints registered in 1963, about 400 were actually dealt with, while over 800 were rejected on formal grounds or were postponed without any need to obtain statements from the administrative bodies. The greater part of the rejected cases concerned problems outside the Ombudsman's area of jurisdiction; they were concerned with court decisions, cases which the Cabinet or Storting [Parliament] had dealt with, municipal decisions, or private legal rights. Also, a rather large proportion of the cases either were out of date or could get a hearing from higher administrative authorities. Almost 100 cases were rejected because they were clearly groundless.

The approximately 400 complaints remaining, wherein the real matter of the case was given close consideration, are relatively evenly distributed among the administrative branches and are also geographically quite representative of the country. The two largest groups of complaints related to work-pay conditions and social security. The other major categories included complaints about decisions on transport laws and on land and farming laws,

complaints concerning the assessment of fees, complaints from inmates in prisons and detention institutions, complaints that reports to the police were not acted upon, and complaints that requests for legal counseling were refused. Of the cases actually dealt with, most have been directed against the content of the decisions made by the administrative body, but in some, the attack was directed against the procedure employed. Most often the complainant objected to the length of time taken to reach a decision. In only two cases have there been complaints against the administrator's behavior or comments.

Of the cases actually dealt with in 1963, this office has taken a stand on about 300, while the remaining 100 are awaiting a statement from either the administration or from the complainant, or are in the final phases of deliberation in this office.

In about 250 cases the investigation of the complaint has neither led to any alteration in the decisions nor given any grounds for criticism or comment. In nearly 50 cases the complaint has caused decisions to be revised either entirely or on some specific points. In about 40 of the cases the responsible administrative body revised its decisions during the period when the complaints were under consideration. This occurred either because additional information was obtained, or because the administration, after having reconsidered the matter, came to a different conclusion. There have been grounds for criticism in more than 20 cases.

In cases where important new facts have been uncovered, or where the decisions were questionable, I have attempted to emphasize the new information now available, or to inquire about the questionable decisions, and have asked the appropriate administrative body whether there might be grounds to reexamine the case. I think this procedure is to the interest both of the complainant and the administration.

There have, of course, been some cases of plain cantankerousness, with consequent inconvenience, but these do not present any problem to speak of. In addition to the Ombudsman, the office personnel consists of four lawyers and three clerical assistants. Whether this staff will be adequate depends on the future work load.

The Question of Jurisdiction

The jurisdiction of the Ombudsman is not yet definitely established. The Instructions are tentative, as it is assumed that they will be scrutinized more closely after some experience has accumulated, giving a better idea of how the office works in practice. In particular, two conditions have been pointed out which will lend themselves to closer examination at the appropriate time. The first is the activity of the Ombudsman vis-à-vis municipalities, and the other is its jurisdiction with respect to the Storting. Besides, the final decisions remain to be made on the extent to which the Ombudsman is to supervise military administration.

In my opinion it is not yet time to reconsider the stipulations--in any case not the question of whether jurisdiction should include municipalities. It is desirable to gain more experience than has been possible this first year. And it is important to see whether the large inflow of complaints continues or decreases. Considering that this office is built on the premise that the Ombudsman shall personally take a position on all cases, the quantity of work sets a limit to the area of jurisdiction.

The precise area of jurisdiction vis-à-vis the Storting raises some doubts on certain points. It was decided in paragraph 6 of the Instructions that if there are complaints about a matter considered earlier by the Storting, Odelsting [lower house] or the Protocol Committee, the Ombudsman cannot look into the complaint. In a couple of cases there have been complaints about matters previously taken up in the Storting's question hour. In these cases the appropriate Storting representative and cabinet member had spoken. The problem then was, whether the question could be said to have been considered by the Storting.

In the documents relating to the various stages of the establishment of the Office of the Ombudsman, there is nothing which can give any particular guidance. This is a complicated question, but my stand has been that if a matter has been taken up in interpellation or in the form of a shorter question which is answered, it must be considered to have been acted upon by the Storting according to the meaning of the Instructions. They are thus acted upon in what may be considered the normal order of business of the Storting. The relevant clause in the Instruction does not differentiate between various

forms of action. It is evident that interpellation and...[other parliamentary] questioning are a link in the constitutional control which the Storting has over the activity of the Cabinet, because these procedures enable the Storting to acquire information which can build the groundwork for evaluating the question of responsibility. It was also of utmost importance that any doubt about jurisdiction should be resolved so that the jurisdiction of the Storting clearly would not be infringed upon. Just the same, I think there are grounds for considering whether it would be better to draw the line differently and only consider a case acted upon by the Storting when, in one form or another, that body has taken a stand on the case. But first that ought to be made completely clear in the Instructions.

According to the stipulations on jurisdiction, the Ombudsman cannot examine decisions made by the Cabinet. According to the law, the decisions themselves are excluded, but not the preparatory work on these matters in the departments. There have been complaints about the manner in which the departments prepared the cases dealt with in the Cabinet. In one case it was complained that the announcement of an opening for a high public office was inadequate. The complainant specified that he was not troubled by the appointment in itself; he knew that in such a case he had to direct his complaint to the Protocol Committee. Rather he complained that the announcement failed to mention that the appointee could count on a side-job which carried a high salary and interesting responsibilities. If that had been mentioned, a great many more would have applied, including the complainant. And with several other applicants, a different appointment seemed quite possible.

Another case dealt with state-owned property which the Storting agreed to sell to a municipality. The complainant felt that he ought to have been allowed to buy that property and pointed out that the Storting Proposal did not mention that he had made a series of well-grounded applications to the department requesting permission to buy the land. If the department had included his request in the Bill, the case would have been decided differently, he argued.

In both of these situations the complainants felt that a mistake had been made during the preparatory handling of the case and that these errors had affected the outcome. My position in the cases was that when the decisions

themselves lay outside the jurisdiction of the Ombudsman, it was not reasonable that he should consider whether an error--of such nature that it affected the conclusion--had occurred in the preliminary consideration of the case. The authority having control of the decision should also judge complaints that the decision is based on false or inadequate information. In my view, a complaint about the preparation of a case should be directed to the Ombudsman only in situations where the error in handling the case cannot only be said to have influenced the decision but is in itself of importance regardless of the decision reached.

Relation to the Administration

1. Cooperation with the administration. It is an unavoidable fact that the establishment of the Ombudsman imposes a large workload on the administration. That is something which necessarily results from the institution itself. All complaints taken up for actual consideration must be put before the appropriate administrative body.

Cases rejected because they lie outside the Ombudsman's jurisdiction, or are out of date, or can be reviewed by a higher administrative body, are dismissed without further action. Otherwise the basis for dismissing a complaint which lies within our jurisdiction is that there are no grounds for the complaint. If it is impossible to determine whether a complaint can be placed in one of these categories, it will ordinarily be put before the appropriate administrative body.

In many instances it is a matter of judgment whether one can say immediately that a complaint is obviously groundless. This is especially true when one must make a rough estimate of what the complaint is concerned with. At the beginning it was reasonable to be a little careful in rejecting cases in such situations. It was necessary to examine some such cases, both in order to get an overview of the general workings of the administration in various areas, and also to draw general lines of practice. As we acquire more experience, our practice will be tightened so that complaints about decisions involving judgment on the part of the administrator will no longer be submitted to the administration to the same extent as earlier.

Today complaints of this type are usually rejected if it is not demonstrated that an error has occurred in the handling of the case or that special

conditions exist which otherwise give grounds for sending the case to the administration. Very often the presentation of the complaint is very imprecise as the complainant's ability to present his ideas in writing is often inadequate to the task; therefore it is impossible to further clarify the complaint by returning it to the complainant. Rather we borrow documents from the department without first asking for a statement on the complaint; often this is quite adequate. Occasionally a point or two may come up which are factually unclear. In that case the practice is to permit the man handling the complaint to confer directly with the man who handled the case in the appropriate administrative body. Usually one telephone call is enough.

From my experience, I would like to say that the administration has cooperated very positively during the entire period--their reports and statements have been useful and objective. I also have the impression that the administration considers it very important not to permit considerations of prestige to stand in the way when there appear to be grounds for reconsidering a decision.

2. Administrative recourse. According to paragraph 5 of the Instructions, the Ombudsman shall not examine complaints which can be reviewed by a higher administrative body unless there is some exceptional reason for doing so. This stipulation is very closely followed. It has been shown in many cases that the decision will be revised by the higher authority--usually because new information is available which sheds additional light on the case. Therefore it is important that the regular administrative channels for complaints be fully utilized.

Generally an exception has been made in only two types of cases. This is done most often when it is obvious that the complaint will not lead to anything. Thus it would be futile to refer the complainant to a higher administrative authority. In such cases the complainant is informed that the decision cannot be criticized, but at the same time he is made aware of the administrative channel available if he wishes to appeal. The other exception is made when the case must be decided quickly; then it is acted upon by this office. But if our decision goes against the complainant, he is informed of the administrative channel for complaint that is open to him.

3. The time used in acting on a case. A frequent complaint is that too much time elapses before the administration reaches a conclusion in a case,

conditions exi[illegible] which otherwise give grounds for suit [illegible] the case to the [illegible] the complaint is very im- [illegible]

[illegible]

2. Admission [illegible] procedure [illegible] can be resolved by [illegible] admin[illegible] for [illegible] cases that [illegible] is very [illegible] The [illegible] light on the case. Therefore [illegible] it is of [illegible] the complaint will not lead to anything [illegible] administrat[illegible] the complaint [illegible] the [illegible] the [illegible] case must be decided [illegible] is set upon [illegible] the [illegible] complaint [illegible] him [illegible] upon by this office.

5. The [illegible] in acting on a case. [illegible] complaint [illegible] the [illegible] case,

3. The time limit [illegible] on a case [illegible] complaint [illegible] the [illegible] places [illegible] the case.

and sometimes such complaints are justified. This often happens in areas where the administration has been given extensive new duties, and may not have been able to keep up with the added work due to unrealistic notions as to its scope and complexity.

It is my considered opinion that administrative cases can be acted upon with reasonable speed. It is important, and a part of one's legal rights, that a person who addresses himself to an administrative body should not have to wait a long time before a decision is reached and he obtains what is rightfully his. Also, for the reputation of the administration itself, it is important that the period in which a case is pending not be unreasonably long.

I think it would be quite advantageous in protracted cases for the administration to send the person a short note informing him that his case has been received, but that because of certain conditions it will take some time to reach a conclusion.

4. Lack of grounds. Another point which has come out in quite a number of cases is that the administration has not always stated reasons for its decision. The general practice of the administration is quite varied here. Some administrative bodies give reasons; others do not give any or give very inadequate ones. Generally people react quite strongly when they receive a negative answer without grounds for the decision. Of course in many cases, especially those in which evaluations of individuals play a role, it is not always possible to divulge the grounds for the decision. But in the large majority of cases this is not the relevant factor in withholding the grounds. I think it would be to the advantage of the administration to give the grounds for their decisions in a greater number of cases. Much misunderstanding could thus be avoided. And it should not be forgotten that when one must find reasons to justify his decision, he is then better able to see how well-founded the decision is. Therefore the requirement of grounds for a decision is also of utmost importance from the viewpoint of legal justice.

5. The duty of the administrative body to make investigations. I would also like to mention a condition about which I learned after working with complaint cases. I am not sure if the administration is always fully aware that they have the duty to make independent examinations in administrative cases.

This applies also in cases which private parties initiate for some purpose or other. In such cases the party himself usually presents all the information he considers relevant to the case, as he usually has easiest access to the relevant information. But if the administration has become aware that something is lacking or unclear, it has the duty of investigating the problem itself or informing the interested party about the situation. Usually though, it will be reasonable to expect that the party himself acquire the missing information.

6. Differences in treatment. A point which often comes up in cases involving judgment is the complaint that the decision was not fair. The complainant often points to concrete incidents which he believes to be analogous but which were decided in another way. In most such incidents closer investigation showed that the cases varied on important points so that the cases could not be considered the same. But there have also been instances wherein identical cases were decided differently. In one case this was due to a plain error on the part of the authorities in the prior case to which the complainant referred. Obviously the complainant could not demand that, because the administration had made one error, the same error should be repeated in his case. The position here must be that if there first exists a definite practice, the administration cannot, without justification, break the precedent in an individual case. Only when this occurs does a legitimate difference in treatment exist to which the complainant need not be exposed. The administration may, of course, change its rules and decide on a new practice. But then it must be a change in general policy and not just a deviation from the regular line of practice for one or a few cases.

7. Internal working documents. In conclusion I would like to mention a question which was the subject of a great deal of discussion when the establishment of the Ombudsman was under consideration--namely whether the administration should be duty-bound to relinquish its internal working documents for use by the Ombudsman.

This question is not touched upon in the Statute or Instructions. In the Storting it was commented that, in actual practice, problems would not arise in this connection, and that the matter would be straightened out satisfactorily in the operational stages. Administrative practice has varied--

some bodies allow drafts and other internal documents to accompany the other documents when they are loaned to the Ombudsman; others do not. In most instances this problem is not very important, but cases may come up where the notes and comments in the drafts would definitely be of interest. This could be particularly true in cases where the complainant maintains that a biased decision has been made, or that the decision was based on irrelevant factors. In such cases, the reasoning contained in the internal working documents would be the best proof.

I do not think there are grounds for bringing this question of internal working documents to a head now. In my opinion the best thing is to wait and see how the situation develops. Personally I think--as did the Storting Committee--that the problem will work itself out well in practice. I would like to emphasize that the Ombudsman is bound by a pledge of secrecy and does not pass on the contents of the working documents to the interested parties.

Institute of Governmental Studies
University of California, Berkeley

THE FIRST YEAR OF THE NORWEGIAN OMBUDSMAN*

By

Andreas Schei
Parliamentary Ombudsman, Norway
Formerly Supreme Court Justice

This article appeared in Nordisk Administrativt Tidsskrift 45(2): 134-42, 1964. It is based on a lecture given at the annual meeting of the Norwegian branch of the Nordic Association of Public Administration, February 24, 1964. The translation was prepared by Joan M. Torgersen.

The establishment of the Ombudsman in Norway was not motivated by any lack of confidence in our administration. On the contrary, all those involved in its preparation have stated explicitly that we already had a good, effective administration. Our primary concern was with the legal rights of the individual, and the office of Ombudsman was established to help protect those rights. The main argument for the Ombudsman was that the activities of public administration had become so comprehensive and the power of the bureaucracy so great that the legal status of the individual needed additional protection. To a considerable extent, the legal rights of the individual vis-à-vis the administration had developed under quite different social conditions than those we have today.

The office of the Ombudsman opened January 1, 1963 and has been in operation well over one year. In 1963 a total of about 1,275 cases were registered. Of these cases, 1,257 came in as complaints while 18 were taken up on our own initiative. Actually the total number of complaints is somewhat

---

* The Swedish spelling of "Ombudsman" is employed here in place of the Norwegian "Ombudsmann," because the former has been accepted as conventional English usage.

(Note: The Institute of Governmental Studies, University of California, Berkeley, had this article translated and reproduced as a public service, because of widespread interest in Ombudsman-like institutions. Individual copies are available on request until the supply is exhausted.)

higher because often basically the same complaint could be traced to unrelated conditions and occasionally had been directed to more than one authority. In such situations the several complaints have been registered as one case and categorized by the principal complaint.

More than 1,250 complaints in one year appears disproportionately large, when compared with the figures for Denmark and Sweden. During the Ombudsman's first 12 months of operation in Denmark, 767 cases were registered--500 fewer than here. This is partly because the Ombudsman was introduced in Denmark in 1955; in the succeeding eight years the scope of activity of the administration has expanded considerably--and not least in the area of social services.

But this is only a part of the explanation. During the last few years the Office in Denmark has registered between 1,000 and 1,100 complaints yearly, that is to say, not much lower than the figures here. In Sweden last year the total came to 1,200 complaints--not quite as many as here.

One could have expected a larger number of cases in Denmark and Sweden than here in Norway because of the larger population and areas of jurisdiction involved. As for myself, I can only think that the number of complaints is disproportionately large because this institution is new here and that in due time the total will stabilize at a more moderate level.

Of the 1,250 complaints registered in 1963, about 400 were actually dealt with, while over 800 were rejected on formal grounds or were postponed without any need to obtain statements from the administrative bodies. The greater part of the rejected cases concerned problems outside the Ombudsman's area of jurisdiction; they were concerned with court decisions, cases which the Cabinet or Storting [Parliament] had dealt with, municipal decisions, or private legal rights. Also, a rather large proportion of the cases either were out of date or could get a hearing from higher administrative authorities. Almost 100 cases were rejected because they were clearly groundless.

The approximately 400 complaints remaining, wherein the real matter of the case was given close consideration, are relatively evenly distributed among the administrative branches and are also geographically quite representative of the country. The two largest groups of complaints related to work-pay conditions and social security. The other major categories included complaints about decisions on transport laws and on land and farming laws, In [illegible] cases of [illegible] the same [illegible] and occasionally [illegible] been directed [illegible] principal [illegible] complaints have been registered as one case [illegible] than one [illegible] complaint.

[illegible] in one year [illegible]

[illegible] more than 40 [illegible] proportionally large. [illegible] Denmark [illegible] Sweden. During the Ombudsman's first [illegible] 767 cases [illegible] the activity of the administration [illegible] social [illegible]

[illegible] in [illegible] activities. [illegible] the last few years [illegible] In Sweden [illegible] between 1,000 [illegible] 1,100 complaints yearly. [illegible] figures [illegible] In Sweden last year the [illegible] larger number of cases [illegible] Denmark and Sweden. [illegible] think that the number of complaints [illegible] larger population [illegible] area of jurisdiction [illegible] think that [illegible] number of complaints [illegible] more [illegible] and that is due [illegible] in 1963, about 400 were actually dealt [illegible]

[illegible] on formal grounds [illegible] the administrative [illegible] the greater [illegible] without [illegible] court decisions [illegible] problems within [illegible] municipal decisions [illegible] court decisions [illegible] the Cabinet [illegible] administrative [illegible] of the cases [illegible] clearly groundless. [illegible] complaints [illegible] the real number of [illegible]

[illegible] close consideration, are [illegible] directly [illegible] and are also [illegible] the country. The [illegible] largest groups of complaints [illegible] quite representative [illegible] transport laws and [illegible] and local [illegible] decisions [illegible] complaints concerning the assessment of fees, complaints from inmates in prisons and detention institutions, complaints that reports to the police were not acted upon, and complaints that requests for legal counseling were refused. Of the cases actually dealt with, most have been directed against the content of the decisions made by the administrative body, but in some, the attack was directed against the procedure employed. Most often the complainant objected to the length of time taken to reach a decision. In only two cases have there been complaints against the administrator's behavior or comments.

Of the cases actually dealt with in 1963, this office has taken a stand on about 300, while the remaining 100 are awaiting a statement from either the administration or from the complainant, or are in the final phases of deliberation in this office.

In about 250 cases the investigation of the complaint has neither led to any alteration in the decisions nor given any grounds for criticism or comment. In nearly 50 cases the complaint has caused decisions to be revised either entirely or on some specific points. In about 40 of the cases the responsible administrative body revised its decisions during the period when the complaints were under consideration. This occurred either because additional information was obtained, or because the administration, after having reconsidered the matter, came to a different conclusion. There have been grounds for criticism in more than 20 cases.

In cases where important new facts have been uncovered, or where the decisions were questionable, I have attempted to emphasize the new information now available, or to inquire about the questionable decisions, and have asked the appropriate administrative body whether there might be grounds to reexamine the case. I think this procedure is to the interest both of the complainant and the administration.

There have, of course, been some cases of plain cantankerousness, with consequent inconvenience, but these do not present any problem to speak of. In addition to the Ombudsman, the office personnel consists of four lawyers and three clerical assistants. Whether this staff will be adequate depends on the future work load.

The Question of Jurisdiction

The jurisdiction of the Ombudsman is not yet definitely established. The Instructions are tentative, as it is assumed that they will be scrutinized more closely after some experience has accumulated, giving a better idea of how the office works in practice. In particular, two conditions have been pointed out which will lend themselves to closer examination at the appropriate time. The first is the activity of the Ombudsman vis-à-vis municipalities, and the other is its jurisdiction with respect to the Storting. Besides, the final decisions remain to be made on the extent to which the Ombudsman is to supervise military administration.

In my opinion it is not yet time to reconsider the stipulations--in any case not the question of whether jurisdiction should include municipalities. It is desirable to gain more experience than has been possible this first year. And it is important to see whether the large inflow of complaints continues or decreases. Considering that this office is built on the premise that the Ombudsman shall personally take a position on all cases, the quantity of work sets a limit to the area of jurisdiction.

The precise area of jurisdiction vis-à-vis the Storting raises some doubts on certain points. It was decided in paragraph 6 of the Instructions that if there are complaints about a matter considered earlier by the Storting, Odelsting [lower house] or the Protocol Committee, the Ombudsman cannot look into the complaint. In a couple of cases there have been complaints about matters previously taken up in the Storting's question hour. In these cases the appropriate Storting representative and cabinet member had spoken. The problem then was, whether the question could be said to have been considered by the Storting.

In the documents relating to the various stages of the establishment of the Office of the Ombudsman, there is nothing which can give any particular guidance. This is a complicated question, but my stand has been that if a matter has been taken up in interpellation or in the form of a shorter question which is answered, it must be considered to have been acted upon by the Storting according to the meaning of the Instructions. They are thus acted upon in what may be considered the normal order of business of the Storting. The relevant clause in the Instruction does not differentiate between various

forms of action. It is evident that interpellation and...[other parliamentary] questioning are a link in the constitutional control which the Storting has over the activity of the Cabinet, because these procedures enable the Storting to acquire information which can build the groundwork for evaluating the question of responsibility. It was also of utmost importance that any doubt about jurisdiction should be resolved so that the jurisdiction of the Storting clearly would not be infringed upon. Just the same, I think there are grounds for considering whether it would be better to draw the line differently and only consider a case acted upon by the Storting when, in one form or another, that body has taken a stand on the case. But first that ought to be made completely clear in the Instructions.

According to the stipulations on jurisdiction, the Ombudsman cannot examine decisions made by the Cabinet. According to the law, the decisions themselves are excluded, but not the preparatory work on these matters in the departments. There have been complaints about the manner in which the departments prepared the cases dealt with in the Cabinet. In one case it was complained that the announcement of an opening for a high public office was inadequate. The complainant specified that he was not troubled by the appointment in itself; he knew that in such a case he had to direct his complaint to the Protocol Committee. Rather he complained that the announcement failed to mention that the appointee could count on a side-job which carried a high salary and interesting responsibilities. If that had been mentioned, a great many more would have applied, including the complainant. And with several other applicants, a different appointment seemed quite possible.

Another case dealt with state-owned property which the Storting agreed to sell to a municipality. The complainant felt that he ought to have been allowed to buy that property and pointed out that the Storting Proposal did not mention that he had made a series of well-grounded applications to the department requesting permission to buy the land. If the department had included his request in the Bill, the case would have been decided differently, he argued.

In both of these situations the complainants felt that a mistake had been made during the preparatory handling of the case and that these errors had affected the outcome. My position in the cases was that when the decisions

themselves lay outside the jurisdiction of the Ombudsman, it was not reasonable that he should consider whether an error--of such nature that it affected the conclusion--had occurred in the preliminary consideration of the case. The authority having control of the decision should also judge complaints that the decision is based on false or inadequate information. In my view, a complaint about the preparation of a case should be directed to the Ombudsman only in situations where the error in handling the case cannot only be said to have influenced the decision but is in itself of importance regardless of the decision reached.

Relation to the Administration

1. Cooperation with the administration. It is an unavoidable fact that the establishment of the Ombudsman imposes a large workload on the administration. That is something which necessarily results from the institution itself. All complaints taken up for actual consideration must be put before the appropriate administrative body.

Cases rejected because they lie outside the Ombudsman's jurisdiction, or are out of date, or can be reviewed by a higher administrative body, are dismissed without further action. Otherwise the basis for dismissing a complaint which lies within our jurisdiction is that there are no grounds for the complaint. If it is impossible to determine whether a complaint can be placed in one of these categories, it will ordinarily be put before the appropriate administrative body.

In many instances it is a matter of judgment whether one can say immediately that a complaint is obviously groundless. This is especially true when one must make a rough estimate of what the complaint is concerned with. At the beginning it was reasonable to be a little careful in rejecting cases in such situations. It was necessary to examine some such cases, both in order to get an overview of the general workings of the administration in various areas, and also to draw general lines of practice. As we acquire more experience, our practice will be tightened so that complaints about decisions involving judgment on the part of the administrator will no longer be submitted to the administration to the same extent as earlier.

Today complaints of this type are usually rejected if it is not demonstrated that an error has occurred in the handling of the case or that special themselves lay outside [illegible]

[illegible] the case [illegible] of importance [illegible]

Relation to the Administrative [illegible]

[illegible] the [illegible] results [illegible] itself [illegible] taken up [illegible] considered [illegible]

[illegible] basis for [illegible] has [illegible] this [illegible] of those categories [illegible] be put [illegible] the appropriate administrative body.

In many instances [illegible] mediately that a complaint is [illegible] This is [illegible] when one must take [illegible] complaint is [illegible] Although [illegible] in [illegible] In such [illegible] order to [illegible] various aspects [illegible] to draw [illegible] cases. [illegible] complaints. [illegible] a [illegible] with [illegible] the [illegible] conditions exist which otherwise give grounds for sending the case to the administration. Very often the presentation of the complaint is very imprecise as the complainant's ability to present his ideas in writing is often inadequate to the task; therefore it is impossible to further clarify the complaint by returning it to the complainant. Rather we borrow documents from the department without first asking for a statement on the complaint; often this is quite adequate. Occasionally a point or two may come up which are factually unclear. In that case the practice is to permit the man handling the complaint to confer directly with the man who handled the case in the appropriate administrative body. Usually one telephone call is enough.

From my experience, I would like to say that the administration has cooperated very positively during the entire period--their reports and statements have been useful and objective. I also have the impression that the administration considers it very important not to permit considerations of prestige to stand in the way when there appear to be grounds for reconsidering a decision.

2. Administrative recourse. According to paragraph 5 of the Instructions, the Ombudsman shall not examine complaints which can be reviewed by a higher administrative body unless there is some exceptional reason for doing so. This stipulation is very closely followed. It has been shown in many cases that the decision will be revised by the higher authority--usually because new information is available which sheds additional light on the case. Therefore it is important that the regular administrative channels for complaints be fully utilized.

Generally an exception has been made in only two types of cases. This is done most often when it is obvious that the complaint will not lead to anything. Thus it would be futile to refer the complainant to a higher administrative authority. In such cases the complainant is informed that the decision cannot be criticized, but at the same time he is made aware of the administrative channel available if he wishes to appeal. The other exception is made when the case must be decided quickly; then it is acted upon by this office. But if our decision goes against the complainant, he is informed of the administrative channel for complaint that is open to him.

3. The time used in acting on a case. A frequent complaint is that too much time elapses before the administration reaches a conclusion in a case,

and sometimes such complaints are justified. This often happens in areas where the administration has been given extensive new duties, and may not have been able to keep up with the added work due to unrealistic notions as to its scope and complexity.

It is my considered opinion that administrative cases can be acted upon with reasonable speed. It is important, and a part of one's legal rights, that a person who addresses himself to an administrative body should not have to wait a long time before a decision is reached and he obtains what is rightfully his. Also, for the reputation of the administration itself, it is important that the period in which a case is pending not be unreasonably long.

I think it would be quite advantageous in protracted cases for the administration to send the person a short note informing him that his case has been received, but that because of certain conditions it will take some time to reach a conclusion.

4. Lack of grounds. Another point which has come out in quite a number of cases is that the administration has not always stated reasons for its decision. The general practice of the administration is quite varied here. Some administrative bodies give reasons; others do not give any or give very inadequate ones. Generally people react quite strongly when they receive a negative answer without grounds for the decision. Of course in many cases, especially those in which evaluations of individuals play a role, it is not always possible to divulge the grounds for the decision. But in the large majority of cases this is not the relevant factor in withholding the grounds. I think it would be to the advantage of the administration to give the grounds for their decisions in a greater number of cases. Much misunderstanding could thus be avoided. And it should not be forgotten that when one must find reasons to justify his decision, he is then better able to see how well-founded the decision is. Therefore the requirement of grounds for a decision is also of utmost importance from the viewpoint of legal justice.

5. The duty of the administrative body to make investigations. I would also like to mention a condition about which I learned after working with complaint cases. I am not sure if the administration is always fully aware that they have the duty to make independent examinations in administrative cases.

This applies also in cases which private parties initiate for some purpose or other. In such cases the party himself usually presents all the information he considers relevant to the case, as he usually has easiest access to the relevant information. But if the administration has become aware that something is lacking or unclear, it has the duty of investigating the problem itself or informing the interested party about the situation. Usually though, it will be reasonable to expect that the party himself acquire the missing information.

6. Differences in treatment. A point which often comes up in cases involving judgment is the complaint that the decision was not fair. The complainant often points to concrete incidents which he believes to be analogous but which were decided in another way. In most such incidents closer investigation showed that the cases varied on important points so that the cases could not be considered the same. But there have also been instances wherein identical cases were decided differently. In one case this was due to a plain error on the part of the authorities in the prior case to which the complainant referred. Obviously the complainant could not demand that, because the administration had made one error, the same error should be repeated in his case. The position here must be that if there first exists a definite practice, the administration cannot, without justification, break the precedent in an individual case. Only when this occurs does a legitimate difference in treatment exist to which the complainant need not be exposed. The administration may, of course, change its rules and decide on a new practice. But then it must be a change in general policy and not just a deviation from the regular line of practice for one or a few cases.

7. Internal working documents. In conclusion I would like to mention a question which was the subject of a great deal of discussion when the establishment of the Ombudsman was under consideration--namely whether the administration should be duty-bound to relinquish its internal working documents for use by the Ombudsman.

This question is not touched upon in the Statute or Instructions. In the Storting it was commented that, in actual practice, problems would not arise in this connection, and that the matter would be straightened out satisfactorily in the operational stages. Administrative practice has varied--

some bodies allow drafts and other internal documents to accompany the other documents when they are loaned to the Ombudsman; others do not. In most instances this problem is not very important, but cases may come up where the notes and comments in the drafts would definitely be of interest. This could be particularly true in cases where the complainant maintains that a biased decision has been made, or that the decision was based on irrelevant factors. In such cases, the reasoning contained in the internal working documents would be the best proof.

I do not think there are grounds for bringing this question of internal working documents to a head now. In my opinion the best thing is to wait and see how the situation develops. Personally I think--as did the Storting Committee--that the problem will work itself out well in practice. I would like to emphasize that the Ombudsman is bound by a pledge of secrecy and does not pass on the contents of the working documents to the interested parties.