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THE RELATIONS BETWEEN THE SUPREME COURTS AND THE PARLIAMENTARY OMBUDSMEN IN SWEDEN

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The Swedish Constitution

The Swedish Constitution consists of four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The Riksdag (i.e. Parliament) Act occupies a position somewhere between fundamental law and ordinary statute law. The central provisions are contained in the Instrument of Government, which corresponds most closely to the constitution of other countries, e.g. provisions on fundamental rights and freedoms (ch. 2), laws and other regulations (ch. 8), judicial and general administration (ch. 11) and parliamentary control (ch. 12).

The Supreme Courts

In Sweden, as in many other countries, there are two parallel systems of courts, one for general courts and one for administrative courts. The general courts handle cases concerning civil law and criminal law, while the administrative courts deal with issues within the field of administrative law. The competence of the administrative courts is very comprehensive and includes several hundreds of different kinds of administrative subjects. Some are more common than others. A large number of cases concerns taxes, social insurance, social welfare, planning and building regulation.

Both systems consist of three instances. The highest court of general jurisdiction is the Supreme Court, and the highest administrative court is the Supreme Administrative Court. Under the Supreme Court there are six courts of appeal and 96 district courts, and under the Supreme Administrative Court four Administrative Courts of Appeal and 23 County Administrative Courts. Every year, about 160.000 cases are filed in the general courts and 100.000 cases in the administrative courts.

The rules of procedure in the general and administrative courts, in many respects build on the same basic principles. However, there are certain differences. Procedure in civil and criminal cases is based on principles of orality, immediacy and concentration. Administrative procedure, on the other hand, is based on written documents. The principle of immediacy means that a court may base its judgment exclusively on what has been presented during the main hearing. The principle of concentration means that the main hearing must be conducted in one continuous series of meetings. Orality also exists in cases tried under the Administrative Court Procedure Act. Oral hearings are held in approximately ten per cent of all cases before county administrative courts. The oral hearings complement the written material in the administrative courts. The court therefore has to take into account information that has not been presented at the oral hearing. One important principle of procedure is valid in the administrative courts, namely the principle of officiality. The principle of officiality means that the court has ultimate responsibility for the investigations in a particular case. The principle has played a major role in administrative procedure.

The Supreme Court normally examines both facts and law in a case and renders a final and full judgment which replaces the judgment of the Court of Appeal. Depending on the type of legal remedy used in a case, the competence of the Supreme Administrative Court varies. If the remedy is the “administrative-judicial appeal”, the court’s reviewing will be very wide comprising not only legal but also discretionary considerations. If the appeal is upheld, the attacked decision can not only be quashed but it can also be varied or replaced by an entirely new decision. If the remedy is the so-called “municipal appeal”, the court’s consideration is limited to certain questions of legality specified in the Local Government Act and the upholding of an appeal can lead only to the decision being quashed. By using a third remedy – legal review

– a party, who is not pleased with a decision by the Cabinet concerning his rights or obligations, can apply for a review by the Supreme Administrative Court. This remedy can also be used if a decision of an administrative authority cannot by any other remedy be brought before a law court. In that case the application is made to the Administrative Court of Appeal. The review of the court comprises the legality of the decision including the judgement of facts and the valuation of proof. It does not, however, concerns the suitability of the decision, nor will it be possible for the court to replace the decision with another one. The court has to confirm the decision or quash it.

The overall objective of the court system is to determine cases efficiently and in accordance with the rule of law. The Swedish Constitution, which includes, inter alia, the Instrument of Government, contains rules requiring that the activities of the courts shall follow the rule of law. There are few rules in the Instrument of Government concerning the organisation of the courts. These rules state that the Supreme Court is the highest general court and that the Supreme Administrative Court is the highest administrative court. The only requirement regarding other aspects of the organisation of the courts is that the main features are prescribed by law and that there should be a permanent judge. The unique position of the courts and judges with regard to non-interference in the administration of justice by other government bodies is laid down in the Instrument of Government, according to which neither a public authority nor Parliament may decide how a court should adjudicate in a particular case or how a court should apply a rule of law in a particular case. Thus Parliament may not assume the position of higher instance in relation to the supreme courts or to any other court. The independent standing of the courts is considered a fundamental principle from the point of view of legal security. However, this has not prevented the acceptance of a form of supervisory control over the court system. Since the introduction of the 1809 Instrument of Government, this control over the courts has been exercised by the Parliamentary Ombudsman and the Chancellor of Justice. Because of the nature of this supervisory control (see below), their existence is not seen as incompatible with the courts' independent standing in adjudication.

In this context, it can be mentioned that the ombudsman and the chancellor have the right to take initiatives against justices of the supreme courts. Thus, ch. 12 art. 8 first paragraph of the Instrument of Government states as follows: "Proceedings under penal law on account of a criminal act committed by a member of the Supreme Court or the Supreme Administrative Court in the exercise of his official functions shall be brought before the Supreme Court by a Parliamentary Ombudsman or by the Justice Chancellor." And the second paragraph of the same article stipulates: "The Supreme Court shall likewise examine and determine whether, in accordance with the provisions laid down in this connection, a member of the Supreme Court or the Supreme Administrative Court shall be removed from office or suspended from duty, or shall be obliged to undergo a medical examination. Proceedings to this effect shall be initiated by a Parliamentary Ombudsman or by the Justice Chancellor."

In Sweden, there is no constitutional court. Instead, both the Supreme Court and the Supreme Administrative Court can deal with constitutional issues, primarily constitutional review. Ch. 11 art. 14 of the Instrument of Government states: "If a court ... considers that a provision conflicts with a provision of a fundamental law or with a provision of any other superior statute, or that the procedure prescribed was set aside in any important respect when the provision was introduced, the provision may not be applied. However, if the provision has been approved by the Parliament or the Cabinet, it may be set aside only if the error is manifest (or obvious)."

The power to review legislation should in principle be exercised ex officio. However, this review of possible contradictions between statutes at different levels was not intended to become an

ordinary feature of the courts' application of the law. The power to review legislation is intended for use only if a contended conflict of norms is expressly referred to as grounds for a claim or if a court in a particular case has special reasons to believe that a conflict of norms exists.

As it is said in the quoted article 14, the court can only avoid applying a provision; the court has no right to nullify it. So far (since 1975 when the new Constitution came into force) provisions adopted by the Parliament or the Cabinet were turned down by the Supreme Administrative Court only in three cases and by the Supreme Court in only one case. The explanation for this is probably the prerequisite that the error shall be manifest (or obvious). In practice, it is not unusual that the Supreme Administrative Court considers that a provision in a regulation issued by a public authority is in conflict with a provision of superior statute.

The provision in the Swedish Constitution on constitutional review (art. 14) does not apply to EC-regulations. In such instances Swedish judges do not have to ask themselves the question whether an act or an ordinance conflicts manifestly or obviously with EC-law. Having established that a conflict exists, the judge must give precedence to the EC-regulation.

In 1995 the European Convention on Human Rights was adopted as Swedish law. Before this adoption there was a lively discussion whether the Convention should be given status of constitutional act or not. But because there already is a Bill of Rights in the Swedish Constitution the Swedish Parliament finally decided to implement the Convention as an ordinary act. In this context, an amendment was made to the Constitution. Now a provision states expressly that all new Swedish laws must be compatible with the Convention. But how about older acts, i.e. acts adopted before 1995? This problem was raised in my court two years ago, and my colleagues decided to set aside the older Swedish act in question in favour of the Convention. Theoretically, the outcome is not indisputable. A contributory cause to the outcome is probably a previous judgment by the European Court of Human Rights, in which the court had declared that the Swedish act concerned was in conflict with the Convention in the same respect as in the case before my court.

The Parliamentary Ombudsmen

The Office of the Swedish Parliamentary Ombudsman was created in 1809 as part of the Constitution that was adopted that year. The Ombudsman (there was only one at that time) was given the duty of supervising all judges and other officials. In order to enable him to fulfil this task the Constitution gave him the right to prosecute those officials that were found at fault.

The most important provisions concerning the Swedish Parliamentary Ombudsmen are at present to be found in the Constitution of 1974. The activities of the Ombudsmen are part of the parliamentary control of government. This control is divided between the Riksdag (i.e. the Parliament) itself and the Ombudsmen in such a way that the Riksdag, represented by its Committee on the Constitution, supervises the Cabinet and the Cabinet ministers, whereas the Ombudsmen on behalf of the Riksdag supervise the courts, the administrative authorities and the local government.

The main object of the Ombudsmen's activities is the safe-guarding of the principle of the rule of law and the protection of the rights and freedoms of the individual as laid down in the Constitution and Swedish law, including the European Convention on Human Rights.

The Ombudsman Office can be described as a form of judicial institution. All the decisions by the ombudsmen are based on the law, and the Ombudsmen take up a strictly impartial attitude in their work in the same way as a court of law.

The Ombudsmen's supervision covers all governmental agencies and the local government as well as the individual members of their staff.

Also the courts are supervised by the Ombudsmen. It is essential, however, that the Ombudsmen do not interfere in the decision-making activities of the courts. This would be in direct conflict with the fundamental principle, that the courts shall carry out their duties in an independent way. For this reason the Ombudsmen as a rule do not make pronouncements concerning the way in which the courts apply the law or assess the evidence in a case.

The Ombudsman's right to investigate is laid down in the Constitution. The Ombudsmen have access to all official files and documents, however secret they may be. Furthermore all officials are obliged to give the Ombudsmen any information they may ask for and to assist them with investigations and in other ways.

The original role of the Ombudsman as a prosecutor still remains, even though prosecutions nowadays are not very frequent. The right to prosecute wrongful acting officials is an important basis for the authority of the Ombudsman Office, however, and it gives a special weight to the critical pronouncements made by the Ombudsmen.

The Ombudsmen's main weapon, however, is the power to criticize officials found at fault. If an Ombudsman finds a measure to be against the law or to be otherwise inadequate or improper but not punishable under criminal law, he will say so and point out how, in his opinion, the matter should have been handled.

This gives the Ombudsman an opportunity to offer advice to the authorities and to clarify the meaning of the law.

The Ombudsmen may also address the Government or the Riksdag asking for an amendment of the law.

There are at present four Parliamentary Ombudsmen, all of whom are elected by the Riksdag (the Parliament) at a plenary sitting for a period of four years. The elections are prepared by the Riksdag's Committee on the Constitution. The Ombudsman Office is stricfly unpolitical, and it has been a tradition that an Ombudsman should be acceptable to all the political parties represented in the Riksdag. Re-elections are possible.

If an Ombudsman does not enjoy the confidence of the Riksdag he can be dismissed immediately by a majority vote in the Riksdag.

Every Ombudsman makes his own decisions. He has his own department and his own staff. The staff consists of two heads of department (lawyers with long experience of legal work), six investigating officers (they are junior judges in the judicial career and usually stay on between four and six years) and finally two secretaries.

Every Ombudsman, and his department, has a certain colour indicating the area of his supervision. One department is the yellow one, another is blue and a third is white. My own department was red. The chief of the administrative division for the Ombudsmen institution is

responsible for the classifying of the cases (that a fitting colour is given to a case). The given colour is manifested in the colour of the cover of the file.

At present the supervisory duties are distributed among the Ombudsmen in the following way. One Ombudsman – the yellow one – supervises the Courts of Law, the public prosecutors and the police. Another one – the blue – supervises the social welfare, the medical care and the education. The third Ombudsman – the white one – supervises the prison administration, the execution of judgments in civil cases, taxes and the assessment of taxes, the armed forces and social insurances. I myself – the red Ombudsman – supervised the Administrative Courts, the labour market, planning, most of the local government, communications, administration of cultural matters, the Church of Sweden, environmental protection and the immigration authorities.

The main task of the Ombudsmen consists of the handling of complaints. The annual number of complaints now is about 5 000. The Riksdag considers the handling of complaint cases to be the central part of the work of the Ombudsmen.

Everyone – even citizens of other countries or people not living in Sweden – may complain to the Ombudsmen. There is no rule saying that the complainant must be personally concerned in the matter. No absolute time limit is set, but it is prescribed that the Ombudsmen usually should not start an investigation if the matter took place more than two years ago.

Complaints should be presented in writing. When necessary, however, a member of the staff will help the complainant to word his letter. No fee is charged. Anonymous complaints are not admissible but they sometimes give an Ombudsman cause to start an investigation on his own initiative.
The largest categories of complaints refer to social welfare, prison administration, the police and the law courts. Together these areas account for about 47 % of the total number of complaints.

Only about 12 % of all complaint cases give rise to some kind of criticism by the Ombudsmen. No less than 40 % are dismissed without full investigation.

In many cases the complaints are based on a misunderstanding; the action complained against, is in fact in accordance with the law. If a complaint is of only minor importance, it may be dismissed, even though it is not obviously unfounded, since it is essential that the comparatively small Ombudsman Office is used as efficiently as possible.

The complaints which are not dismissed or referred to another agency, are investigated by the Ombudsmen. Often the first step is to request the relevant documents from the authority concerned. In many cases it is possible to judge from these documents alone whether there is sufficient cause for the complaint or not. The next – sometimes the first – step will be to ask for an explanation in writing, from the authority or the official responsible for the actions complained against. If necessary, further correspondence may take place, and the opinions of experts or competent bodies may be requested. Oral hearings are sometimes held in order to obtain more or better evidence.

If an Ombudsman finds that there is sufficient ground for a prosecution, he is obliged to prosecute in the same way as an ordinary public prosecutor. The Ombudsmen usually do not appear themselves before a Court of Law in their prosecuting capacity. This function is instead assigned to a public prosecutor or to a member of the Ombudsmen's staff. As a rule at least one experienced prosecutor is serving in the Ombudsmen's Office.

When the investigation is completed, the Ombudsman pronounces his decision, which is open to the public. The decisions are often very detailed, and they are in many respects written in the same way as the judgments of the Courts of Law. The decisions are often reported in the mass media.

The Ombudsmen are also entitled to start investigations on their own initiative. The majority of these are based on observations made during inspections. Sometimes reports in the newspapers or on the radio or TV give the Ombudsmen cause to open investigations. Furthermore, when investigating a complaint case, an Ombudsman sometimes discovers unsatisfactory conditions or errors committed, which are not covered by the complaint. He will then act on his own initiative and open a new investigation.

Ever since the Ombudsman Office was set up, the Ombudsmen have made inspections from time to time of authorities of every kind all over the country. The Ombudsmen now together spend 30–40 days each year inspecting authorities of different kinds.

During an inspection much time is spent in perusing files and other documents. The Ombudsman meets with the head of the authority and other senior members of its staff. There are also discussions between the members of the Ombudsman's staff and the employees of the inspected authority. When a prison, mental hospital or a similar establishment is inspected, the inmates are given the opportunity to meet the Ombudsman and express their grievances.

The inspections are of great value in several ways. They give the Ombudsmen and their staff the opportunity to meet people who are serving in the authorities in their proper surroundings and to get to know their working conditions. It is also much easier to find errors of a systematical nature in the activities of an authority at an inspection, than from dealing with complaint cases. Also, the knowledge that any authority can be inspected by an Ombudsman at any time, contributes to keep the officials on their toes.

The Ombudsmen have to submit a printed report to the Riksdag (the Parliament) every year. The report is studied by the Riksdag's Committee on the Constitution. The Annual Report is also read by judges, civil servants, law professors etc. It is considered to be a document of great interest and it is often referred to in legal writings.

On the whole, the Swedish Ombudsman Office has proven to be an indispensible complement to the regular legal institutions. The specific qualities of the Ombudsman institution give it a practical and psychological effect that cannot be taken over by any other agency. Among other things, it has an important preventive effect; a lot of errors probably never occur, because of the existence of the Ombudsmen.

Some practical examples

From my own activity as an Ombudsman I would like to give some examples of the topic for our workshop. I have divided the cases into two sections. The first section contains cases in which I have dealt with constitutional issues. In the second section I have gathered some of my decisions in which I have supervised administrative courts.

THE OMBUDSMAN AND CONSTITUTIONAL ISSUES

From the book The Parliamentary ombudsman on Administrative Procedure 1996[1]

16 The question of the legality of the National Aliens Board's routines for dealing with post addressed to foreigners housed at residential facilities

In his capacity as publicly appointed counsel for a family applying for asylum, G. requested the Parliamentary Ombudsman to investigate whether the National Aliens Board had the right to open and inspect or – without actually opening any mail – to copy letters or postal orders which had arrived for families housed in residential facilities, and whether a decision to reduce the daily allowance payable could be based on the result of such inspections.

In his decision of 25 April 1996 the *Parliamentary Ombudsman, Mr Lavin*, wrote as follows.

Initially, I should like to make it clear that the Parliamentary Ombudsman does not usually express any opinion about the correctness of a decision *per se*. Normally, any inquiry into questions of this kind only takes place when a decision is in direct conflict with a law or other regulation, or when the decision otherwise appears to be patently erroneous. In view of this, I am not going to express an opinion about the National Aliens Board's decision to reduce the relevant daily allowance. Moreover, this issue has already been examined by a County Administrative Court.

In the ensuing discussion, I shall only concentrate on the National Aliens Board's routines regarding the distribution of postal items to those housed in the Board's residential facilities. The Board has described these routines in the following terms:

All post addressed to those applying for asylum who are housed in a facility arrives at the facility's post box and is collected from the post office by the staff of the facility and laid out for collection from the facility's reception office.

Items of post which the staff consider to have a potential effect on the amount of daily allowance payable are copied and the appropriate case officer may, if necessary, summon the refugee concerned to an interview in order to establish whether a new decision on the amount payable is required.

It should be noted that sealed envelopes/items are never opened. Certain envelopes reveal, however, that their contents may be of interest in this connection. One instance was the recent case which involved one of the postal giro system's envelopes containing a postal cheque (coloured green). In such cases, the envelope is copied and the refugee summoned to an interview and asked about the contents of the envelope.

My starting-point is, therefore, that the routines employed by the National Aliens Board do not involve the opening of envelopes or the retention of items of post. Admittedly, the National Aliens Board concedes that post may have been opened on one or more than one occasion and if

[1] These and the following translated decisions are reproduced by permission of the publisher: Juristförlaget i Lund, Box 207, S-221 00 Lund, Sweden.

so by mistake. I have found no reason to investigate this any further. I am, however, assuming that routines have been tightened up or, if this has not yet happened, that they immediately will be, in order to prevent any repetition of these mistakes.

It hence transpires that one of the routines of the staff of residential facilities while sorting incoming mail is to note items addressed to residents and record those which could be assumed to affect entitlement to a daily allowance – postal orders and the like – so that the staff of the National Aliens Board will then be able to challenge the addressee with the information so gained. These measures are thus intended to help ensure that the daily allowance paid will not be larger than necessary. The National Aliens Board has stated that information which can be derived from items of post may also be noted down or orally communicated to other members of staff. Insofar as assessment of the principles underlying these routines is concerned, there is hardly any reason to distinguish between the different methods of ascertaining and disseminating the results of observations made while dealing with post.

Individuals applying for asylum are only entitled to a daily allowance if they have no funds of their own. I am assuming that adequate information is available about the conditions for entitlement to a daily allowance, and that this information is translated so that applicants understand the significance of the forms they sign. In doing so, an applicant has undertaken to inform the National Aliens Board of any income or other assets which may come into being after the application has been made. The routines adopted by the National Aliens Board in connection with the sorting of post are in themselves of such a nature that one may well wonder whether applicants are normally allowed enough time for them to communicate relevant information of their own accord.

The regulations in Chapter 4, Sections 8 and 9 of the Criminal Code are hardly applicable to the routines of the National Aliens Board described here, however strictly interpreted. The first of the two Sections does not apply because the National Aliens Board does not belong to the category of forwarding agencies which its wording specifies, while Section 9 is based on the presumption that items of post have been tampered with, i.e. that the offender has gained access to a sealed item of post. The routines adopted by the Board would not appear to involve any such action. Nor have I found that the requisite conditions for malfeasance as laid down in Chapter 20, Section 1 of the Criminal Code are fulfilled.

The protection guaranteed under Chapter 2, Section 6 of the Instrument of Government (the Swedish Constitution) against the scrutiny of letters or other private communications almost certainly extends not only to ordinary items of post but also to the organised regular conveyance of communications to private individuals by public authorities (cf. Petrén and Ragnemalm, *Sveriges grundlagar*, 1980, p. 55). Thus, the way in which the National Aliens Board deals with post at its residential facilities should *per se* be covered by this section of the Instrument of Government. The question is, however, whether the actions of the National Aliens Board described here can be regarded as constituting the form of investigation of confidential postal items referred to in the wording of the law. In view of the fact that confidentiality is given particular prominence in this wording, it is the content of the communication which enjoys constitutional protection (cf. Government Bill 1973:90, pp. 242 f.). According to the National Aliens Board's description of its routines, it is not the Board's intention to study the actual contents of the postal items. It cannot, however, be ruled out that the interest in the post addressed to residents displayed by the staff of the residential facilities could give rise to knowledge of a confidential nature. It has not therefore been demonstrated without any shadow of doubt that the routines adopted by the National Aliens Board are in full agreement with the Constitution. This uncertainty should give rise to some degree of reflection and reconsideration.

Article 8 of the European Convention is probably intended to apply mainly to measures involving a much higher degree of intervention than those referred to here (see Lorenzen, Rehof, and Trier, *Den Europaeiske Menneskeretskonvention med kommentarer*, 1994, pp. 246 ff.). The cases involving interference with the right to correspondence which have been heard in the European Court have primarily dealt with the opening, censoring, or retaining of letters (see van Dijk and van Hoof, *Theory and Practice of the European Convention on Human Rights*, 2nd ed., 1990, pp. 392 ff.). The question of whether measures of the kind involved in this case are permissible has probably never been brought before the Court. The wording of Article 8 in the Convention does not, however, exclude the possibility that the practices described by the National Aliens Board could be regarded as being in breach of the Article.

As has transpired from the preceding discussion, the National Aliens Board cannot be regarded as being guilty of any obvious contravention of the law in its routines involving post to its residential facilities. Even so, I would like to express my reservations about those routines. The reason why the staff of the residential facilities take care of the post is to ensure that the various items reach their addressees. What is happening in this case is that the staff are using this routine for a different purpose than the one it is supposed to serve. When an agency avails itself of its powers to achieve an end other than the one intended, it becomes – in the parlance of administrative law – guilty of abusing its powers ("détournement de pouvoir"), in other words overstepping its authority. References to this legal area may be found in the periodical *Förvaltningsrättslig tidskrift*, 1995, pp. 150 f., and in the sources referred to there. In this case, in my opinion, the National Aliens Board balances on the borderline of the area of application covered by the relevant legal instrument.

Furthermore, I should like to draw attention to the risks that a systematic scrutiny – possibly combined with registration and copying – of post can involve for the sender and the recipient. Information on envelopes makes it possible to draw conclusions of various kinds about the addressee and his family, such as their political and religious affiliations as well as membership in and contacts with organisations. I am presuming that the scrutiny which takes place at the National Aliens Board's residential facilities is not of such a nature and such an extent that it enables staff to investigate the personal circumstances of those who send letters and of the refugees who receive them.

In the light of what has been said above, I find the routines described there distinctly dubious. If, nevertheless, these routines are still going to be applied in future, applicants should at any rate be told about the procedure in advance. One possibility would be to ensure that the forms they sign explicitly state that items of post which are judged to be of potential relevance to the assessment of the resident's daily allowance may be registered by the staff of the facility.

(Reg.no. 4494-1995, Reporting Officer Timo Manninen)

38 The question of whether a municipal employee, who had caused a parent's notice to be removed from the notice board of a day nursery, may be held to have restricted the parent's constitutional freedom of expression

In his complaint to the Parliamentary Ombudsman, J. has levelled criticism against a District Manager working in the municipal administration of child care for pre-schoolchildren on the grounds that the District Manager had caused four notices, placed by J. on notice boards in a day

nursery, to be taken down. J.'s complaint contends that his freedom of expression has been restricted by the Manager's actions.

The notice contained an appeal against the presence in the relevant residential area of a nursing home for people with mental problems. The appeal exhorted parents to take joint action in order to have the home removed from the area.

In his decision of 18 September 1996, the *Parliamentary Ombudsman, Mr Lavin*, wrote as follows.

According to Chapter 2, Section 1, subsection one of the Instrument of Government (the Swedish Constitution), all citizens shall be guaranteed freedom of expression in their relations with the public administration. This entails the freedom to transmit information and express thoughts, opinions, and feelings in speech, in writing, by means of pictorial representation, or in some other way. Freedom of expression may be restricted, though. In such cases, the relevant provisions in Chapter 2, Sections 12 and 13 must be observed, among them the rule in Section 12, subsection one in the Instrument of Government under which restrictions shall be implemented in accordance with laws and statutes. It is clear from Chapter 2, Section 13, subsection three that directions which regulate certain ways of disseminating or receiving utterances, regardless of their contents, shall not be held to constitute a restriction in freedom of expression.

That protection of the freedom of expression which is contained in the Swedish Instrument of Government constitutes protection against "the public administration". This term comprises, among other things, the local (municipal) administrative authorities. In consequence of such protection, an authority must not, directly or indirectly, intervene or take action against anyone because he or she made use of his/her constitutional right to express an opinion. Exceptions are only valid if an intervention is supported by law, or if the authority bases its intervention on provisions of order under Chapter 2, Section 13, subsection three.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms also comprises rules regarding the freedom of speech, but these rules hardly constitute more comprehensive protection than the regulations contained in the Swedish Instrument of Government.

The notice put up by J. was not to be regarded as a printed text; consequently, the Freedom of the Press Act was not applicable in the case. Even so, the fundamental contentions underlying the Freedom of the Press Act are the same as the ones underpinning the Instrument of Government with regard to the possibility of regulating the dissemination of utterances via rules of order. As the freedom of expression is explicitly regulated in the Instrument of Government, there is not, in my view, any reason to make a detour by invoking the Freedom of the Press Act in order to set up a legal foundation for the assessment of utterances which do not formally belong under that Act (cf. the Parliamentary Ombudsmen's Official Report for 1970, p. 294).

In its reply to the official request for an account of the reasons that led to the removal of J.'s notices, the relevant Committee referred to certain rules and regulations pertaining to the use of notice boards in pre-school facilities. According to the Committee's reply, the gist of these rules was that the notice boards might be utilised for the purposes of spreading information on municipal activities and helping parents recover objects lost on the premises. The grounds for the relevant regulations are not explained in the reply. The reply also states that over the years, the utilisation of the boards has in some cases been extended so as to permit notices regarding so-

called swapping days for limited periods of time. It would appear that the reason for the removal of J.'s notices was that they were not held to be relevant to pre-school child-care activities.

A factor which contradicts the Committee's description of the rules that apply to the utilisation of notice boards is J.'s statement in his complaint to the effect that the municipality actually allowed parents to use the boards to a comprehensive extent. Among other things, he claimed that at the time when he put up his notices, there was already an appeal against higher day-nursery fees on the boards. The Committee has not contested these allegations, and it is therefore difficult to gain a clear picture of what rules the municipality was in fact practising. My assessment, however, has had to proceed from the contention that at the very least, the municipality permitted parents of children cared for in day nurseries to put up appeals with a bearing on that particular activity.

In view of what has been said above concerning the municipality's regulations of order, and as J.'s notices may be held to have had a bearing on the child-care activities, I find that the municipal administration's action in removing these notices does not agree with the protective rules on the freedom of expression contained in the Instrument of Government. The incident gives me reason to stress the importance of the Committee's drafting unambiguous regulations pertaining to the utilisation of notice boards in pre-school facilities and ensuring that information about these rules is duly disseminated. Naturally, the regulations must not be abused in such a way that freedom of expression is restricted for any other reason than the desire to maintain a good order concerning the notice board.

With the criticism implied in the preceding paragraphs, the case is closed.
(Reg.no. 4090-1995, Reporting Officer Jakob Hedenmo)

From the book The Parliamentary ombudsman on Administrative Procedure 1997[2]

56 The question of whether the chairperson of a church council infringed the prohibition, contained in Chapter 3, Section 4 of the Freedom of the Press Act, against inquiring into the identity of the author of published material

L. has reported the Church Council chairperson E., claiming that E. attempted to establish the identities of the authors of an anonymous letter to the editor published in a daily paper, and that she succeeded in doing so.

In his adjudication of 16 December 1997, the *Parliamentary Ombudsman, Mr Lavin*, wrote as follows.

Chapter 2, Section 1, item 1 of the Instrument of Government (one of four Constitutional Laws in Sweden) prescribes that every citizen is guaranteed the freedom of expression in relation to institutions in public life. Freedom of expression means that the individual is at liberty to communicate information and to express thoughts, opinions, and feelings in speech, writing, or pictorial representation, or by other means. Limitations in these rights may be introduced by legal means (Chapter 2, Section 12 of the Instrument of Government). To a certain extent, freedom of expression is granted special protection by the rules on informant freedom that are

[2] © Juristförlaget i Lund, cf. note 1 above.

contained in the Freedom of the Press Act (another Constitutional Law). Informant freedom under Chapter 1, Section 1, subsection two of the Freedom of the Press Act signifies that each Swedish citizen is, provided he/she observes the provisions contained in the Ordinance protecting individual rights and public safety, at liberty to express thoughts and opinions in a printed publication, publish documents that are in public domain, and communicate information on any subject whatever. Furthermore, informant protection entails a prohibition forbidding authorities and other public bodies and agencies to take steps to establish the identity of an anonymous informant (Chapter 3, Section 4 of the Freedom of the Press Act), with the exception of certain stated types of criminal activity.

The legal provisions afford the same protection to employees in official positions as they do to every other citizen. Hence, a public official may express his/her opinions freely, even as regards the activities of his/her own authority/body. It is true, of course, that the Secrecy Act (1980:100) contains rules which limit the freedom of expression enjoyed by officials when it comes to speaking of what they have learned in the course of their duties; but those rules are irrelevant to the present case.

The protection for the freedom of expression that is contained in the Instrument of Government is a protection against “institutions in public life”. The Church Council in the ecclesiastical district is such an institution. In consequence of the protection established in law, an authority is not permitted to intervene against a person because he or she has made use of his/her constitutional right to express an opinion in the media, or in other ways. Nor is an authority allowed to attempt to thwart an employee’s utilising his/her rights. Thus, an employer must not, by way of general pronouncements or criticism in individual cases, try to influence an employee with regard to the manner in which he/she makes use of his/her freedom of speech. Exceptions only exist in cases where intervention is legally sanctioned.

Impermissible investigation is an offence under Chapter 3, Section 5, subsection two in the Freedom of the Press Act. It emerges from the relevant provision that the penalty for intentional investigation is a fine or imprisonment for a maximum period of twelve months.

I have limited my consideration of the case to what took place in connexion with the telephone conversation between E. and the Church Clerk on 27 October 1995. The remainder of the inquiry has not provided a sufficient basis for me to be able to form an opinion on other circumstances in the case. Nor do I see any reasons for a continued inquiry into these.

It is clear that E. and the Church Clerk discussed the anonymous letter to the editor during their telephone conversation. The letter had been published the day before, and E. was the person who brought it up. Both the Church Council and E. appear to wish to argue that her actions on this occasion were dictated by concern for the staff, and that no serious attempt was made by her during the conversation to find out who was behind the statements expressed in the newspaper.

On the basis of what E. has communicated to my Office, I am in a position to affirm that she posed direct questions as to who might be behind the newspaper item during her conversation with the Church Clerk. In other words, E. tried to find out where the published information came from. Personally, I cannot therefore take any other view of her actions than the one according to which she, by acting as she did, adopted measures that belong within the prohibition to investigate which is contained in Chapter 3, Section 4 of the Freedom of the Press Act. In consequence of this, I have considered initiating a preliminary police inquiry in order to find out whether E. was guilty of prohibited investigation, in contravention of Chapter 3, Section 4, the opening sentence, of the Freedom of the Press Act. On the basis of my own inquiry, however, I

have been unable to establish that E. deliberately and intentionally attempted to find out the names involved, although she was informed of them during the telephone conversation. Even so, E.'s actions are in contravention of the prohibition as such, and even if no penalty is imposed on her, they merit very serious criticism indeed. In contenting myself with expressing this criticism, I have taken account of the fact that nothing in my inquiry has seemed to suggest that those parish officials who chose to express their opinions in the press were exposed to any sort of retaliation from the parish.

The Church Council's reply to the letter in which it is invited to state its view of the case suggests that the Church Council is unaware of the right of employees to express their thoughts and opinions in print. Hence, I wish to recommend the Church Council to familiarise itself with the currently valid rules on the relevant aspects of the constitutional freedom of expression which its employees enjoy.

With these communications, and with the criticism articulated above, the case is closed.
(Reg. no. 3561-1996, Reporting Officer Marianne Trägårdh)

From the book The Parliamentary ombudsman on Administrative Procedure 1998/99[3]

2 The question of whether a public library had the right to refuse to lend an individual certain books because of his reason for wanting to borrow them

V. had requested that the Parliamentary Ombudsman should examine the rules for lending imposed by a commune public library. He also raised the question of whether the library was registering political opinions.

In his adjudication of 9 January 1998, *the Parliamentary Ombudsman, Mr. Lavin* expressed the following opinion.

Up until 1 January 1997 no legislation existed with regard to public libraries, apart from certain regulations concerning government grants. On 1 January 1997 the Library Act (1996:1596) came into effect. The Library Act contains certain fundamental regulations about public libraries. No detailed provisions about how communes are to organise and manage library services have been laid down.

There could well be reason to point to some of the regulations of relevance for this case in the Library Act. Article 2 stipulates that every commune is to have a public library and Article 7 lays down that this is one of the services for which communes are to be responsible. Public libraries are to allow the general public to borrow printed works for a certain length of time (Article 3). Article 10 stipulates that the county libraries, book depositories, university libraries, research libraries and other libraries financed by the state are to make printed works from their collections available to the public libraries free of charge and that they are otherwise to co-operate with public libraries and school libraries and assist them in their endeavour to provide borrowers with good library services.

When the events referred to in this complaint occurred, the Library Act had not yet come into force and there was no other legislation that governed the activities of public libraries. It can, however, be established that even since the Library Act came into force, there are no statutes that

[3] © Juristförlaget i Lund, cf. note 1 above.

govern the activities of public libraries in detail. Even today, there are no stipulations about the obligation of a public library to provide written works of a specific nature, insofar this should be of interest, or to arrange inter-library loans.

The supervisory powers of the Parliamentary Ombudsman primarily involve ascertaining that those who exercise public authority comply with the law and other legislation and that they otherwise fulfil their obligations. In addition, the Parliamentary Ombudsman is to exercise discretion in expressing opinions on issues that lie within the competence of the elected councils of the communes, to which library services for the most part pertain.

An important task for the Parliamentary Ombudsman is to ensure that courts and administrative agencies adhere to the Constitutional requirements of objectivity and impartiality and that the fundamental rights and liberties of citizens are not encroached upon by the state – Article 3 in the Act with Instructions for the Parliamentary Ombudsmen (1986:765).

It is principally in the light of this last provision that I have undertaken my examination of this case.

Chapter 2 of the Instrument of Government contains stipulations about the fundamental rights and liberties of citizens. One of the provisions of the first paragraph of Article 1 is that the state is to guarantee each citizen freedom of information, described here as the freedom to obtain and receive information and otherwise acquaint oneself with the utterances of others. This provision guarantees freedom of action for each citizen when it comes to receiving information provided from different quarters. On the other hand it does not imply any obligation for the state to provide information. (See Petrén and Ragnemalm, *Sveriges grundlagar och tillhörande författningar med förklaringar [The Swedish Constitution and Associated Statutes with Explanations]*, 1980, p. 44.)

The provisions about freedom of information in 2.1 of the Instrument of Government cannot, as has been shown, provide a basis for considering that a public library is obliged to make all of its books available to the public.

The regulations in Chapter 2 of the Freedom of the Press Act enjoin every public authority to allow individuals access in certain ways and subject to certain restrictions to the authority's public documents. However, printed works and the like forming part of the collection of a library cannot be regarded as public documents (11.3.1). Once again, there is nothing to be found on which an individual could base a claim to be allowed access to any item whatsoever in the collection of a public library.

In 1.9 of the Instrument of Government, administrative agencies and other agencies involved in public administration are enjoined to pay regard to the equality of all individuals before the law and to observe objectivity and impartiality in discharging their obligations. This provision demands that in the application of laws, ordinances and other legal regulations, citizens are to be treated objectively, impartially and even-handedly. In the Local Government Act (1991:900) Article 2.2 stipulates that communes and county councils are to treat their inhabitants impartially, unless there are valid reasons for not doing so.

In my opinion, the principles of objectivity and impartial treatment apply in situations where a public library is dealing with a request from an individual to be allowed access to a printed work that forms part of the library's collection or for an inter-library loan. In this context, it would be acceptable to establish a principle denying children or young people access to some types of

works. Similarly, it would be acceptable for a library to restrict public access to some books in its collection, or to refuse to arrange inter-library loans, or to arrange such loans only for those involved in research. In the same way it is, of course, totally acceptable for a library not to buy works of a certain type. On the other hand, I cannot find it acceptable to differentiate between adult borrowers so that available works are only provided to those who can show that they have the "correct" opinions or that they are well enough informed about certain subjects. Nor do I consider it acceptable to base the decision whether or not to arrange an inter-library loan on such differentiation.

In the rejoinder, the Chief Librarian admits that the staff asked V. his purpose for requesting the loan when he asked for two works by Martin Luther. The reason is that the library staff are "vigilant where anti-Semitic works are concerned". What this means in practice is not, however, explained. In the rejoinder, all that is said is that the public library did not on any occasion prevent V. from borrowing any books. It is implied that in its actions the library was vague or that misunderstanding had arisen.

The library's rejoinder is contradicted by the contents of a letter signed by the Chief Librarian and one of the staff on August 9 1996. This states that library policy forms the basis of its actions and its reluctance on principle to use the inter-library loan system to acquire the books that V. bad requested. Here it is said that the aim of these actions is to prevent the abuse of freedom of expression and of the library's unrestricted loans of various forms of publication. When V. by referring to a newspaper article he had written had been able to indicate the "serious purpose" behind his request, the library attempted to arrange an inter-library loan and then lent the requested works by Martin Luther from its own collection.

The documents in this case reveal, as has been shown, that not until the staff had made sure that there was a serious purpose for the loan did the library accede to V's request. It has become obvious that in establishing the nature of this purpose V's political and religious standpoints were taken into account, and that if he had expressed, in the article or otherwise, a point of view considered by the staff to be unsuitable, his request would not have been granted. In the light of what has been said previously about the application of the principles of objectivity and equal treatment in the operations of a public library, to differentiate in this way among individuals applying for loans cannot be acceptable.

This critical opinion concludes the case.
(Reg. no. 3622-1996, Reporting Officer Henrik Runeson)

16 The question of preventing the circulation of a printed work

An article, printed in a newspaper led the Parliamentary Ombudsman to initiate a special enquiry into whether it could be considered that obstacles had been raised to the circulation of a printed work. The article contained the following account:

A ban is now in force at the library and it is being obeyed loyally by all of the library staff. This is what A., the owner of a second-hand bookshop, found out in connection with a recent event – the International Poetry Festival. He was asked by the administrative director of the library, R., not to display a number of copies of "Tidernas bibliotek". During the festival, A. had been selling the works of the visiting poets at different venues. "I sell them in the shop, so I brought

some along with me to a reading at the library. ... R. considered it inappropriate for me to sell the works in view of what had been said by the politicians. ...”

In its rejoinder to the Parliamentary Ombudsman, the Local Authority’s Cultural Committee included the following:

A. confirms that the situation was not experienced as a threatening one, but possibly as “unpleasant”. He says that he was asked who had given him permission to sell books at the library. He was unable to reply and therefore considered the question to be surprising. As he could not answer, R. asked him to remove the books. A. chose not to continue the discussion, as he felt that the situation was strange and he was uneasy about the permission to sell books.

In an adjudication of 24 March 1998, *the Parliamentary Ombudsman, Mr. Lavin* stated the following.

According to 6.1 of the Freedom of the Press Act, any Swedish citizen or legal person has the right, either personally or with the assistance of others, to sell, dispatch or otherwise disseminate printed matter. In addition, the second paragraph of 1.2 contains an explicit prohibition for any agency or other public body to prevent printing, publication or circulation to the public of printed matter because of its content, through action not authorised under the Act.

The decision by the Cultural Committee that the public library’s own copies of the work “Tidernas bibliotek” were not to be sold before a certain date cannot be regarded as an unlawful ban on circulation. My assessment of this case will therefore be limited to the question whether the actions of representatives of the committee towards the bookseller in connection with the International Poetry Festival were in breach of the prohibition in the second paragraph of 1.2 of the Freedom of the Press Act.

I shall begin by establishing that the intended sale of the books by the bookseller must be regarded as the circulation of printed matter to the public, irrespective of whether this was to take place on the library’s premises.

From the rejoinder of the Cultural Committee it is clear that the reason the library’s administrative director requested the bookseller to remove the books was that he felt that he should comply with the Cultural Committee’s intention that the books should not be sold in the library until later. His action was not therefore based on regulations or similar circumstances prohibiting sales on the library’s premises. On the contrary, it has become clear that the intervention came about precisely because the book offered for sale by the bookseller was “Tidernas bibliotek”. It was therefore, in other words, the contents of the work that gave rise to the administrative director’s action.

Even though this action was not accompanied by any threat or followed by any inspection, it must be regarded as an obstacle to circulation to the public. As this obstacle came from a public authority and had no support in the Freedom of the Press Act, it was unlawful. The circumstance that the Culture Committee had decided that the Committee’s own copies of the book were not to be sold before a specific date cannot render the action taken against the bookseller acceptable.

I consider that the documents in this case enable me to come to the conclusion that the administrative director of the library based his actions primarily on a misunderstanding of the extent of the Cultural Committee’s decision about the sale of the work. There was never any intention to deprive the public of the contents of the book – the book was available and could be

consulted in the library itself. I find therefore that I can conclude this case with the criticism of the action expressed above.

(Reg. no. 4028-1997, Reporting Officer Lars Clevesköld)

THE OMBUDSMAN AND THE ADMINISTRATIVE COURTS

From the book The Parliamentary ombudsman on Administrative Procedure 1998/99[4]

1 The question of revealing a medical diagnosis in the judgment of a court

In a letter to the Parliamentary Ombudsman, Y. complained that a County Administrative Court had divulged a medical diagnosis of his condition in its judgment, maintaining that in so doing the court was in breach of the Secrecy Act (1980: 100) and that he had been defamed.

The following formed part of the adjudication issued by *the Parliamentary Ombudsman, Mr. Lavin,* on 8 January 1998.

Article 12 of the Secrecy Act contains special provisions regarding secrecy and the courts, etc. The first paragraph of 12.1 states that if, in the exercise of its judicial powers, a court acquires from another court or other public agency information that is confidential, it is to maintain this confidentiality. In the same Act, the first paragraph of 12.3 makes it clear that this confidentiality no longer applies in a case or issue if the information is presented in a public court hearing while the court is exercising its judicial powers. The second paragraph of the same section states that if the confidential information referred to in the previous paragraph is presented during a hearing *in camera,* its confidentiality is to be respected during the remainder of the hearing unless the court appoints otherwise. Once the court has completed its hearing of the case or issue, the information will only remain confidential if the court has so ordained either in its judgment or in a separate decision. According to 12.4.1 the confidentiality of information in a case or issue subject to the judicial powers of a court ceases to exist if this information is included in a judgment or other decision regarding the case or issue in question. The following paragraph lays down that this provision is not to apply if the court has prescribed such confidentiality in a judgment or separate decision. Confidentiality cannot be prescribed for a judgment or the corresponding section of any other decision except when required by inexorable regard for the safety of the realm or some other interest of overriding importance.

Article 30 of the Administrative Court Procedure Act (1971:291) lays down that the findings of a court are to be based on the contents of the hearing and anything else that may have come to light in the case. Its judgment is to present the reasons on which its findings are based.

As the County Administrative Court has stated in its response to the complaint, Article 30 of the Administrative Court Procedure Act requires that a judgment should be formulated so that, for instance, the reasoning leading to the findings is made clear. Only if this reasoning is openly accounted for can an individual see how the court has sifted and evaluated the relevant facts in making its decision and how these facts have been assessed according to the laws that apply. An

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informative opinion can either convince an individual that the decision is a correct one or provide her or him with the basis of an appeal. Public confidence in the competence and objectivity of the courts requires them to be able to show that their decisions are well grounded.

As has already been made clear, courts do have the possibility of stipulating that the reasons for a judgment remain secret (the Secrecy Act 12.4.2). In the *travaux préparatoires* of the Secrecy Act (Govt. Bill 1979/80:2 p. 102) attention is drawn, however, to the importance of the public being afforded as much insight as possible into the activities of the courts. From this point of view, there is good reason for the findings of courts to be as public as they can be. At the same time, however, it must be borne in mind that taking the principle of public access too far in this context may be detrimental to public or private interests. On the other hand, for a court to omit on the grounds of secrecy more detailed discussion of certain circumstances that are of significance in a case could, in its turn, give rise to an inadequate perception of the reasons for the adoption of a particular standpoint. In addition, it is stated (p. 309) that the courts are to be free to decide whether to give greater weight to the principle of public access or to confidentiality. The scope afforded to the courts to make such a decision in individual cases corresponds to the scope they are given in deciding whether a hearing is to be public or in camera. It must be presumed that the courts are restrictive when it comes to declaring judgments and decisions secret.

When, as in the case in question, during a hearing in camera confidential information is presented about an individual's medical condition or other personal circumstances, and the judgment has not been declared secret, restraint must be exercised in referring to information which is not needed to comply with the demands of Article 30 of the Administrative Court Procedure Act. It is not always necessary to disclose a medical diagnosis that could be regarded as being detrimental for the individual in order to clarify how the court has reached its findings.

In the judgment in this case the diagnosis is referred to explicitly in three instances. Two of them form part of the account of the testimony of the Senior Consultant and Y. during the court hearing, which took place in camera. In my view, there was no obvious need to divulge the diagnosis. It would have sufficed to state that Y. considered that the Senior Consultant's diagnosis was erroneous and that he did not consider himself to be suffering from any mental illness. The third reference to the diagnosis is in the first sentence of the County Administrative Court's own assessment. There the County Administrative Court even confirms the diagnosis with the words: "Even if Y. has maintained that the diagnosis is wrong and that he is completely well, nothing has been shown other than that Y. is suffering from … which needs to be treated with drugs." In my opinion, the County Administrative Court could easily have avoided specifying the diagnosis and still been able to make its own opinion clear. It could, for instance, have used a wording like: "Nothing has come to light in this case to support any opinion other than that Y. is suffering from the disease diagnosed by the Senior Consultant."

I would like to emphasise how important it is that the diagnosis of illnesses, especially mental illnesses, should only be reported in judgments when this is absolutely necessary. Even if it is my opinion that the judgment in this case could have been worded with considerably more consideration for the patient than was in fact the case, I am nevertheless not prepared to express criticism of the County Administrative Court. Here, I am taking into account the fact that the inclusion of diagnoses in judgments has not previously attracted a great deal of attention on the part of the Parliamentary Ombudsman.

(Reg. no. 4053-1996, Reporting Officer Elisabeth Hagelin)

38 The question of whether an error in a court judgment which was corrected after the judgment had been announced constituted an error of oversight rectifiable under Section 32 of the Administrative Court Procedure Act (1971:291)

In the course of an inspection of a County Administrative Court, a judgment was found in which the Court had decided to undertake a self-correction in accordance with Section 32 of the Administrative Court Procedure Act. The correction amounted to the deletion of the initial paragraph in the Court's assessment of the case.

In his rejoinder, the Chairman of the Court has submitted the following statement:

When the court official in charge presented the case before the Court, he contended that the requested exemption from the obligation to keep accounts could not be granted retroactively, and he had stated this view in the proposed judgment which he put before the Court. The Court, however, decided that this could in fact be done, and the proposed judgment was altered accordingly. When the proposed judgment was edited, however, the official's proposal was erroneously allowed to remain in it. The mistake was subsequently corrected by means of self-correction according to Section 32 of the Administrative Court Procedure Act.

In his decision of 23 September 1998, the *Parliamentary Ombudsman, Mr Lavin*, wrote as follows.

Section 32, subsection one of the Administrative Court Procedure Act prescribes that a Court is permitted to correct a decision which contains some obvious inaccuracy due to the Court's or some other person's error in writing or calculating or to some similar oversight. More detailed provisions of a practical nature are found in Section 36 of the Ordinance (1979:575) on the keeping of records etc. in public administrative courts of law. The Ordinance prescribes that a correction of or a complementary addition to a judgment or some other decision under Section 32 of the Administrative Court Procedure Act must be entered by the Court's Chairman on the original of the judgment or decision or, when the decision has been entered in the Court's records, in those records. Furthermore, the date of the correction or addition should, according to the Ordinance, be stated in that entry.

The provision in Section 32 of the Administrative Court Procedure Act refers to those inaccuracies that are termed errors of oversight. These are errors that arise in consequence of the Court's mistakenly happening to reproduce the contents of a correctly decided judgment in an erroneous manner. So-called errors of assessment are often set up as a kind of counterpart to errors of oversight. Inaccuracies of the former type must not be corrected under Section 32 of the Administrative Court Procedure Act. Such faults in the contents of a judgment are due to inaccurate investigation, an erroneous assessment of the facts, or an erroneous application of law. On these points, see Hellners and Malmqvist, *Nya förvaltningslagen med kommentarer*, 4th ed., 1995, pp. 323–327; Strömberg, *Allmän förvaltningsrätt*, 18th ed., 1997, p. 123; and Wennergren, *Förvaltningsprocess*, 3rd ed., 1995, pp. 256–260.

The correction undertaken by the Chairman of the Court the day after the judgment had been announced was said to have been made in accordance with Section 32 of the Administrative Court Procedure Act. It consisted in the cancellation of a two-sentence paragraph from the assessment part of the grounds for the Court's decision. The paragraph in question derived from a proposed judgment which the Court had rejected during its deliberations. When the judgment was being edited, the paragraph was, mistakenly, not deleted.

Indubitably, the paragraph which was removed from the judgment came to express something that was at variance with the Court's intention. The content of the paragraph is in obvious conflict with the reasons which the judgment goes on to state; nor does it agree with the actual judicial decision. It can also be established that the cancellation *per se* has not affected the concrete outcome (cf. the Supreme Administrative Court's correction in RÅ 1993, note 9, of its judgment in RÅ 1991, ref. 99). Furthermore, the inaccuracy strikes the reader as obvious on perusal of the judgment, especially in view of the actual judicial decision. To sum up, I am of the opinion that the correction was indeed undertaken in accordance with Section 32 of the Administrative Court Procedure Act. Besides, the correction was performed in the prescribed manner. Consequently, I have no objection to the Chairman's having carried out the correction in question.

In view of this matter, I wish to emphasise the importance of taking the greatest possible care when editing judgments in word-processors. Naturally, print-outs must be subjected to attentive scrutiny before judgments are signed and dispatched.

The case is closed.
(Reg.no. 2141-1998, Reporting Officer Lennart Nilsson)

39 The question of whether a certain document should have been dealt with as an appeal against an administrative decision

M. has complained that a letter which was sent by A. to a Local Tax Office and which did not constitute an appeal had been sent on to the County Administrative Court, which treated the letter as a document of appeal.

In his decision of 24 September 1998, the *Parliamentary Ombudsman, Mr Lavin*, wrote as follows.

If an appeal against an administrative decision is lodged with an administrative court, the rules of appeal contained in the Administrative Procedure Act (1986:223, Section 23) and the Administrative Court Procedure Act (1971:291, Sections 3 and 4) become applicable simultaneously. With regard to the contents of the document of appeal, the legal texts prescribe that the decision against which the appeal is made shall be stated, as well as what the appellant requests (the alteration of the decision which he/she demands) and the circumstances adduced in support of that request. In case law, letters from individuals that were written as a result of dissatisfaction with administrative decisions have been interpreted with considerable generosity and deemed to constitute formal letters of appeal even in cases where a letter does not actually mention the word "appeal". This practice is connected with the fact that an individual is usually obliged to plead his/her own cause in the administrative procedure, without any legal assistance. If there is any doubt concerning the individual's wishes in any respect, the authority should request that he/she complement the document (cf. Section 5 in the Administrative Court Procedure Act).

If a party demands another outcome than the one contained in the decision, that is normally enough for a letter from that party to be deemed to constitute a letter of appeal. If there is any doubt as to the actual purpose of the letter, however, the decision-making authority should inform the complainant of this step before his/her letter is forwarded to the Court. See the court case in *RÅ* 1988, ref. 33. By way of an example of a letter of appeal accepted as such by the

relevant Court, my own book *Gäst hos försäkringsöverdomstolen* (1991), p. 95, mentions an acknowledgement of service on which the following words had been written: “Is the investigation completed? Am waiting for the investigation to be completed. Or are people condemned from the start?”

The letter written by A. which the County Administrative Court regarded as a letter of appeal was directed against a certain measure adopted by the relevant authority, and in other respects too its contents can be read as signifying that A. was dissatisfied with the measure. I therefore have no objections to the County Administrative Court’s having treated A.’s letter to the Local Tax Office, which was received by that Office within the stipulated period of appeal, as if it contained an appeal proper.

I am, however, critical of the continued processing of the case. Naturally, what was said above to the effect that letters received before the expiry of the period of appeal are generally presumed to constitute letters of appeal only applies until the examination of the matter in hand suggests otherwise; see the Parliamentary Ombudsman’s Annual Report 1991/92, p. 315. A.’s reply to the County Administrative Court’s injunction begins with her statement that she had not appealed against the Tax Office’s decision; that statement should, as the reply to the inquiry in the case points out, have persuaded the Court to drop the case. The Court answered that the decisive sentence had been “overlooked”, referring, perhaps by way of explaining the incident, to large backlogs and a high working pace which, in their turn, had had such effects as deterioration in respect of control and meticulousness. I fully understand that increased pressure of work may lead to errors being committed. In this case, though, I find it difficult to accept that pressure of work as such might account for the incident. Both during the preparation of the case and during the final perusal of the documents prior to signing and dispatching, the statement made by A. on 5 December 1997 should have been observed. I find myself inclined to share the fears expressed by M., to the effect that inadequacies in the reading of the relevant documents caused the Court’s failure to pay attention to what was a crucial sentence in this case.

With the criticisms articulated above, the case is closed.
(Reg.no. 1790-1998, Reporting Officer Carina Hedbom Blomkvist)

51 The question of an Administrative Court’s responsibility for investigating a case concerning harassment in the workplace under the Act (1976:380) on Industrial Injury Insurance

F. has lodged a complaint against the County Administrative Court of G., maintaining that the Court, in one of its judgments, made specific mention of her as having conducted herself in a reprehensible manner at her place of work, and that the Court did not afford her any opportunity to refute the allegations. The judgment declared that a previous employee at the complainant’s place of work was entitled to compensation under the Act on Industrial Injury Insurance owing to harassment and bullying which was said to have occurred there.

In his decision of 23 November 1998, the *Parliamentary Ombudsman, Mr Lavin*, wrote as follows.

The reason why F. had no opportunity to make herself heard during the trial proceedings is that she was not a party in the case. However, it was the County Administrative Court’s obligation to ensure that the case was investigated to the extent that its nature called for (Section 8 of the

Administrative Court Procedure Act, 1971:291). According to the judgment, the Court had access to comprehensive investigatory materials; but apparently it did not deem it necessary to hear F.'s views. Cases of harassment and bullying in the workplace are often extremely difficult to investigate. It is not rare for oral hearings to be arranged in order to facilitate attempts to clarify what actually happened. It must be borne in mind, though, that the Court is not, in such a case, obliged to take the investigations beyond what is necessary in order to determine whether the insured person is entitled to compensation according to the Act on Industrial Injury Insurance.

The question of whether a judgment is correct with regard to the point at issue is not normally a matter for the Parliamentary Ombudsman. Consequently, the Parliamentary Ombudsman does not usually review complaints concerning the assessments made by courts of law. F.'s complaint belongs to this category. Hence, I find that it would be inappropriate for me to scrutinise the circumstances which F. describes in her complaint.

(Reg.no. 4347-1998, Reporting Officer Magnus Schultzberg)

55 The question of the wording of a service by publication in a local newspaper regarding a County Administrative Court's judgments in cases of economic support according to the Social Services Act (1980:620)

B. and others have queried whether the County Administrative Court in the county of S. grossly neglects the obligation to observe secrecy in the social services as a result of its wording of services by publication regarding judgments in cases that involve economic support under Section 6 of the Social Services Act. A copy of the service by publication that was printed in *Dagens Nyheter* on 16 March 1998 accompanies the complaint.

In his decision of 14 December 1998, the *Parliamentary Ombudsman*, *Mr Lavin*, wrote as follows.

By means of an amendment (1997:313) to the Social Services Act which became valid on 1 January 1998, Section 6 (the so-called economic-support section) came to be complemented by regulations specifying the circumstances under which a person is entitled to what is termed subsistence support (Section 6 b) and other support (Section 6 f), respectively. Furthermore, local Social Welfare Committees (Section 6 g) were authorised to grant support "in another form than, or in addition to, what follows from Sections 6 b and 6 f". Decisions made in accordance with Section 6 g are not included in the enumeration, in Section 73, of decisions against which appeals may be made (by means of "administrative appeals") to administrative courts of law. Hence, such decisions can only be reviewed according to the procedure laid down in Chapter 10 of the Local Government Act (1991:900).

It is clear from Chapter 10, Section 14, subsection two of the Local Government Act that a decision which is made by a County Administrative Court or an Administrative Court of Appeal and which entails the quashing of another decision may be appealed against, by the relevant municipality or county council or by their members.

In the judgments involved in the present case, the County Administrative Court quashed decisions made by municipal committees on the basis of regulations contained in Chapter 10 of the Local Government Act. It was possible for an unspecified set of people to appeal against the

judgments of the County Administrative Court; therefore service of process was made by way of publication in accordance with Section 16 of the Act on Service (1970:428).

Service by publication takes place in the following manner: the relevant document is kept available for a certain period of time on the court's premises or in a place decided by the court, and a statement to this effect which also reports the main contents of the document is published in *Post- och Inrikes Tidningar* and the local newspaper, or in either of these, within ten days from the day on which the decision to serve by publication was made (Section 17, subsection one of the Act on Service). By way of publication in the newspaper, members of the municipality/county council who are entitled to appeal are thus supposed to become acquainted with the "main contents" of the judgments concerning economic support. In other words, the information printed in the local paper must, both with regard to character and extent, be such that a member of a municipality/county council is able to determine whether there is any reason for him/her to study the judgment more closely. In the service by publication with regard to which a complaint was made to me, the County Administrative Court published the names of applicants for support as well as the purposes for which they applied for support. As the relevant legal remedy is the "municipal appeals" procedure, and as it may only initiate a review of legal validity under Chapter 10, Section 8 of the Local Government Act, it ought normally to be sufficient to state the purpose of an application, such as rent-payment support or support enabling the recipient to purchase a washing-machine. However, I doubt that it should be deemed sufficient to state "support under the Social Services Act", and nothing more, in respect of each judgment. The question is, of course, how one is prepared to interpret the words in the Act about the "main contents" of the relevant judgment.

What caused me to request an answer from the County Administrative Court, and to review the matter in some detail, was, above all, the fact that the names of the applicants for economic support were made public in the newspaper item. According to Section 2 a of the Statute (1979:101) on Service, care should be taken in the context of service to ensure that the adopted measures do not expose the recipient or any other person to unnecessary public attention. Obviously, a person who finds himself/herself in such a precarious situation that he/she has to apply for economic support does not wish his/her name to appear in a major broadsheet. As a result of publication, the names will be spread to hundreds of thousands of readers who would never even consider appealing against some judgment concerning economic support, and who may not even be members of the relevant municipality and thus would have no right to appeal in the first place. Evidently, this publication may be very harmful to the individual person. As was stated above, it is, in my view, chiefly the purpose of the economic support in question that a member of the relevant municipality who is entitled to lodge an appeal should have an opportunity to become acquainted with. Consequently, it is my opinion that the applicant's name should not normally be published in a service by publication concerning a decision about economic support.

The County Administrative Court's rejoinder makes it clear that the Court has itself realised the inappropriateness of publishing the names of applicants for support, and that it now no longer submits such names for publication. In view of this, I do not find that there is any reason for me to criticise the County Administrative Court.

The case is closed.
(Reg.no. 1615-1998, Reporting Officer Magnus Schultzberg)