

Ombudsman In Sweden and Denmark; A Comparative Study

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ABSTRACT

An ombudsman is an official, usually appointed by the government, who investigates complaints (usually lodged by private citizens) against businesses, financial institutions, or government departments or other public entities, and attempts to resolve the conflicts or concerns raised, either by mediation or by making recommendations. Ombudsmen may be called by different names in some countries, including titles such as a public advocate or national defender. Depending on the jurisdiction, an ombudsman's decision may or may not be legally binding. Even if not binding, the decision typically carries considerable weight. When appointed, the ombudsman is typically paid via levies and case fees. An ombudsman typically has a broad mandate that allows him or her to address overarching concerns in the public, and sometimes the private, sector.³

Keywords: *Ombudsman, Ombudsman in Sweden, Ombudsman in Denmark.*

INTRODUCTION

Ombudsman exist in many countries; different countries have different ombudsman according to their own peculiar needs. Ombudsman originated in Sweden and is a very powerful institution there. Denmark has a different approach to this institution. In the Swedish process of law, the protection of the rights of individuals in their contacts with authorities is fundamental. In this context the Swedish Ombudsman system is a guarantee against oppressive measures and misgovernment in the judiciary and public administration. The word "*Ombudsman*" has been derived from the Swedish word "*ombud*", which in the Swedish language commonly denotes a person who acts as a spokesman or representative of another person or persons. It is a public officer entrusted with the power to investigate public grievances. Its supervision covers all central and local government agencies and their staff. The powers of the Parliamentary Ombudsman are to supervise the observance of laws by judges, government officials⁴

Danish Ombudsman was newer in its origin, 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" ' on the part of the executive.⁵

Both model function differently for serving the needs of their countries.

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³ Will Kenton, "Ombudsman", Investopedia, (Oct 6, 2019). <https://www.investopedia.com/terms/o/ombudsman.asp>

⁴ Anders Johnson, "The Role of Ombudsman: The Swedish Experience", The daily star, (Jan, 17 1999, Last Modified Jul 12, 2013 11:57 PM). <https://www.thedailystar.net/news/the-role-of-ombudsman-the-swedish-experience>

OMBUDSMAN IN SWEDEN

In the Swedish process of law, the protection of the rights of individuals in their contacts with authorities is fundamental. In this context the Swedish Ombudsman system is a guarantee against oppressive measures and misgovernment in the judiciary and public administration. The word 'Ombudsman' has been derived from the Swedish word "ombud", which in the Swedish language commonly denotes a person who acts as a spokesman or representative of another person or persons. It is a public officer entrusted with the power to investigate public grievances. Its supervision covers all central and local government agencies and their staff. The powers of the Parliamentary Ombudsman are to supervise the observance of laws by judges, government officials and other civil servants employees and to advise or prosecute officials who have acted illegally or have neglected their duties. The Swedish Parliamentary Ombudsman (JO) is appointed by the Parliament and helps to maintain public confidence in the activities of the courts and in the Public Administration. We also have an Ombudsman for Military Affairs to ensure that statutes, regulations and rules are observed by the officers.⁶

Other Ombudsmen exist in a number of special areas. These are appointed by the Government - (and are accordingly subject to the supervision of the Parliamentary Ombudsman) - and they have similar duties of surveillance, each in a particular sphere such as Consumer Ombudsman, The Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Children's Ombudsman, the Office of the Disability Ombudsman. There is also a Press Ombudsman who, rather than being a public institution, is sponsored by media.

Sweden was the first country to establish the office of Ombudsman. It dates back to 1809, created by the constitution. It was originally established to provide the Parliament (Riksdag) with the means of supervising compliance with laws and ordinances by all judges, civil servants and military officers. It took more than 100 years until some other countries followed suit - first in Finland in 1919, Denmark in 1954 and Norway in 1960. In 1962 New Zealand became the first Commonwealth country to establish an office of the Ombudsman. In 1966 Tanzania became the first African country with the name "Permanent Commission of Enquiry". Today we find similar institutions in a large number of countries.

WHY WAS THE INSTITUTION ESTABLISHED?

Sweden is a native land of the institution of Ombudsman." In 1713 King Charles XII of Sweden, had been out of the country at war with Russia for nearly twelve years. He gave order for the appointment of a supreme representative of the King known as Hogste Ombudsman." This institution was established by the King to ensure effective enforcement of law and order and to observe the functioning of the public servants and also to see that they discharged their duties in the public interest.¹⁴ In 1719, the name of the Hogste Ombudsman was changed and became Justitie Kansler. but the functions, duties and responsibilities of the Justitie Kanter did not undergo any significant change. But during 1766 to 1772 his position was changed and his appointment was made by the existing representative bodies and not by the King of Sweden." In 1772 King Grustavas III staged a coup d'etat and Justitie Kansler again became an office in the confidence of the King. The on-going struggle between the King and the Parliament on the issue related to the appointment of 5 Ombudsman came to an end in 1809 with the adoption of a new Constitution, in which the Parliament was given power to appoint a Parliamentary Ombudsman. The democratic Constitution adopted by the Swedish Parliament in 1809 provided for the division of powers between the King, the Parliament and the Judiciary. Although the King was given too many powers, Parliament was also endowed with varied means of exercising control over Government actions, one of such mean being the appointment to the newly created office of Ombudsman." Main function of the Ombudsman was to exercise Constitutional control over the activities of the King, his subordinate staff and military officers.⁷

The Swedish Ombudsman ensures that those who hold office must respect the law and properly fulfill their obligations. For all practical purposes the origin of Ombudsman office, in modern times may be traced to the 1809 Constitution of Sweden.

But before any country could adopt this institution, it was again Sweden which after a very long gap in the year 1915 established one more Ombudsman to look after the complaints against the armed services, known as the Milite Ombudsman, It is believed that during the First World War some complications were aroused in the public services and the grievances arising in and against the armed forces led to the appointment of the Milite Ombudsman exclusively to look into the various complaints and criticisms.⁸

Then

before, the Milite Ombudsman may be called a product of the war years. This Swedish office of Milite Ombudsman continued throughout the Second World War period, but later during the peace time there was a gradual decline in its work and it was abolished in 1968. Since then the office has twice been reorganized. The first in 1968, that was after the abolition of the Milite Ombudsman, the posts of three Ombudsmen of equal rank were created, second time in 1976, when the Swedish Parliament, opted for a new system where by four Ombudsmen were appointed Out of four Ombudsmen one is elected by the Parliament to act as a Chief Ombudsman." Over the years, Sweden Ombudsmen has been developed as a successful and strong institution providing help to the aggrieved citizens. It also emerged as a successful defender of civil liberties. In Sweden the consumer's interests have also been safeguarded by the Ombudsmen. He is also an interpreter of law, number of laws has been amended at his initiative, whenever he found any law to be improper. vague or unsatisfactory he made efforts to amend it. The Swedish Ombudsmen proved to be a neutral investigator who handles the public complaints in a simple and effective way.

But the Swedish Ombudsmen does not go to the extent of reviewing all administrative action like the French Conseil d' Etat having a power to enforce its decision. The Swedish Ombudsmen is an independent advisory authority, which cannot quash decision of administration nor enforce its own decision, but can only make investigation and recommendations to Parliament against public official and Ministers on complaints made by the aggrieved citizens. While other grievance redressal institutions, offices or practices have more or less become part of the history, the institution of Ombudsmen has transcended history.⁹ Throughout the 17th-18th centuries, domestic politics were dominated by a power struggle between the king and the aristocracy. With the death of King Karl XII - and the fall of the Swedish "empire" - there was an almost total change in the mode of Government. "Here everyone is behaving like flies that have survived the winter and come to life again" we read in a letter describing the political activity at that time.¹⁰ During the following decades of what we call "The age of Freedom" (1719-1772) The Parliament gradually grew into a strong constitutional position. We had a somewhat unique feature in Sweden at that time with more than 50% of landowner self-owning farmers or peasants forming their own association and party. The emerging division of interests was a crucial basis for the enhancement of the role of the Parliament as the focal arena for debate and consultations on vital national issues. Despite autocratic interventions by the also exerted its sway over foreign policy through its Secret Commission. At any moment it could also intervene in the administration or the judiciary.¹¹

In 1809, Parliament was summoned and worked out and adopted a new constitution. Based partly on Montesquie's ideas, partly on indigenous experiences from the Age of Freedom, the 1809 Constitution distributed the power between king, Council or Government and Parliament. Sweden became a constitutional monarchy. The institution of Ombudsman became an important body to provide the Parliament with a means of supervising compliance with laws and ordinances by all judges, civil servants and military officers.

HOW DOES IT FUNCTION?

The Parliamentary Ombudsman or Ombudsman for Justice or the Justice Ombudsman (JO) covers all central and local government agencies and bodies. It is not intend to supervise Cabinet Ministers or members of Parliament. There are special Standing Constitutional Committees dealing with that. There are four Parliamentary Ombudsmen elected for four-year periods. One of them is responsible for administration and focus of its activities.

Anyone who feels that he or she has been wronged may submit a written complaint to the JO. Some 5,000 such complaints are handled each year. About 40% of these usually prove at an early stage to be unfounded, and can therefore be summarily dealt with.

The Parliament has empowered the Ombudsman (JO) with full discretion to decide which cases to investigate. It has also been authorized to refer to other agencies cases that are more appropriately dealt with there.

The JO concentrates on those that are significant in the sense that they involve striking a just balance between the claims of the community and the freedom of the individual. Many of the complaints come from people caught on a bureaucratic "merry-go-round", a vicious circle. The aggrieved citizens may lodge complaints with the Ombudsman, but he can also proceed upon his own motion through any other means.¹²

It is the JO's duty to inspect, from time to time, authorities under their supervision. Frequent inspections have been made of central government agencies, courts, prisons, the police etc. The JO also pursue long-term investigations. The power over the court is specially interesting as we also have the principle of independence of judiciary. JO is not concerned with contents of the court's decision but rather with the question of whether a judge has acted illegally and violated its mandate.

When the JO find that an error has been made, but one of such seriousness as to entail punitive or disciplinary consequences, the JO may issue critical statements of opinion. These, containing more or less serious criticism, usually feature in some 600 JO decisions annually. That represents about one-fourth of the investigations.

One of the duties is to present an annual report to the Parliament. The report contains an account of the work done and the investigations carried out. It is entitled to draw to the attention of the Parliament or the Government inconsistencies, gaps or other shortcomings in the regulatory and administrative system that has come to light during the investigations. It could result in an amendment of a law or ordinance. The report is examined by one of the Standing Parliamentary Committees. After examining the contents on a spot-check basis, the committee presents a statement of opinion to the Parliament. The mass media may also be said to exercise control over the JO, since they often take up controversial cases for debate.

OTHER OMBUDSMAN INSTITUTIONS

The Consumer Ombudsman took office in 1971 with the duty to ensure that "The Marketing Act" and "The Unfair Contract Terms Act" are followed to protect the consumer.¹³

The Swedish Children's Ombudsman watches over juvenile rights and interests. The basis of this work is the UN Convention of the Rights of the Child and to ensure that Sweden fulfills its obligations.

The Equal Opportunities Ombudsman was established in 1980 the same year in which the Act concerning Equality between Men and Women at Work came into force. The purpose of the Act

to promote equal rights and opportunities for men and women with regard to work and terms of employment.¹⁴

The Ombudsman against Ethnic Discrimination was established in 1986. Ethnic discrimination is in the Act defined as when a person or group of persons is treated unfairly, compared to others, because of race, skin, colour, national or ethnic origin or religious faith.

The Office of the Disability Ombudsman aims to work for the rights and interests of persons with functional disabilities, to promote their full participation in society.

The Press Ombudsman is entirely voluntary and wholly financed by the three press organisations. The National Press Club, the Union of Journalists, the Newspaper Publisher's Association. These organisations are also responsible for drawing up Sweden's Code of Ethics for the press television and radio. The purpose is to establish a self-regulatory system. The Swedish Press Council founded in 1916, is the oldest tribunal of its kind in the world. A newspaper that has been found to contravene good press practice is expected to publish the findings of the Press Council. It may also have to pay an administrative fee.

IMPORTANT INGREDIENTS AND FEATURES:

It has a high degree of independence from executive intervention. It enjoys full freedom in regard of investigations. It is being manned by people of outstanding merits and integrity to ensure trust in its operations.

It has powers of investigation - to have access to and investigate any documents and other material - to give strength and credibility of the investigation. It has the power to recommend - not to enforce changes - but the system of transparency and credibility will give the recommendation high weight.¹⁵

In its *annual report* it can provide the people (mainly thorough the media) and the Parliament with adequate information, not least to clarify general expectations of the bureaucracy in its dealings with citizens.¹⁶

The concept of Ombudsman originated in Sweden. Now the institution has been adopted in many parts of the world, irrespective of social, economic, demographic, legal or political diversities among these countries. The primary duty is to fight against maladministration. The fundamental function is to ensure transparency and accountability and efficiency - all vital ingredients of Good Governance.¹⁷

OMBUDSMAN IN DENMARK

Stephan Hurwitz, the First Ombudsman of Denmark was elected on 29th March 1954 and assumed his office in April 1954.¹⁸ The decision to introduce institution of Ombudsman was taken during the deliberations about a new Constitution in 1953. It was argued at that time that the expansion of the public sector had reached a level where it was necessary to have more safeguards for the proper exercise of the States, civil and military competencies. The 1954 Law was to a considerable extent a copy of the Swedish Ombudsman Law, the practice meant from the very beginning that the investigating role and not the prosecuting role become its sole function. The Act has been amended three times, but a definitive overhaul was initiated in 1992, resulting in a new Act in 1997.¹⁹ In Denmark a person who is a law graduate is eligible to be appointed as an Ombudsman.²⁰ Ombudsman is elected by the Parliament for a term of four years. If the Ombudsman ceases to enjoy the confidence of the Parliament, then Parliament have a power to dismiss him. Ombudsman jurisdiction cover State administration. civil, police, military and since 1962. the municipal authorities also comes under its jurisdiction. Danish Ombudsman can also supervise the Ministers, civil servants and all other persons acting in the service of the State. He has been specifically given jurisdiction over discretionary areas of the administrative decision. but he cannot alter the administrative structure. It is not mandatory on the part of Government to follow the recommendation of the Ombudsman. Ombudsman can discuss policy matters of the Government and can suggest reforms in the defective provision of the law. The Ombudsman shall submit an Annual Report on his work to the Parliament.²¹

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" ' 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 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.

The Ombudsman is by law the mandatory of Parliament and exercises his control over the government services on behalf of that body. 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.' 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.' As a matter of fact, the regulations which were adopted a year after the appointment of the first Ombudsman¹⁰ serve chiefly to amplify the concise provisions of the Ombudsman Act, and Parliament has in no wise 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. He is paid according to the salary scale for judges of the Supreme Court and may be granted an additional allowance. The Ombudsman may not engage in any other public or private employment without the consent of a special parliamentary committee.²²

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.²³

TYPES OF OMBUDSMAN IN DENMARK

The Parliamentary Ombudsman

(Danish: Folketingets Ombudsmand) was established in Denmark in 1955 to investigate complaints brought by an individual or ex officio in all matters relating to public governance, including maladministration by central or local authorities, on a case-by-case basis and on a general scale. The ombudsman's main areas of expertise include administrative law; constitutional law; the rights of inmates in correction facilities; and access to information. The ombudsman is appointed by the Parliament of Denmark.²⁴ The Danish Parliamentary Ombudsman is elected by the Danish Parliament, the Folketing, to investigate complaints about the public administration. The Ombudsman may state criticism and recommend that the authorities reopen a case and perhaps change their decision, but the Ombudsman cannot himself make decisions. The Ombudsman may consider legal questions but not matters which it will require other specialist knowledge. The Ombudsman may also take up cases on his own initiative, such as issues which have been the focus of media attention. His areas to take care are, Agriculture & Rural Development, Care, Disability, Education & Training, Employment, Entrepreneurship, Environment, Climate, Energy, Gender-based Violence, Health, Institutional Mechanisms, International Cooperation & Development, Justice & Human Rights, Media & Communication, Men & Gender Equality, Poverty & Social Exclusion, Power & Decision-making, Sport, and Other.

How to lodge a complaint with Parliamentary Ombudsman?

Complaint may be lodged with the Ombudsman either verbally or in writing. One may forward his complaint in his native language: a translation is provided into Danish. One has to try to explain which authority (or public employee) as to why complaint is made. For instance, one may state what he believe the authority has done wrong. It is also asked that the person shall send a copy of the decision he/she wishes to have of together with such documents that he/she consider significant to the case (letters from the authority, replies from the authority, statements etc.). The Ombudsman will reject anonymous complaints: one is always required to state his/her name and address in the enquiry. The complaint must be lodged with the Ombudsman within oneyear.

What happens when the Ombudsmen receives the complaint? Usually, the person will receive one of the following three answers from the Ombudsman:

Complaint will be investigated in detail If the Ombudsman decides to investigate the case. He will forward the complaint to the authority involved and ask for a statement. He will also askfor the documents of the case. Ordinarily, the authority's statement will then be sent to

complainant thereby giving him an opportunity to make his remarks. A legal investigation officer will deal with this part of the case processing.

Complaint is rejected because the Ombudsman cannot investigate the case in detail. Where an appeals body exists, i.e. another higher administrative authority, one should lodge his complaintwith said body first. If in doubt, one can contact the authority which processes the case originally or apply to the Ombudsman's Office for advice.

The Parliamentary Ombudsman is commissioned to supervise all parts of the public administration – including the state, the regions, the local authorities and other public bodies. Private establishments, the courts of justice and the Parliament, however, lie without thejurisdiction of the Ombudsman. Anybody may lodge a complaint with the Ombudsman. It is free of charge, and there are but a few conditions to be met.

The Ombudsman chooses not to investigate the case. The Ombudsman is under no obligation to investigate a complaint. He may thus decide not to process the complaint at all, or he may decide to process only parts thereof. One should, however, keep in mind that the Ombudsman himself cannot take a renewed decision on the case – such can only be done by the authority. Consequently, the task of the Ombudsman is to clarify for the authority that, in his opinion, the authority has

committed an error. The Ombudsman cannot sentence an authority or apply any kind of sanction.²⁵

The Consumer Ombudsman

(*Forbrugerombudsmanden*) was established in 1974 to ensure that the consumer protection and marketing rules are complied with by private undertakings. The ombudsman can ultimately institute legal proceedings before the Copenhagen Maritime and Commercial Court.

The Royal Ombudsman

(The highest representative of the Danish government in Greenland is called the Royal Ombudsman (*Rigsombudsmanden*) since 1979. However, here the word is used more in its older

general meaning of commissioner.) In February 2011 the Danish government turned down a request from a United Nations committee to create the position of Ombudsman for Children (*Børneombudsmand*).²⁶ The government instead opted to create a specialized "children's office" (*Børnekontor*) as a part of the existing Ombudsman institution.²⁷

COMPARISON BETWEEN SWEDISH AND DANISH MODEL OF OMBUDSMAN

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." 'On June 11, 1954, the King gave his assent to the Parliamentary Ombudsman Act,' 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.²⁸ Since Denmark, like the common-law democracies, but unlike Sweden, had no tradition of free inspection of the public records, the Danish experience is more instructive to persons concerned with the development of legal institutions in England and America." 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.²⁹

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,³⁰ 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, 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. Swedish ministers (*statsråden*) are not covered by the Swedish Ombudsman's authority.

In Denmark, a similar limitation would reduce the impact of the Ombudsman control very significantly, as Danish ministers – unlike their Swedish counterparts – in addition to their function as members of the government are also heads of administration and therefore both formally and in reality responsible for the state administration. There was accordingly no doubt that the Danish Ombudsman system must also include supervision and control of the ministers' discharge of their office. The other major difference in the law involved the Ombudsman's relationship with the courts. The Swedish Justitieombudsman also supervises the courts. In Denmark, the assumption was that an Ombudsman elected by the Folketing

should not undertake general supervision of the courts. However, the Constitution Commission in its comments to Section 55 of the Constitution stated that the provision could authorize the inclusion of the courts' purely administrative activities as within the Ombudsman's jurisdiction. The first proposals for an Ombudsman Act were in line with this, as they aimed to cover all administrative services, including the administrative functions of the courts, but not their judicial activities. However, this attitude changed during the reading of the bill in the Folketing and instead agreement was reached on a provision that generally excluded the judges' discharge of all their functions from the Ombudsman's jurisdiction. By an amendment of the Act in 1959, the other civil servants of the courts (magistrate's clerks, clerks of the court, etc.) were also exempted from the Ombudsman's jurisdiction. The Ombudsman at the time himself suggested that such an amendment was desirable. He considered it natural for the judicial power to be largely subject to the control of the courts themselves and the Ministry of Justice. In practice, the Ombudsman's office has in fact gone further than the legislators in this respect, by drawing an extremely clear line between the activities of the courts and the Ombudsman. Complaints are rejected by the Ombudsman not only if they concern issues that have been settled by the courts, but also when the issue is pending or testing by the courts is being considered. In Denmark, this aspect is thus very clear. The Ombudsman does not exercise any kind of control – directly or indirectly – over the judiciary.³¹

While there were thus significant differences between the Danish and Swedish systems as far as the Ombudsman's relationship with ministers and the courts was concerned, the Swedish emphasis on the personal responsibility for administrative activities was retained as the objective and aim of the Ombudsman's investigations when the legal basis in Denmark was formulated. The main provision about the Ombudsman's tasks thus amplifies the constitutional provision concerning control of the administration as superintending "whether the ministers, civil servants and other persons acting in the service of the State [later also the service of the local authorities] are guilty of errors and derelictions in the exercise of their office." As far as the Ombudsman's powers to react were concerned, the main emphasis was likewise placed on the disciplinary and criminal liability of the civil servants.

Despite differences in basis and development, there is nonetheless no doubt that the Danish Ombudsman office would not have seen the light of day without the Swedish inspiration and its model.

CONCLUSION AND SUGGESTIONS

Conclusion:

The idea of establishing an Ombudsman institution in Denmark originated in post-war public administration reform work. The crisis legislation of the 1930s and the ongoing economic reconstruction had necessitated strong state machinery, with extensive powers to interfere in the social economy and the daily lives of the citizens. Partly due to the extensive use of delegating legislation (i.e. authority provisions), the public administration increasingly appeared as an independent power factor. To mitigate the unfortunate aspects of this development, it was regarded as necessary to strengthen the role of the Parliament (the Danish Parliament, since 1953 called the Folketing) in relation to the public administration and at the same time expand the legal guarantees of the individual citizen's position in relation to the public administration. An Ombudsman system based on the Swedish model was a central, albeit not uncontroversial, element of this reform work. One of the key stages was its inclusion in the amended constitution of 1953, which had been prepared with the Swedish legal experts. According to the preliminaries of the Constitution and the subsequent Ombudsman Act, a Danish Ombudsman would serve as a supplement to the guarantees already in place to ensure that public administration activities were carried out correctly. This was deemed necessary due partly to the increasing importance of the public administration, and partly to the shortcomings detected in the existing guarantees. In this connection, it was noted that civil servants are subject to disciplinary and criminal liability, but also that instances of civil servants being called to account were rare and could in practice seem arbitrary. It was further noted that the administrative appeal systems, which were likewise intended to serve as legal protection of the citizens, were themselves part of the public administration. The appeal body was therefore unable to come

fresh to a case in the way an external supervisory body would. Experience showed that the opportunity to have a case tested by submission to the courts was very rarely used. Bringing a case before two or possibly three judicial bodies involved a lot of work and considerable costs. Moreover, testing by the courts was limited to the public administration's application of the law. The courts could not overrule the exercise of administrative discretion.

The introduction of the Ombudsman was seen as a protection – above all, of the individual citizen – for the enforcement of right and reason in relation to the public administration. The Ombudsman should be able to act at no cost to the relevant citizens, in their interest – and that of the general public – and address errors and negligence of every kind in the public administration. The Ombudsman's position under the Folketing was to ensure the office's independence in relation to the government and the public administration. At the same time, this position would also strengthen the Folketing's control of the public administration. The proposal concerning the establishment of an Ombudsman system led to the provision in Section 55 of the new Constitution, which provides by law that the Folketing shall elect “one or more persons to superintend the civil and military administration of the State.” (The distinction between civil and military administration was never implemented in practice and the option of electing more than one person as Parliamentary Ombudsman has likewise never been used. The limitation of the Ombudsman's authority to the state administration was removed in 1996, when the entire regional and municipal administration was included under his authority). The Ombudsman bill was debated at the same time as the Constitution bill in 1953, but not passed until 1954. The first Ombudsman took up office on April 1, 1955. The wording of the Danish Ombudsman Act was extensively influenced by the Swedish model.

Suggestions:

Both the institutions best work for their country. Still there can be another learning from each other:

- The authority of the Danish Ombudsman does extend to the ministers. It is needed for Sweden to have some check for the ministers. The institution of Ombudsman is very well accepted and respected there, so it would be best of Swedish Ombudsmen's authority could extend to checking the higher executives in the government. This will ensure greater transparency in administration at all levels.
- The Swedish Justitieombudsman also supervises the courts. In Denmark, the assumption was that an Ombudsman elected by the Folketing should not undertake general supervision of the courts. This assumption though is alright but Courts must also assume some level of public accountability. And this could be easily imposed upon them if the jurisdiction of Ombudsman is extended to the courts as well.

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