THE DANISH OMBUDSMAN

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Unlike the Swedish Ombudsman, the Danish office of Parliamentary Commissioner is of very recent origin. In 1953, as a part of a general constitutional revision, the Danish Constitution was amended to include a section reading: "Legal provision shall be made for the appointment by Parliament of one or two persons who shall not be members of Parliament to supervise the civil and military administration of the State." [1]

On June 11, 1954, the King gave his assent to the Parliamentary Ombudsman Act,[2] and on March 29, 1955, Parliament appointed Stephan Hurwitz, an eminent professor of criminal law, as its first Ombudsman. Professor Hurwitz has continued in the position since its creation.

While the Danish institution lacks the antiquity of its Swedish or even its Finnish counterpart, it has received much more attention in the English-speaking world than did its predecessors.[3] One writer has suggested that since Denmark, like the common-law democracies, but unlike Sweden, had no tradition of free inspection of the public records, the Danish experience might be more instructive to persons concerned with the development of legal institutions in England and America.[4]

In the slightly more than six years since the Danish Ombudsman took office, he has published five annual reports. Thus there is now material for a tentative evaluation of the Ombudsman's work in a modern parliamentary democracy where there is no tradition whatever of that special form of control of the executive, and where, in contrast to the Swedish situation, the institution has been engrafted onto an extant constitution during an unrevolutionary era.

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1 DEN. CONST. § 55

2 Act No. 203 of June 11, 1954, Om Folketingets Ombudsmand [hereinafter cited as Ombudsman Act]. The full text of this act, as amended by Act No. 205 of June 11, 1959 and Act No. 91 of March 16, 1960, appears in Hurwitz, *Denmark's Ombudsmand: The Parliamentary Commissioner for Civil and Military Government Administration*, 1961 WIS. L. REV. 169, app. A at 194.

3 Davis, *Ombudsmen in America: Officers To Criticize Administrative Action*, 109 U. PA. L. REV. 1057, 1058 nn. 4-6 (1961); see Abraham, *A People's Watchdog Against Abuse of Power*, 20 PUB. ADMIN. REV. 152 (1960).

4 See Blom-Cooper, *An Ombudsman in Britain?*, 1960 PUB. L. 145, 147-48.

BACKGROUND

The debates preceding the creation of the office of Ombudsman in Denmark show that the new office was designed to pursue two objectives in particular.

First, the Ombudsman was to act on behalf of Parliament in relation to the administrative agencies, strengthening the control traditionally exercised by the supreme elective body and its individual members over the ministers and their officials. Such strengthening was considered necessary because of the growing power and increasing complexity of the administrative process. Apparently the Ombudsman was expected to perform this function through two kinds of activity: he was to oversee the exercise of the wide quasi-legislative powers which had been delegated to the Danish government services during the preceding generation and to propose amendments to existing legislation in order to promote law and order and to improve the civil service.

Second, the Ombudsman was to be a safeguard of law and order for the individual, a sort of appellate institution for citizens who come into conflict with the administrative agencies. In the words of the parliamentary spokesman of the Labor Party, the Ombudsman was meant to be "the protector of the man in the street against injustices, against arbitrariness, and against the abuse of power" [5] on the part of the executive.

The second objective was stressed as the more important even before 1955, and the actual functioning of the office since its creation has followed this emphasis. In fact, the role of the Ombudsman in controlling the exercise of delegated legislative power by administrative agencies has been of relatively secondary importance. For, although the Ombudsman has frequently proposed amendments to existing legislation, these proposals have usually resulted from his activities as the protector of individual rights. On the other hand, the activity of the Ombudsman has become an important supplement to the existing remedies by which citizens can assert their individual interests against the administration.

Since the office of Ombudsman is essentially a supplement to and an extension of already existing agencies of appeal, it goes without saying that it has been necessary to adjust the activities of the institution to these existing facilities. Thus a general idea of the other means by which citizens may vindicate their rights and interests under

[5] Folketingstidende 1953/54, sp. 5294.

Danish administrative law is required in order to understand both the inadequacies which led to the introduction of the Ombudsman and the scope of the Ombudsman's functions and authority.

Alternative Sources of Relief

Before undertaking a brief survey of some essential aspects of Danish administrative law, it is appropriate to emphasize two of its basic characteristics. There is no Danish system of administrative courts with general powers to decide disputes of public law such as exists in France and Germany, for example. Nor is there a comprehensive Administrative Procedure Act like that in the United States, although there are sporadic provisions on the subject in general legislation. The chief means available to a citizen for challenging a decision by an administrative agency are appeal to a superior authority or review by the ordinary courts.

Administrative Appeal

It is a general principle of Danish law, which applies in the absence of any express provisions, that an appeal may be taken to a higher authority from any administrative decision. The ultimate level of appeal is, as a rule, the competent minister. In the last few decades, however, special agencies of appeal have been set up within several branches of the administration; these agencies, which are much like the administrative tribunals of British law in organization and legal status, are more or less independent of the minister. This general opportunity for administrative appeal is cheap (more often than not it is entirely free of charge, legal assistance being rarely required) and normally speedy; it has the additional advantage that, in principle, the responsibility for providing the evidence necessary to decide the appeal rests on the public authority. Moreover, since the agency of appeal may reconsider the case in its entirety, the scope of review is not limited by distinctions between discretion and legality, fact and law, and the like. At the same time, however, the administrative appeal has the serious drawback that the appellate body belongs to the administration and is, in the eyes of the public, not quite impartial, although this feeling does not extend to certain of the administrative tribunals.

Judicial Review

The ordinary courts of law also exercise judicial review of administrative action under Danish, as under Anglo-American law. Any citizen having standing to sue may bring an action against the govern-

ment, asking that an administrative decision be annulled or modified and, alternatively or in addition, that damages be awarded. Moreover, by declining to follow the demand of a public agency, the citizen may compel the agency to institute enforcement proceedings. However, the power of Danish courts to review administrative decisions is not unlimited. Judicial review is qualified not only by a number of statutes providing that particular administrative decisions shall be unreviewable but also by limitations similar to those imposed on the administrative courts of other continental countries. Thus, while the distinction between law and fact is irrelevant in review by the Danish courts, these courts are confined to reviewing the legality of the administrative action: whether the agency has crossed the bounds of its statutory authority but not whether it has exercised a sound or adequate discretion within the scope of the law. These limitations on the scope of judicial review have not prevented the courts from overruling administrative decisions in a great many cases or from exercising a salutary general control.

The inadequacies of judicial control of administrative agencies which contributed to the introduction of the office of Ombudsman are different from those connected with the administrative appeal. The courts enjoy a high reputation for impartiality, but because the courts adhere to the usual forms of legal procedure in reviewing administrative actions, judicial review is often slow and costly. The expense is aggravated by the requirement that the citizen provide the evidence to support his claims and by the usual expedient that he employ counsel to present his case. Therefore, the number of suits relating to administrative law is very small in proportion to the volume and importance of the administrative process. Where it operates, the control of the courts is excellent; its operation, however, is sporadic.

The Ombudsman and His Work

The Ombudsman is elected by Parliament after every general election and may be reelected indefinitely. If he no longer commands the confidence of Parliament, he may be dismissed at any time and another elected to his position.[6] In point of fact, however, Professor Hurwitz has been Ombudsman ever since the establishment of the office.

Relation to the Parliament

The Ombudsman is by law the mandatory of Parliament and exercises his control over the government services on behalf of that body.[7]

[6] Ombudsman Act § 1.

[7] *Ibid.*

The fact that the Ombudsman's authority is derived from Parliament, which exercises the supreme power in the Danish government, gives added weight to his opinions about the conduct of government officials—especially of the ministers—and, at the same time, stresses that he is outside the administration which it is his business to control. This attachment to Parliament does not imply, however, that the Ombudsman's relationship to the legislature is one of subordination. On the contrary, the Ombudsman Act provides for his independence of Parliament in the discharge of his duties.[8] Parliament may not order the Ombudsman to consider a case or to drop a case under consideration, nor can it dictate the outcome of any investigation by him. Parliament's sole influence, beyond the power of appointment and dismissal, is its ability to set general regulations concerning the Ombudsman's functions.[9] As a matter of fact, the regulations which were adopted a year after the appointment of the first Ombudsman[10] serve chiefly to amplify the concise provisions of the Ombudsman Act, and Parliament has in nowise attempted to tie the Ombudsman's hands by modifying these regulations.

Qualifications

The Ombudsman may not be a member of Parliament and must be a graduate in law.[11] He is paid according to the salary scale for judges of the Supreme Court and may be granted an additional allowance.[12] The Ombudsman may not engage in any other public or private employment without the consent of a special parliamentary committee.[13]

Staff

The Ombudsman engages his own staff. During the past six years, he has been able to manage with a very small group of assistants; currently his staff is comprised of one deputy chief, one senior staff officer, three junior staff officers—all members of the legal profession—and the necessary clerical employees. The staff is likely to be maintained at the same modest level in the future.

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[8] Ombudsman Act § 3.

[9] *Ibid.*

[10] Instruction No. 109 of March 22, 1956, for folketingets ombudsmand [hereinafter cited as Regulations]. These Regulations are printed in full in Hurwitz, *supra* note 2, app. B at 196.

[11] Ombudsman Act § 2.

[12] Ombudsman Act § 12.

[13] *Ibid.*

Work Load

Figures are available for the work load carried by the Ombudsman for the last seven months of 1955 and for full years from 1956 through 1959. Over this period, 4,437 complaints were received by the Ombudsman, of which 1,610 have been taken up for consideration on the merits. Of these, 204 have been found to afford ground for criticism and 95 more, although not falling into the former category, have resulted in representations to the competent authority. While 36% of all complaints received by the Ombudsman up to the end of 1959 have been considered on their merits, there is a strong trend toward nonconsideration. Thus in 1955, 56% of all complaints were considered, while in 1959, fewer than 21% received similar treatment. This trend may be the result of a growing ability on the part of the Ombudsman to recognize those cases which deserve consideration on the merits rather than of a decreasing willingness to consider complaints, since the percentage of complaints which have led to criticisms or representations to the competent authorities has remained steadily at about 7%.[14]

Scope of Authority

The Ombudsman Act provides that the Ombudsman shall supervise the civil and military services of the state, including all central and local services, whether exercised by civil servants or not.[15] Parliament and the courts of law are outside the scope of his authority, and the same applies as yet to the various agencies of municipal government. On the other hand, the ministers come under the supervision of the Ombudsman when they exercise their functions as heads of government departments.

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[14] The annual case load of the Ombudsman during the first five years is recorded in the following table:

Year	*Total no. complaints received*	*No. complaints considered on their merits*	*Cases affording grounds for criticism*	*Cases affording no ground for criticism but resulting in representations to the competent authority*
1955	565	315	25	14
1956	869	438	30	15
1957	1,029	384	50	31
1958	1,101	292	60	17
1959	873	181	39	18

The figures for 1955 are for the last seven months of the year only. The figures in the last two columns are not capable of exact comparison with the statistics on the number of complaints considered on the merits since not all cases taken up in any one year are closed in the same year. Nevertheless, the table is quite reliable as a reflection of the volume of the Ombudsman's work.

[15] Ombudsman Act §§ 1, 4.

Comparison to Sweden

In two particulars, the scope of authority of the Danish Ombudsman differs substantially from that of the Swedish archetype. As a result of a theory of the independence of the courts, court personnel have been entirely excluded from the concern of the Danish Ombudsman,[16] while in Sweden, control over certain court functions plays quite an important part in the office. On the other hand, the authority of the Danish Ombudsman does extend to the ministers,[17] whose activities are beyond the competence of his Swedish counterpart. This difference is due to the fact that the Danish government, like most systems of central administration on the European continent, but unlike the Swedish one, has developed in as many hierarchical pyramids as there are ministers. The authority of the Danish Ombudsman would have been ineffective had the ministers been left outside his control, since a minister could always have insulated any matter from the Ombudsman's authority by making a decision or giving an order personally.

Supervision of Ministers

The Ombudsman's supervision of the ministers is an actual fact. Quite a number of cases relate to decisions of various ministers, and in at least one case published in the reports the Ombudsman has levelled criticism against a minister. The matter concerned a citizen who, in connection with a dispute over the proper payment of the duty on certain goods, claimed that he had applied in person to the Minister of Finance who, according to the complainant, had promised to accept his view of the matter. After some time, the citizen sent the Minister a letter in which he invoked the alleged promise and stated that he intended to act in accordance with it. The letter went unanswered, and the Minister subsequently decided the case against the complainant, who then appealed to the Ombudsman. After an investigation, the Ombudsman was unconvinced that the Minister had made any promise. He said, however, that the Minister should have answered the citizen's letter so as to correct the apparent misunderstanding. When informed of the Ombudsman's view of the matter, the Minister refused to admit that the circumstances of the case justified a determination that the misinformation in the citizen's letter should have been corrected by a reply from the Ministry. The Ombudsman, how-

[16] Ombudsman Act § 1.

[17] Ombudsman Act § 4.

ever, maintained his position, and both views were published in the 1956 Annual Report.[18]

Other State Officials

Although the ministers are subject to the control of the Ombudsman, his supervision is primarily directed toward civil servants. Moreover, persons other than civil servants and ministers come within the Ombudsman's sphere of authority if they are attached to the national government services. For example, members of the numerous administrative tribunals and regulatory commissions of the government are subject to supervision by the Ombudsman, although they are not technically civil servants. In his 1955 Report, the Ombudsman even criticized a member of Parliament who, in his capacity as a member of such an agency, had decided a case on inadequately verified data and had disregarded a time-limit.[19]

Even those state activities which do not involve the exercise of public authority come within the jurisdiction of the Ombudsman. For example, the universities and other institutions of higher education, cultural institutions such as The National Theater, The National Radio, and museums, the postal service, and the railways come within the Ombudsman's authority whenever they are operated by the state; this authority also extends to the supervision of government contracts for goods and services. The Ombudsman has frequently taken up cases in these fields.

Local Government

While there is general agreement on the proper limits of the Ombudsman's sphere of control, the exclusion of local or municipal government from his supervision has resulted in a great deal of discussion. A large proportion of the total public administration in Denmark is entrusted to elected local councils, their committees, and their public servants. Viewed from the ideal of protecting the individual, which was the chief reason for creating the office of Ombudsman, it may seem both unreasonable and illogical to exclude these agencies from his control. The illogicality is accentuated by the fact that in Danish law no clear line can be drawn between municipal and national government services, and many decisions by municipal authorities are subject to appeal to national authorities. The implication of the limitations on the Ombudsman's authority in these cases is that, paradoxi-

[18] FOLKETINGETS OMBUDSMANDS BERETNING FOR ÅRET 1956 s. 76, at 119 [hereinafter cited as ANNUAL REPORT].

[19] 1955 ANNUAL REPORT 76.

cally, the Ombudsman may supervise a review by a national appellate agency, but not a decision by a municipal agency of first instance. On the other hand, the subjection of all local government services to the Ombudsman's supervision would give the Ombudsman day-to-day control over the conduct of publicly elected officials. That not only would be contrary to the principle of local self-government, which has a great popular acceptance in Denmark, but would create a danger that the Ombudsman might become involved in local party politics.

This discussion for and against extending the Ombudsman's authority to include municipal governments has quite recently resulted in an amendment to the Ombudsman Act.[20] The new provision, which will come into effect on April 1, 1962, represents a compromise between the need to afford greater protection to the individual and the desire to respect the peculiar status of local elective bodies. The opportunities for private citizens to complain against municipal action under the new amendment are rather severely restricted, while the power of the Ombudsman to investigate municipal action on his own initiative is much wider. Citizens may complain against municipal action only in cases for which the law provides an administrative appeal to national authorities, and even then never when the action has been taken by the municipal council *in pleno*. On his own initiative, however, the Ombudsman may investigate any municipal action which has violated essential legal interests.

Jurisdictional Problems

Doubts about the delimitation of the Ombudsman's authority occur quite frequently. The lines dividing municipal from national government services and public from private enterprise have been the source of special difficulties. The latter distinction is particularly relevant where government policies are implemented through independent public corporations; many child-care institutions, for example, are independent organizations from a legal point of view, but their expenses are paid almost entirely from public funds and they are subject to close supervision by the government. While the Ombudsman has been very reluctant to deal with any administrative services of a municipal nature, he has quite often included such semi-public institutions under his supervision.

An exposition of the problems of jurisdiction facing the Ombudsman would be misleading without emphasis of the fact that such problems are somewhat less important to the Ombudsman than to many

[20] Act No. 142 of May 17, 1961, Lov om ændringer i lov om folketingets ombudsmand.

other authorities. Since the principal sanction available to the Ombudsman is that of stating his opinion, even where a case includes matters outside his sphere of authority he may recount the case in such a manner as to express more or less indirectly his view on those aspects of the case which are technically beyond his jurisdiction. Examples of such handling of cases appear occasionally throughout the reports.

Political Problems

Since the Ombudsman's jurisdiction extends to the ministers, there is an obvious risk that the political opposition will try to use the Ombudsman for political purposes. It is possible, for example, that the opposition might lodge a complaint with the Ombudsman against the conduct of a minister on a politically delicate issue. It is of prime importance to the Ombudsman as an institution that it keep from becoming involved in the general political struggle. The institution will survive only if it is accepted by all influential groups as impartial and unbiased.

In practice, the Ombudsman has managed to avoid becoming a plaything of political controversy. The treatment of two early cases which threatened to use the institution for the promotion of particular political aims may serve as illustrations. Shortly after he had taken office, an organization of car owners approached the Ombudsman, requesting a statement on the power of the government to apply revenue from gasoline and motor vehicle taxes to purposes other than the construction and maintenance of roads. The Ombudsman inquired whether various special financial acts had provided for any use of the funds contrary to the provisions in the permanent taxation acts and whether the administration had obeyed these special acts. He found that the agencies had dealt with the funds in conformity with the special acts but refused to consider whether the legislature had violated the constitution by amending the general tax legislation through special acts or whether the legislature should require that the portion of revenue not used for roads be accumulated in a special fund for later use and not merely entered into a fictitious special account in the budget.[21] Thus, the political aspects of this case were converted into legal ones, some falling within and others without the scope of the Ombudsman's authority. The Ombudsman was faced even more directly with a political question in a case decided about the same time in which a merchants' association complained that the Minister of Finance, by overdrawing the government account in the

[21] 1955 ANNUAL REPORT 57.

Danish National Bank, was borrowing money contrary to the constitutional requirement that state loans be raised only by statute. Here the Ombudsman found that the power to overdraw the government account must be regarded as acknowledged by usage; but he recognized that the amount of overdraft must be subject to a limit. Nevertheless, the Ombudsman observed that "the determination of that limit being a subject not of legal, but of political considerations, I am not empowered to express any opinion on the question." [22]

Rules of Procedure

Commencement of Inquiries

The Ombudsman's Initiative

The Ombudsman may take up any matter for investigation on his own initiative.[23] This may happen, for example, because an issue is being discussed by the press or as a result of the Ombudsman's own inspections of the prisons or other institutions. In actual fact, however, very few cases have been initiated by the Ombudsman *sua sponte*. Of the approximately 1,100 cases considered on their merits during the first three years that the office existed, no more than twelve commenced in that fashion. It does not follow, however, that this initiative is without effect; its existence is one of the prerequisites for the wide discretion which the Ombudsman has in dealing with complaints by private citizens.

Complaints From Private Citizens

Section 6 of the Ombudsman Act and article 5 of the Regulations contain the rules governing the procedure for making complaints to the Ombudsman. Complaints may be lodged by any person, subject to the limitations that the complainant must state his name, that the complaint must be in writing and accompanied by evidence where this is possible, and that it must be filed within one year after the occurrence of the incident which is alleged.

Discretionary Power in the Treatment of Complaints

Mere compliance with these rules of procedure does not guarantee the complainant that the Ombudsman will consider his complaint on its merits. Section 6 of the Ombudsman Act gives the Ombudsman discretion to decide whether a complaint affords sufficient grounds for

[22] 1955 Annual Report 64.
[23] Ombudsman Act § 6.

the institution of an inquiry.[24] This provision is augmented by article 7 of the Regulations which states that "if the Ombudsman finds that a complaint . . . is without foundation or that the subject matter of the complaint is quite immaterial, he shall as soon as possible inform the complainant that he finds no reason to take any action in the matter." This provision has gained great importance as the office of the Ombudsman has developed. In 1958 and 1959, where the reports contain information on the subject, 249 and 253 cases, respectively, were shelved pursuant to that provision. The purpose of the provision is to provide the Ombudsman with a device to keep the number of cases at a practicable level and to permit him to concentrate on important problems, disregarding the trivial cases.

Conversely, the rules governing the form of the complaint and the time-limit for appeal are not binding on the Ombudsman. A faulty complaint may be sufficient to induce the Ombudsman to consider the problem presented on his own initiative. And, while many complaints are not considered because of the expiration of the one year limit, it is not unusual for the Ombudsman to take up matters dating back more than one year if they are connected with more recent events or if they are of particular importance.

Scope of the Inquiry

On the whole, the legal relationship between the complaint of a party, the issue of the case, and the substance of the decision customary in court proceedings and administrative appeals is of little importance to the consideration of a case by the Ombudsman. It is quite usual for the original complaint to become subordinated to a detailed inquiry into a problem of general consequence. For example, a taxpayer's complaint that a tax question which he had raised had not been answered in the course of two and a half years gave rise to an extensive investigation of the handling of complaints by the highest administrative tax court—an investigation which extended to the basic organization of that court.[25] On occasion, cases are even discussed in the reports without any statement of the complaint which brought about the original investigation. A typical example is found in the 1957 Report, where the text begins, "in the consideration of a case, I became aware . . . ," and continues with the exposition of an important general problem.[26] On the whole, at least in the cases published in the reports, the Ombudsman has shown a definite inclina-

[24] See statistics on the Ombudsman's exercise of this discretion in note 14 *supra* and accompanying text.

[25] 1955 ANNUAL REPORT 69.

[26] 1957 ANNUAL REPORT 198.

tion to attach more importance to the future general consequences of each investigation than to the effect on the particular parties involved in the complaint which started the investigation.

Exhaustion of Administrative Remedies

As previously mentioned, Danish law provides citizens with a general right to bring decisions of subordinate government authorities before higher authorities, the ultimate agency of appeal normally being the competent minister or an administrative tribunal. This raises the question whether a dissatisfied citizen must exhaust these administrative remedies before approaching the Ombudsman. Originally, the Ombudsman Act was silent on this point. The Regulations, on the other hand, contained a vague provision which was interpreted to mean that administrative remedies had to be exhausted only where the right of appeal was to an administrative tribunal or to some other specially provided appellate body.[27] In practice, however, the Ombudsman usually referred complaints against subordinate authorities to their superiors.

In 1959 section 6 of the Ombudsman Act was amended to prohibit the lodging of complaints with the Ombudsman against any decision still subject to variation by a higher administrative authority.[28] The principle underlying this amendment was that, as a general rule, the Ombudsman should take up a case only after a dissatisfied citizen has been unable to obtain redress through administrative appeal. However, this rule is subject to two major exceptions. First, notwithstanding the new provision, the Ombudsman may take up the conduct of a subordinate agency on his own initiative at any time, without waiting for resort to administrative remedies by the victims of the possible administrative abuse. Second, the right of appeal to the Ombudsman does not depend upon the exhaustion of administrative remedies when the complaint is against the faulty handling of a citizen's business with a government agency rather than the substance of the agency's decision. The idea is that administrative superiors are the proper organs initially to determine the substantive law within their spheres of competence, whereas the Ombudsman should be able to investigate allegedly improper conduct of subordinate officials at any time. Since the latest available report relates to the year in which the amendment came into force, it is impossible to determine the practical effect of this change in the jurisdictional requirements for complaints to the Ombudsman.

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27 Regulations, art. 7(2).

28 Act No. 205 of June 11, 1959, Lov om ændring i lov om folketingets ombudsmand.

Relation to the Courts

Since many of the complaints lodged with the Ombudsman might have been brought before the courts—and, in fact, may be brought before them later—the relationship of the Ombudsman to the courts raises problems similar to those concerning the exhaustion of administrative remedies. However, this field has not been regulated by Parliament and hence can be understood only through an examination of actual practice which, while it may not yet be fully crystalized, has resulted in the development of certain broad lines of policy. Thus, when a case has already been brought before a court, the Ombudsman has refused to consider any complaint bearing on the same question. When the complaint lodged with the Ombudsman has related to matters which, in the case of a lawsuit, would clearly not result in the invalidation of the decision or in an award of damages to the complainant, the Ombudsman has been willing to consider the case and give his opinion without reservation. This has been the treatment particularly of complaints about rather trivial formal mistakes, dilatory procedures, slackness, rudeness, silence in the face of inquiries, and similar faults. When, on the other hand, the Ombudsman's investigation has revealed defects in the substance of the administrative decision or formal mistakes likely to result in the invalidation of the decision, he has been inclined to express his opinion but to add that the final decision rests with the courts; in some cases of this sort he has even promised to recommend free legal aid to the complainants. Quite a number of examples of this approach are given below.[29] In summary, the opportunity of going to the courts instead of to the Ombudsman, or of going to the courts at a later time, has not prevented the Ombudsman from considering a complaint on its merits; but judicial review has been held out as an alternative remedy in graver cases.

Conduct of Inquiries

Procedure before the Ombudsman is subject to few rules. Section 7(3) of the Ombudsman Act provides that the Ombudsman should inform the person or agency about which a complaint is registered as soon as possible after the decision to consider the complaint on the merits has been made, unless this action is absolutely incompatible with an investigation of the matter.

While no form of hearing before the Ombudsman or his staff is prescribed, the inquiry is normally conducted in writing and with little formality. At the same time, informal personal interviews with

[29] See, *e.g.*, cases cited in notes 43, 44, and 49 *infra*.

the parties perform a very important part in the Ombudsman's investigations, and the wise use of this technique has contributed greatly to the good will which the office has generated. The present Ombudsman considers it particularly important that complainants, who usually lack legal assistance, be afforded the opportunity for personal interviews with him. Similarly, both parties are given a chance to present their arguments in much greater detail than is required by the statute; as a matter of course full argument is heard, and the evidence of one party is often submitted to the other in order to isolate the facts on which the Ombudsman's decision is requested.

All persons are required to supply any information requested by the Ombudsman for use in his inquiries. However, this duty is subject to the same qualifications which apply to the duty to give evidence before the ordinary courts. The obligation to supply information to the Ombudsman is not subject to separate sanctions; but recalcitrant witnesses may be summoned before a court in order that the Ombudsman may obtain information under oath on any matter relevant to his investigation.[30]

While these provisions do not empower the Ombudsman to request information from public authorities without limits, in practice there have been no difficulties in this respect. The Ombudsman has always received whatever information he has requested from the central government authorities and has never had to require production of witnesses in court. In fact, the government departments collect much of the information needed by the Ombudsman. Often the Ombudsman will submit a complaint to the government department concerned, which then provides full particulars on the matter, usually accompanied by a detailed statement from the department.

SANCTIONS

By traditional legal standards, the range of sanctions available to the Ombudsman is remarkably small. Even if the Ombudsman finds that an unlawful decision has been made or that an error has been committed in the handling of a case, he cannot himself vary the decision of the administrative agency, nor may he order the agency to change its decision, remand the case for reconsideration by the agency, award damages to a complainant, or impose any penalty on the civil servant who has been at fault. Thus, of the traditional legal sanctions, only two are available to the Ombudsman: he may order the public authorities to institute criminal proceedings and may direct an administrative agency to begin disciplinary action against a civil

[30] Ombudsman Act § 7.

servant.[31] However, during the years covered by the published reports, neither of these sanctions has been used.

In practice, the Ombudsman has relied on the third sanction available to him by statute, a sanction peculiar to his office. For, in addition to the two unused traditional sanctions, the Ombudsman Act provides that the Ombudsman may "state his view of the case." [32] This treatment of cases has permitted the Ombudsman great flexibility in meeting the needs of particular situations. Thus he may merely inform the parties of his view of the case; and, where his investigation has revealed faults of major importance, the Ombudsman must inform Parliament and the competent minister of his findings and conclusions.[33] Finally, by including a case in his annual report, the Ombudsman may give special weight to his statement.[34] These reports, which contain from fifty to one hundred cases per volume, receive a great deal of attention, not only from the government but also from the public press. In stating his views of cases the Ombudsman appears to have developed a scale of forms ranging from such expressions as "it would have been more appropriate if . . ." to "I must consider it highly criticizable that . . . ."

To some extent the Ombudsman has gone beyond the mere statement of his view of a case. Thus in some opinions the Ombudsman has suggested that an administrative agency redress an injury. And, in accordance with section 7(3) of the Regulations, it is usual for him to recommend that a citizen be granted free legal aid for any action that he may wish to bring against the state in consequence of the fault committed. Such recommendations have always been followed by the competent authorities.

Recommendations

An important result of the Ombudsman's investigations goes beyond the decision of actual cases. The Regulations require the Ombudsman to acquaint Parliament and the competent minister with cases which he feels reveal inadequacies in existing laws and regulations,[35] and he may propose such measures as he deems useful to promote law and order or to improve government services.[36] Such

[31] Ombudsman Act § 9.

[32] *Ibid.*

[33] Ombudsman Act § 10.

[34] The requirement of an annual report is set down in Ombudsman Act § 10.

[35] Regulations, art. 11.

[36] *Ibid.*

proposals may be made even when there is no ground for criticism of the conduct involved in a particular case. While this power to make recommendations has been used largely in connection with his inquiries into actual cases, it contributes to the tendency of the Ombudsman to lay emphasis on the general problems raised by a case and the future consequences of his decision rather than on the specific fault which was the subject matter of the complaint. This tendency has been discussed above, but it is deserving of further illustration by two rather typical cases. The 1957 Report contains the case of a psychopathic prisoner who complained that he had been given no opportunity to see the medical officers of the prison. The investigation showed that this was the result of a shortage of medical officers at the institution. While the Ombudsman said that the prisoner ought to have been taken to a medical officer more promptly, he laid greater emphasis on a recommendation to the ministry to consider increasing the number of medical officers at the prison.[37] The same report contains the case of a woman who complained that she had been handcuffed in her commitment to a police station. Although the Ombudsman had no objection to the use of handcuffs in the particular case, he gave a detailed and categorical opinion setting forth general rules for the use of handcuffs, because his investigation had revealed that there was some uncertainty as to when they might be used.[38]

Rules of Decision

According to section 5 of the Ombudsman Act, "the Ombudsman shall see whether any person coming within his sphere of authority commits any faults or acts of negligence in the discharge of his duties." Article 3 of the Regulations amplifies this provision by extending "fault" to include "any improper purpose" and "arbitrary or unreasonable decisions." Thus there is no precise statutory definition of what conduct by the government services the Ombudsman may find open to criticism, since the language used in the statute has no fixed meaning in Danish administrative law. One thing that may be inferred from these rules with certainty is that the Ombudsman, unlike the courts, is not required to base his judgments solely on legal considerations; rather, he may include in his opinions more discretionary reflections on the justification and expediency of the conduct of administrative agencies, without having to disguise them in the garb of traditional legal analysis.

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[37] 1957 Annual Report 177.

[38] 1957 Annual Report 195.

Information as to the actual principles on which the Ombudsman bases his judgments must therefore be gleaned from the reports. By way of introduction, it should be emphasized that the office of Ombudsman is of very recent origin and that the published material is still on a very modest scale. The picture provided here may therefore, without the author's intention, be false; and quite possibly it will change in the course of time.

Legal Principles

In his judgment of the blameworthiness of particular conduct on the part of an administrative agency, the Ombudsman looks first of all to the legal principles on which the judicial control of the administrative process rests. Court practice and legal literature have defined a number of defects which will invalidate an administrative decision. These so-called grounds of nullity are also used by the Ombudsman in reaching his decisions.

Scope of the Agency's Delegated Authority

It is a fundamental principle of Danish administrative law that if the acts of administrative agencies are to have the force of law, they must be within the delegated authority of the agency. The Ombudsman has applied this principle in a rather small but important category of cases. Among these are the rare cases in which the Ombudsman has actually supervised the delegated legislative power. It is beyond doubt that the Ombudsman has applied the same standard in these cases as do the ordinary courts to determine the degree of authority required. A few important examples deserve discussion here. In some instances, the Ombudsman has stated that he found the questioned authority sufficient. For example, in the 1955 Report, the Ombudsman stated that a minister had had the necessary authority under a statute on local taxation to permit the imposition of especially high taxes in a local government area.[39] The next year he found that there was adequate authority for certain rules issued by the Ministry of Agriculture governing the control of various agricultural products.[40] The Ombudsman's attitude has been equally clear in cases in which the necessary authority has been found absent. In his 1958 Report he said that a particular agency had had no authority to refuse to assist a divorcée in recovering maintenance from her former husband; he recommended that action be taken to recover the maintenance.[41] Very often, however, ques-

[39] 1955 ANNUAL REPORT 80.
[40] 1956 ANNUAL REPORT 33.
[41] 1958 ANNUAL REPORT 145.

tions of the adequacy of authority are very close; in such cases the Ombudsman has maintained an attitude of prudence. In some of these cases he has given detailed accounts of the arguments on both sides of a question and has concluded by saying that he was undecided on the issue of authority.[42] Sometimes he has added that the final decision was within the jurisdiction of the courts,[43] and once he even said that a judicial determination of the matter would be desirable and suggested that he would recommend free legal aid if the complainant sought such a decision.[44] On the other hand, the 1956 Report contains a case in which the Ombudsman recommended that the Minister of Agriculture propose an amendment to the act in question so as to render the authority indisputable.[45] A somewhat similar result is found in a case included in the 1959 Report concerning regulations issued by the police against certain forms of advertising flying over greater Copenhagen. The Ombudsman found the authority of the police to issue such regulations doubtful, adding that the final decision came within the jurisdiction of the courts. However, since he found that steps had been taken to render the authority indisputable, the Ombudsman stated that there was no ground for taking any further action.[46]

The difference in wording of various opinions of the Ombudsman depends in some measure on the individual circumstances of the cases reported, but it is justifiable to assume that the difference may also reflect greater or lesser doubt about the adequacy of the legal authority. The special treatment of the last two cases may also be due to the fact that the rules were actually considered beneficial to society. The importance of this factor, and the general unwillingness of the Ombudsman to be hypnotized by formal legal rules is illustrated by the 1958 case in which an agreement with a health insurance society concerning the insurance of some prisoners was not criticized, despite the doubtfulness of its conformity with the relevant statute, because, *inter alia,* the arrangement provided by the agreement was felt to be expedient and beneficial to the prisoners.[47]

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42 See the cases concerning the propriety of charging for a certain sort of instruction in municipal schools where general education is free, 1956 ANNUAL REPORT 201, concerning the statutory authority for certain regulations on export control, 1956 ANNUAL REPORT 206, and concerning the lawfulness of an administrative practice relating to another export regulation, 1958 ANNUAL REPORT 230.

43 *E.g.*, the school case and the 1958 export practice case, *supra* note 42.

44 *E.g.*, the 1958 export practice case, 1958 ANNUAL REPORT 230, *supra* note 42.

45 1956 ANNUAL REPORT 206.

46 1959 ANNUAL REPORT 52.

47 1958 ANNUAL REPORT 80.

Other Legal Principles

Of the other grounds of nullity, mention should be made of improper purpose, *détournement de pouvoir,* and arbitary or unequal administration, which are expressly listed in article 3(1) of the Regulations. These grounds are common to the practice of the courts and the Ombudsman, but they take on a somewhat different meaning in the practice of the Ombudsman. The Ombudsman cannot vary or annul any administrative decision. Consequently, unlike the courts, he need not embark upon a complicated consideration of whether a defect is important enough to entail invalidity. Rather, the Ombudsman may criticize any misconduct by a government agent, regardless of its triviality; therefore, he may criticize an improper purpose of subordinate importance, whereas the courts may invalidate a decision only where the improper purpose was the dominant purpose.

Cases in which the Ombudsman investigates allegations of improper purpose are rather common. For example, in 1955 the Ombudsman found that a decision to refuse permission to keep a kiosk open after the usual hours was not criticizable, but he said that it was improper to support the decision by reference to the unsightliness of the kiosk and its competitive advantage, since these considerations were outside the purpose to be pursued in administering the statute concerned.[48] Three years later, the Ombudsman was faced with the question of whether the police had abused their power to assign cab stands in order to pursue purposes contrary to the principle of competitive free enterprise. The Ombudsman considered the question very doubtful and, since it could not be established with sufficient certainty that the chief constable had exceeded his powers, made no criticism, adding, however, that the ultimate decision belonged to the courts.[49]

The principle of equality plays a more important part in the practice of the Ombudsman than in that of the courts. This is probably due to the difficulty of ascertaining with the certainty required for a court to set aside an administrative action that two cases which have been decided differently are in fact alike in all material respects. Since the Ombudsman need not draw any concrete legal conclusions, he is in a better position to invoke the principle of equality, thus contributing to the maintenance of an evenhanded attitude on the part of civil servants, which is the main aim of that principle. Some typical examples are found in the 1958 Report, where, in discussing a traffic accident involving a policeman and a private citizen, the Ombudsman

[48] 1955 ANNUAL REPORT 19.
[49] 1958 ANNUAL REPORT 242.

said that it would have been most correct for a charge to have been brought against the policeman as well as the private person,[50] and where it is stated that, on the principle of equality, the date of discharge should be the same for all conscripts who have commenced their military service on the same day.[51]

New Standards of Conduct Imposed by the Ombudsman

In the cases discussed so far, the Ombudsman accepted and applied traditional rules of administrative law, subject to certain special conditions peculiar to his position; that is to say, he contributed to the enforcement of existing rules rather than to the establishment of new ones. However, there are cases in which the Ombudsman's practice shows a clear tendency to make new demands on the administrative agencies in their conduct toward citizens. This tendency is particularly pronounced in requirements that an administrative agency provide information to citizens on matters which concern them. In this field, the courts have been reluctant to go beyond the enforcement of rather modest statutory requirements, whereas the Ombudsman seems to be developing a higher standard of conduct for administrative agencies. For example, in Danish law it has always been assumed that administrative agencies have no general duty to accompany their decisions with information as to how—or even whether—an appeal may be taken. On the other hand, the Ombudsman has deliberately endeavored to introduce such a practice. The best example is found in the 1958 Report, where it is suggested that information about appeals be given in letters announcing decisions under the Industrial Injuries Insurance Act.[52] In support of his recommendation, the Ombudsman cited isolated statutory provisions from other fields of law, sporadic administrative practice, and a number of his own earlier decisions. He concluded from these that it is "in conformity with good administrative practice that citizens be given information and guidance to the widest possible extent in regard to any existing facilities of appeal." Since this conclusion was based principally on prior opinions of the Ombudsman, and since neither analogous legal provisions nor sporadic administrative practice create such legal duties, it is evident that the Ombudsman was intentionally creating a new legal standard.

The Ombudsman has also sought to improve the administrative process by encouraging the publication of general rules, even where these do not come within the categories of rules which the law requires

50 1958 ANNUAL REPORT 213.
51 1958 ANNUAL REPORT 60.
52 1958 ANNUAL REPORT 40.

to be published. In the course of time, he has been instrumental in prompting the publication of a number of standing orders of administrative tribunals.

Less sharp in outline, but plain enough in tendency, is the Ombudsman's effort to establish what might be called a duty to keep citizens informed and a related duty to reply to citizens' requests for information. This duty is not limited to communicating the final decisions of cases and answering direct requests for information; the Ombudsman has stated that citizens should also be told why their cases are progressing slowly or that their cases have been transferred to another authority, and that agencies should acknowledge reminders from citizens who have not yet been informed as to the outcome of their cases. A few examples will suffice to illustrate this tendency. In his 1956 Report, the Ombudsman said that, in his opinion, an authority should have informed the person concerned, on receipt of a reminder, that the decision of his case had been stayed owing to considerations of principle.[53] In the same report, it is said that an agency should have given some explanation to a citizen who repeatedly inquired why his case was being handled so slowly.[54] In his 1955 Report, the Ombudsman recommended that the Director of Public Prosecution consider making it a practice to inform persons reporting an offense of any action taken by the police or the courts.[55] And in a more recent report, the Ombudsman contributed to the introduction of the practice of giving notice to a divorced father when his child obtains permission to bear the name of a stepfather.[56] Finally, in his 1956 Report, the Ombudsman criticized the Ministry of Defense for permitting four months to elapse between deciding not to extend a certain branch of defense and communicating this decision to persons who were undergoing training for employment in that branch.[57]

Since the Ombudsman finds it so important that citizens receive the kinds of information discussed above, it is not surprising that he has criticized any contravention of the statutory provisions which require agencies to give reasoned decisions or guarantee a citizen's right to be heard before his case is decided. There is even a tendency, as yet but faintly defined, to raise the standards of administrative agencies in these respects.

Another field in which the Ombudsman has shown a tendency to raise the demands on administrative agencies relates to the rules

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53 1956 ANNUAL REPORT 177.
54 *Id.* at 211.
55 1955 ANNUAL REPORT 99.
56 1959 ANNUAL REPORT 41.
57 1956 ANNUAL REPORT 69.

governing bias on the part of public servants. In Denmark, as elsewhere, these rules are far from unambiguous—there are few judicial decisions, statutory provisions are sporadic and vague, and administrative practice is not only uncertain, but is also generally concealed from the public. In the light of this background, the Ombudsman has been reluctant to criticize administrative actions in particular cases, but he has been anxious to elucidate and regularize future administrative practice. For example, in several cases the Ombudsman has recommended an amendment of the rules governing the composition of certain administrative appeal boards so as to exclude persons who have taken part in the decision of a case in the first instance.[58] And in a much-discussed case in the 1958 Report relating to a professor's conduct in connection with the appraisal of his son-in-law's thesis, the Ombudsman recommended that members of the various academic assemblies vacate their seats when questions in which they may have a personal interest are to be discussed.[59] The case revealed that no such rules existed and that practice varied, but the Ombudsman's recommendation resulted in the introduction of fixed rules governing bias.

Review of Discretion

One particularly vexing question remains concerning the Ombudsman's rules of decision. Admitting that the Ombudsman has created rules of conduct in areas where there were previously no legal standards, has he also fully exercised his power to criticize administrative decisions in matters which are entrusted to the unfettered discretion of government agencies? The difficulty of answering this question is compounded by the fact that the concept of discretion, when used to limit the extent of judicial review of administrative decisions, is uncertain and vague. In considering a statement by the Ombudsman, it is difficult to say whether the courts would have reviewed the same question to the same or to a lesser extent. Also, the Ombudsman's practice in this field is not yet established with clarity or finality. However, there are a few general statements in the reports which give evidence of a certain reluctance to review discretionary decisions.

In the 1956 Report, the Ombudsman stated that "in fields where the civil servant concerned has discretionary power, I am confined to criticizing instances which must be characterized as arbitrary or unreasonable," citing article 3(1) of the Regulations in support of his opinion.[60] In the 1958 Report, he concluded that the same Regulation

[58] 1958 ANNUAL REPORT 178; 1957 ANNUAL REPORT 63; 1956 ANNUAL REPORT 196.

[59] 1958 ANNUAL REPORT 116.

[60] 1956 ANNUAL REPORT 118.

"has been so written as to limit the Ombudsman's authority to criticize the discretionary decisions of government departments to those which are patently arbitrary or unreasonable." [61] His attitude in a number of individual cases is in accord with these general statements. For example, the Ombudsman has been very cautious concerning both judgments based on expert knowledge, as in the field of medicine, and decisions of the public prosecution as to whether an offense should be prosecuted. Of more isolated examples, mention may be made of a 1955 case in which the Ombudsman declined to express any opinion as to the justification for refusing to commission certain cadets who had sought instruction from a former Danish officer who fought for Germany in World War II,[62] and a 1957 case in which the Ombudsman said he could not criticize the judgment underlying the imposition of disciplinary penalties on a group of conscripts.[63]

On the other hand, in a few cases the Ombudsman has clearly carried his review much further than the courts would have. An evident example is found where the Ombudsman expressed his opinion in unambiguous terms concerning the dismissal of a particular civil servant, who, it should be noted, was liable under Danish law to dismissal at any time within the discretion of his appointing authority.[64]

In the main, it is clear that the Ombudsman has not fully utilized his power to review the discretionary decisions of administrative agencies. And it is doubtful, I think, that this power will ever be used in any large measure. Where a decision is really discretionary, so that it cannot be inferred from general legal principles and one decision may be as justifiable as another, it is difficult for any authority, particularly for one which is outside the public administration and lacks expert knowledge in many fields, to make an exhaustive review.

Fault and Negligence

The preceding account of the Danish Ombudsman's rules of decision has been aimed primarily at giving an idea of basic legal principles, since these principles are of the greatest importance for the future and of the greatest interest to members of the legal profession, particularly those outside of Denmark. However, it would be remiss not to include some mention of the large number of cases in which the Ombudsman has had to deal with allegations of much more tangible faults which come within the scope of "faults and acts of negligence"

61 1958 ANNUAL REPORT 16.
62 1955 ANNUAL REPORT 54.
63 1957 ANNUAL REPORT 186.
64 1956 ANNUAL REPORT 40.

under section 5 of the Ombudsman Act. These cases deal with complaints relating to such matters as unreasonably slow handling of business, mislaying of files, slackness, forgetfulness, or lack of care in the consideration of cases, inconsiderateness or direct rudeness of personal conduct toward citizens, and like matters. Such cases are of little interest individually; everyone concerned with the government realizes that they are bound to happen now and again, but that steps should be taken to avoid them. However, the prospect of the Ombudsman's criticism in the more serious cases is likely to increase attention to the proper standards of conduct and thus reduce the number of such faults. While this category of cases covers a broad range, a few examples from the reports will serve to illustrate the scope of the Ombudsman's activities. Thus, a male nurse who struck a mental patient was found to have committed a serious offense;[65] administrative agencies have been criticized for failure to correct misinformation given to citizens about the future handling of their cases;[66] an agency was found to have failed to issue a certificate through forgetfulness;[67] and another was held responsible for having given incorrect information to the tax authorities concerning the payment of wages to an employee.[68] In these last two cases, the agency had admitted the fault, regretted it, and, insofar as possible, corrected it; therefore, the Ombudsman found no reason to take any further action—quite a usual conclusion to cases of admitted faults.

Public Scandals

One final aspect of the Ombudsman's activities should be added. In any community, incidents which in themselves are of no fundamental significance develop into public affairs or scandals which, through the press, attract a keen public interest, arouse passions—or at least curiosity—and give rise to mutual public defilement of the parties concerned. In several cases, where such affairs have come within the sphere of his authority, they have been submitted to the Ombudsman or taken up for investigation by him on his own initiative. Examples of the more notorious of these include a case pertaining to a number of mutual allegations among teachers and research workers at the Royal Veterinary and Agricultural College as to improper procedures used for the evaluation of a thesis submitted by a candidate for a degree;[69] another case relating to charges that a professor at the

[65] 1955 Annual Report 79.
[66] 1957 Annual Report 162; 1955 Annual Report 86.
[67] 1955 Annual Report 21.
[68] 1955 Annual Report 26.
[69] 1955 Annual Report 105. The details of the case are discussed in Hurwitz, *Denmark's Ombudsmand: The Parliamentary Commissioner for Civil and Military Government Administration*, 1961 Wis. L. Rev. 169, 186-87.

University of Copenhagen, who was also president of the university, had favored his son-in-law;[70] an acrimonious dispute between the personnel and the curator of a museum about the curator's use of museum property and labor for his private purposes;[71] and a final case in which there was an attempt to fix the blame for the fact that a diplomat who committed espionage because of messy financial circumstances had not been discharged long ago for his financial imbroglios.[72] In such cases the Ombudsman's activities assume a special character. In each, his main business has been to get to the bottom of the case, to segregate the core of truth from the exaggerations and controversy, and to try to put an end to the affair. In most cases he has been successful, and his recommendations have often resulted in new regulations and procedures designed to prevent the recurrence of such episodes.

CONCLUSION

It is the general consensus in Denmark that the control exercised by the Ombudsman during the past six years has been satisfactory. Civil servants, who had raised a strong protest through their organizations against the introduction of the institution, now appear to have accepted it, and the Ombudsman has established good personal relations with the highest administrative officials. It is also obvious that the institution commands remarkable confidence in Parliament, with the press, and, so far as can be ascertained, among the populace. A large factor in this success has been the personal qualities of the present Ombudsman, who is cut out for the post to an exceptional degree. In addition, the institution has won support from the fact that it has been capable of combining an inclination toward the citizen's point of view with a great understanding for the conditions of administrative work.

The Ombudsman's investigations have not revealed any serious flaws in Danish public administration—no cases of gross political abuse, pronounced favoritism, corruption, or consistent slackness have been reported. As is noted above,[73] the majority of the cases considered on their merits have afforded no grounds for criticism, and the faults criticized, however objectionable they may have been, have not

[70] 1958 ANNUAL REPORT 116. For a further discussion of this case, see text accompanying note 59 *supra*.

[71] 1955 ANNUAL REPORT 33. The details of the case are discussed in Hurwitz, *supra* note 69, at 185-86.

[72] 1959 ANNUAL REPORT 79. The details of the case are discussed in Hurwitz, *supra* note 69, at 192-93.

[73] See note 14 *supra* and accompanying text.

been of the kind likely to compromise the public administration. Indeed, it is quite possible that the easy access to the Ombudsman and the wide publicity surrounding his inquiries have contributed to strengthening confidence in the public administration.

CAVEAT

The fact that the office of Ombudsman has been found satisfactory in Denmark is, of course, no evidence of its viability in other countries. Therefore, it may be worthwhile to mention some characteristics of Denmark which may have played a part in the success of the Ombudsman in that country so that American readers may more easily weigh the difficulties which would face a similar institution in their nation. Denmark is a small country, about equal to Massachusetts in population and twice as large in area. Its one major urban center contains slightly more than twenty-five per cent of the total population; and somewhat less than thirty-eight per cent of the population lives in other towns or cities. The economy has evolved from mainly agricultural to mainly industrial in the course of the present century. The great bulk of the population is homogeneous, the country is old, and the community is politically and socially stable. Class distinctions and income differences are less marked than in most other countries of Western Europe, and for years the nation has pursued a levelling policy of the sort which is now called a welfare state.

Denmark is a parliamentary democracy and has a multiparty system, four parties holding more than seven-eighths of the seats in the unicameral Parliament. The government is now, and has been historically, highly centralized. Apart from the ministers, national government services have a clearly nonpolitical and professional character: virtually all the top officials have worked their way up through the ranks, and outside recruitment is almost unknown. The majority of the higher officials in the civil service are graduates in law or economics. The number of government employees supervised by the Ombudsman is difficult to determine, but of some 105,000 persons employed by the government, a few, such as court personnel, are excluded from the Ombudsman's jurisdiction by law, and a great many are engaged in purely clerical or manual functions which seldom give rise to any complaints to the Ombudsman.