Good administrative Practice

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Introduction

Ombudsmen and human rights commissions all over the world use the concept of good administrative practice.

In connection with the processing of specific complaint cases, the basis of assessment available to Ombudsmen and commissions in written or unwritten actual rules of law is often inadequate to evaluate and criticise censurable acts and decisions by the administration. In such situations, criticism and any recommendations for changed future practice are often based on the Ombudsman's or commission's concept of good administrative practice.

Alongside from the actual rules of law laid down for the work of the administration, which ipso facto can never be exhaustive, good administrative practice is thus a tool used by Ombudsmen and commissions to influence and develop the executive power's attitude to the relationship between citizen and administration. And the meaning of good administrative practice is continuously developed and refined by Ombudsmen and commissions.

This already suggests the primary characteristic of the concept. Good administrative practice is not developed in an abstract ethical, philosophical universe, but always in an actual historical, legal and ethical context, and for that reason the definition of good administrative practice will always vary in different countries and jurisdictions. There are wide variations ranging from the use of good administrative practice in connection with the assessment of the outcome of cases, which involves significant parts of the equality and proportionality principles as well as the abuse of power maxim and fairness evaluations, to definitions which like the Danish focus on the administration's case processing and contact with the citizens.

Because the concept is defined by its historical, ethical and legal context, good administrative practice is inherently dynamic. Good administrative practice naturally develops alongside that which it gauges - the ideal relationship between citizen and administration at the time and in the place in question.

The view of what an administration should do in relation to the citizens and serving them develops over time and unless the statements on good administrative practice made by Ombudsmen and commissions originate in generally accepted behavioural norms, they are unlikely to have much impact. This does not mean that Ombudsmen and other control bodies may not in certain situations have to make their own

way in the wilderness of different opinions and interests in society and hazard an opinion on what should be decisive in complex cases.

Instead of trying to put forward an abstract definition of the concept of good administrative practice, which would in any case sooner or later be overtaken by developments, this article attempts to illustrate the evolution of the concept in Denmark and tries to get closer to its dynamic nature.

The Danish Ombudsman and Danish Administrative Law

As part of the 1997 amendment of the Ombudsman Act, the basis of assessment was described as follows in Section 21 of the Ombudsman Act:

"The Ombudsman shall assess whether any authorities or persons falling within his jurisdiction act in contravention of existing legislation or otherwise commit errors or derelictions in the discharge of their duties."

There has been no change to the application of the concept of good administrative practice, which is used in the same way as before.

Before the Public Administration Act and the Access to Public Administration Files Act came into force on 1 January 1987, general guidelines for the activities of the administration were to a large extent established through the development of unwritten legal principles in relation both to the administration's treatment of the citizens and their cases and to the legality and correctness of their decisions. In a close collaboration of the courts, the Ombudsman and the administration itself, the principles evolved from an apparently common normative basis.

The courts rarely considered the actual case processing by the administration and therefore mainly contributed to the development of legal principles relating to the substance of the requirements: proportionality, equality, abuse of power etc. The Ombudsman's statements contained several contributions to the establishment of what must be regarded as current administrative law outside the area of actual authority issues. Where the practice of the courts left questions about the legal position, the Ombudsman from the mid 1970s increasingly used the concept of good administrative practice to pick up and develop general principles.

Good Administrative Practice - Argumentation and Development

Guidance on Appeal - an example

In 1973 a lawyer wrote to the Ombudsman in connection with the Ministry of the Environment's refusal to consider his complaint about a local authority's compulsory purchase decision. The local authority had not given guidance on appeal and in its grounds the Ministry had merely noted that the statutory time limit

for appeal had been exceeded. The Ombudsman recommended that the Ministry submit the complaint to an actual investigation as in his opinion it followed from "good administrative practice that the citizens should as far as possible be given information and guidance on available appeal options, especially in cases where the appeal rules are laid down in the law and where specific time-limits for lodging an appeal have been fixed ...". This case was only the fourth time the concept of good administrative practice was used in the written practice of the Ombudsman office.

Previously this criterion had merely been used sporadically in the following three cases: in 1957 about the privatisation of bus routes, where the Danish State Railways (DSB) had made no attempt to correct an actual misapprehension by the competent authority in the case; in 1963, where the Ombudsman stated that the Ministry of Education's failure to respond to reminders from the party in a very protracted case was contrary to good administrative practice; and finally in 1973, where the Ombudsman informed a County Tax Council that in accordance with good administrative practice its communication to a citizen about a projected tax increase should have included information about the opportunity to comment on the basis for the decision before the Council made its ruling.

In the early years, it was not possible to isolate good administrative practice from the many other concepts the Ombudsman used as criteria. The concept was not used consistently and several different expressions were often used in cases with the same problem and the same assessment. Thus the Ombudsman Report for 1973 includes another case concerning guidance on appeal and calculation of time-limits and here the Ombudsman says that it would have been most correct if the National Tax Tribunal had given the complainant accurate guidance (1973). In the same way, the Report for 1974 uses the term that it would have been best if the authority had given guidance on appeal.

In the early reports, the Ombudsman's choice of words and concepts in cases involving criticism was mainly based on the key concepts of errors and derelictions: it was an error is used as a standard term for instance in. This is not strange, since the Ombudsman Act explicitly uses the terminology errors and derelictions to describe the basis of assessment. But errors and derelictions soon proved to be too crude when assessing the work of the administration. It was necessary to describe undesirable or inappropriate actions by the administration, which could not be characterised as actual errors or derelictions. For these, the Ombudsman used numerous terms and concepts, of which the most common were:

It would have been natural (1958), the nature of the matter (1957), practical considerations (1958), should (1955, 1959, 1956), not unwarranted (1956), would have been advantageous (1956), very unfortunate (1956, 1959), desirable (1956, 1974), administratively unfortunate (1959) - and then the quite central and frequent in principle (1961 and 1960), on grounds of principle (1955, 1956, 1959 and 1961), wrong in principle (1971), points of principle of procedural law (1971), general principles (1957), follows from general legal principles (1955 and 1959) and a matter of administrative principle (1956). Hearing of parties is justified by general principles of procedural law (1956 and 1959). General principles of administrative law are adduced in 1975 and as the basis of assessment in connection with an

interpretation issue in 1960. In accordance with administrative legal practice is used in 1961 and about hearing of parties it is said for instance in 1972 that there is, however, a tendency towards hearing of parties and hence this would have been in accordance with good administrative legal practice. Good administrative legal practice also appears in 1974.

Before the Public Administration Act there were no general rules obliging the authorities to give guidance on appeal, but several ad hoc acts included provisions about it. The Danish Public Administration Act now contains the following provision in Section 25:

Guidance on Appeal

25. Any decision delivered in written form where appeal lies to another administrative authority shall be accompanied by written guidance on the right to appeal, stating where to appeal and informing of the procedure or lodging of ...

The particular issue of guidance on appeal in connection with decisions which may be brought before the courts, now regulated by Section 25, subsection (2) of the Public Administration Act, was discussed by the Ombudsman for instance in the cases FOB 1956.150 and FOB 1956.159. Here he stated that a chief constable should have advised a citizen of the possibility of bringing a confiscation case before the courts under the Administration of Justice Act and that it was an error that a regiment in its decision on a national serviceman did not observe the provisions in the Army Administration of Justice Act concerning active guidance on appeal. Here the dividing line between error and should is very clear. The regiment's error was that they had failed to give statutory guidance on appeal.

In a case from 1973, which refers to good administrative practice in connection with guidance on appeal, there are traces of the foundation stones on which the good administrative practice argumentation was built in this early period. In previous statements concerning guidance on appeal, the Ombudsman had outlined the current legal position: there was no general rule concerning guidance on appeal in Danish law, but the ad hoc legislation included provisions obliging the authorities to give guidance on appeal in connection with decisions which did not fully sustain the citizens' claims. In 1964, the Ombudsman quoted a couple of acts containing guidance on appeal requirements and added that even without such rules of law, guidance on appeal was given in certain cases. A general guidance on appeal requirement could be justified by legal protection considerations and the Ombudsman stated that it would be in accordance with administrative legal practice to give guidance on appeal. Since guidance on appeal was a recurrent problem, he asked the Ministry of Justice to include the issue in the considerations concerning the need for general giving of grounds rules to be made by a committee set up in 1964.

The committee's subsequent report of 1972 outlines current law and administrative practice. The report pointed out that the Public Administration Commission of 1946 also touched on the problem in its

Seventh Report (pp.31-32) and stated as the committee's opinion that in principle it was most correct to inform applicants of any appeal options in cases where the right to appeal was laid down in the law.

In other words, the idea of imposing a general obligation on the authorities to give guidance on appeal in cases which did not fully sustain the citizens' claims was not new and Report No. 657 showed that the Ombudsman's point of principle, which he repeated several times, was based on opinions and practice already to a certain extent existing in the culture of the administration.

In 1975, however, the concept of good administrative practice fell into place as a consistent term in connection with the guidance on appeal issue and the way was paved for carrying over the good administrative practice to the guidance on appeal provisions in the Public Administration Act. The Ombudsman said about the matter: "In my opinion it follows from good administrative practice that the citizens should as far as possible be given information and guidance on available appeal options, especially in cases where the appeal rules are laid down in the law and where specific time-limits for lodging an appeal have been fixed. In this connection, I refer to pp.52-60 in Ministry of Justice Report No. 657/72 concerning the giving of grounds for administrative decisions and administrative recourse etc, and to the views I have expressed in several earlier cases, included the case described in my Report for 1973, pp.386-390. The issue of general legislation covering the administration's case processing, the Ministry of Justice on the basis of the above-mentioned Report is, currently considering including administrative right to appeal and guidance on appeal. The comments on the Ministry of Justice's bill to amend the Access to Public Administration Files Act introduced in the Folketing on 26 February 1975 (bill concerning deferment of amendments to the Act from the sessional year 1975/76 to 1976/77) show that the Ministry believes the result of its own considerations about general legislation covering the administration's case processing (including guidance on appeal) and the work of the Ministry of Justice's Committee on Amendment of the Access to Public Administration Files Act should probably in due course be combined into a Public Administration Act bill ..."

The wording was repeated in 1978 and in 1979 the Ombudsman then stated: "In accordance with these [his earlier statements concerning guidance on appeal and good administrative practice], an administrative practice has developed - especially in recent years - where the predominant basic rule seems to be that authorities making decisions that may be appealed give guidance on appeal options along with the decision ..."

The circle had thus been closed. First the Ombudsman deduced that it would be in keeping with tendencies and principles in the administration's practice to give guidance on appeal. Report No. 657/1972 confirmed this tendency and in 1973 the concept of good administrative practice achieved independent existence as a basis of assessment in connection with guidance on appeal issues. In 1979 the Ombudsman observed that this good administrative practice was generally followed and this was explicitly expressed in for instance FOB 1983.83, where the Permanent Under-Secretary of State for Customs agreed with the views of the Ombudsman and stated that in future the customs authorities

would give individual guidance on appeal. The Department of Inland Revenue came to the same conclusion in 1984.

In 1988, Sections 25 and 26 of the Public Administration Act took over the substance of the good administrative practice as a basis of assessment. In his decision, the Ombudsman wrote: "Section 25, subsection (1) of the Public Administration Act stipulates the following for giving guidance on appeal [quoting Section 25]. As mentioned above, the obligation to give guidance on appeal does not apply if the decision fully sustains the citizen's claim ..."

The provisions in Sections 25 and 26 largely correspond to the legal position, which the Ombudsman characterised as good administrative practice before 1987. However, as the above-quoted preliminaries of the Public Administration Act show, the intention was that actual general rules of law concerning guidance on appeal should make it easier for the courts to draw legal conclusions when they were disregarded. In the Ministry of Justice Guide to the Public Administration Act, Item 144, the legal effect of failure to give guidance on appeal is explained: "Failure to give guidance on appeal cannot result in rendering decisions invalid. However, failure to give guidance on appeal may mean that the complaint cannot be rejected solely on the grounds that a time-limit for appeal has been exceeded or a prescribed procedure for lodging an appeal has not been followed ..." This is in keeping with the Ombudsman's views as expressed in 1978, where he states about the calculation of time-limits that the time limited for appeal can only be calculated from the moment when the complainant is informed not only of the decision itself, but also the appeal authority and the appeal time-limit. However, an actual assessment of the error is required, as seen for instance in 1990, where the Danish Supreme Court disregarded the failure to give guidance on appeal under Section 26 because of the citizen's passivity.

Nonetheless, there is still room for good administrative practice as an independent basis of assessment in connection with guidance on appeal. In the Ministry of Justice Guide, Item 143, it is highlighted as good administrative practice to advise the citizens of the possibility of bringing a case before the courts in situations where legal proceedings immediately suggest themselves. Similarly, the Ombudsman has stated that although it is not obligatory to advise that decisions cannot be appealed to a higher authority, such negative guidance on appeal may be considerate to the party in the case and to the authority which risks receiving an appeal. If the citizens themselves ask, the situation is explicitly covered by the duty to give guidance on appeal in Section 7 of the Public Administration Act.

The guidance on appeal must be accurately worded. In 1994, the Ombudsman considered taking up a case on his own initiative in connection with an authority stating in its guidance on appeal that it generally was not possible to appeal the relevant decision. The authorities agreed that this wording was too imprecise and the own-initiative investigation therefore was not instigated.

It is natural to try to collect the various cases concerning good administrative practice from the Ombudsman's practice into general categories. An article by the Danish professor at Copenhagen University Bent Christensen introduced this method. Bent Christensen analysed the Ombudsman's basis of assessment before the concept of good administrative practice was systematically recognised. He divided the basis of assessment into two main categories: traditional administrative law and something else. This second category measures the administration's activity by other criteria than the strictly legal, for instance requirements relating to staff behaviour (including the requirements of decorum and qualification), case processing time, the provision by the administration of extensive and adequate information externally, the examination and correctness of the basis of decisions, internal planning, efficiency and finally consideration towards the citizens.

When former Ombudsman Lars Nordskov Nielsen in 1983 in a lecture systematised The Citizens' Requirements of the Administration, he used three categories: requirement of friendliness and consideration, requirement of openness and requirement of trust in the administration. In Report No. 1272 of 1994 concerning amendment of the Ombudsman Act, the headlines are: consideration, case processing time, guidance and extension of the rules of the Public Administration Act.

As Bent Christensen noted, any categorisation must rest on a good deal of authorial interpretation. On the basis of Lars Nordskov Nielsen's categories, the requirements of good administrative practice are in the subsequent section systematised as requirements relating to friendliness and consideration towards the citizens, openness, the creation of trust and the planning of the administration's work in such a way that cases are processed quickly, thoroughly and with as few errors as possible.

The discussion includes cases, which do not explicitly use the expression good administrative practice. As described, the concept was only systematised during the 1970s and the use of the concept in the Ombudsman's statements is still not entirely fixed. He still uses different terms: the administration should, it was desirable that, it was best or most correct etc, and it is probably symptomatic of the development that the indexes of the Ombudsman Reports did not include good administrative practice as a search topic until 1992.

Requirement that the Administration Should be Friendly and Considerate

It is good administrative practice to be friendly and considerate towards the citizens. The need to show understanding and courtesy towards the citizens for humanitarian reasons emerges in many of the inspections undertaken by the Ombudsman over the years. One example is FOB 1976.434, where the Ombudsman characterises the structure of Nyborg State Prison as antiquated and unsatisfactory from treatment and humanitarian points of view. In 1988 about an inspection of Psychiatric Department O at the State University Hospital, the Ombudsman found it desirable for measures to be taken to provide the patients with a minimum of privacy, limit the number of moves between wards and offer more than one common room. It was completely unsatisfactory that the patients did not have the opportunity to get out

into the fresh air at least once a day. Another example is FOB 1965.147, which dealt with the issue of prisoners' access to participate in services. The humanitarian principle also appears in ordinary complaint cases: thus a refusal of residence permit to a Polish woman should have emphasised the human consequences (1977).

The requirement of friendliness and consideration sets limits to the staff's behaviour towards the citizens:

A female senior teacher was very displeased that the drivers on DSB's coaches between Ålborg and Frederikshavn allowed people to smoke in the front part of the coach, which was reserved for non-smokers. She had complained to one of the drivers and been treated impolitely: it is not stated how, but one can imagine the driver replying to the respectable teacher in a certain way. The driver admitted that his behaviour might not have been sufficiently polite. He was severely reprimanded and the teacher received an apology. (1955).

An elderly woman was arrested after a raid in Copenhagen's underworld and was to be taken to the police station. She was not given the opportunity to put on outdoor clothes and waited on the pavement outside her home in her dressing gown, flannel nightgown and slippers for fifteen minutes before she was taken to the station. The Ombudsman could not find any circumstances justifying such treatment and expressed criticism. (1956).

The behaviour of the citizens may necessitate limiting their access to public offices and properties, but when these institutional powers are used, it must be on an objective basis and with due regard to courtesy and friendliness:

In 1958, a director was refused access to the Danish National Bank. He was told either to write or send a representative. The Ombudsman did not express criticism of the National Bank and in this connection attached importance to the director's behaviour. It probably played an important part that the bank expressed itself with consideration and care when notifying the director of its decision. The case later resurfaced and 1959 shows that the relationship between the bank and the director had been normalised.

In 1990, the Ombudsman endorses the Ministry of the Interior's assessment of a case where a young man was partly refused access to a local government office, but in 1978 the Ombudsman disagreed with a decision to expel a disabled person from a centre on the grounds of subversive activities.

When the administration writes to the citizens, the letters must be easy to understand and the language as far as possible adapted to the specific situation: see Ministry of Justice Guide to the Public Administration Act, Item 214, which among other things emphasises that the addressees of the text must be able to read and understand it easily. In accordance with this, the Ombudsman in 1980 pointed out the importance of making an application form for completion by senior citizens as simple as administratively acceptable.

But the requirement of friendliness also applies when the administration writes letters. It would have been desirable for the authorities not to address a subpoena to a convict in prison (1981). In the following examples, the Ombudsman expressed criticism of the wording of the letters:

"When you are not receiving wages or social security benefit, you should not start 'conning' money off your mother. I can see no other solution than for you to be kept by your male acquaintances." (1983)

"Referring to the above, we hereby seek to make you understand ... without otherwise examining your layman's legal reflections more closely ... that libellous accusations of this nature will not be tolerated in future ..." (1990)

"Finally, we would inform you that your threats and libellous allegations in no way influence the Ministry's consideration of your case. We would recommend - in your own interest - that you choose more suitable language - especially when you as a foreign national address the Danish Minister of Education." (1998)

The administration must consider its language carefully, but of course also ensure that the letter is sent to the correct person and avoid situations such as the one in 1990, where a letter was sent to a deceased man and opened by his widow. The requirement of friendliness also applies to the letters written by the authorities to their staff. A director acknowledged that it was not particularly friendly to write to a subordinate: "If you are employed by the Inspectorate next year ...", when the person in question had no plans to leave at the time of writing (1957). A decision in a disciplinary case was unfortunate because it was phrased in "very general, imprecise and - it seemed to me - partly rather 'emotive' (almost 'scolding') terms: 'irrational', 'without real justification', 'irresponsible' ..." (1982).

In line with this, it is good administrative practice to avoid unnecessarily denouncing or exposing the citizens. A number of statements relate to the police and police procedures. The ideas are naturally closely connected with the fundamental principles behind the rules of professional secrecy and passing on of confidential information:

The Criminal Investigation Department used an open form to summon a man for examination as a witness in a murder case. The man, who suffered from nerves, lived with his fiancée. It was his fiancée who found the summons, which merely stated that the examination was about the murder case. With no explanations and the open form, the woman was naturally easily left in doubt about the man's role in the murder case. (1966).

A young man had informed the army medical board that he suffered from incontinence. The police had to summon his father and sister as witnesses in connection with the case. Again they were summoned for examination using an open card with no further explanation of the reason. (1961).

The media revealed that the police had tried to arrest a teacher at his school to bring him before the bailiff's court. It later turned out that the teacher had been mistaken for another person. The case

attracted the Ombudsman's attention, because there are police rules stating that citizens may only be arrested in their place of work if all other possibilities have been tried. (1972).

The police investigated a bookseller's circumstances, but the case was dropped. In connection with the investigation, the police had summoned a witness and mentioned the nature of the charge in the subpoena. The witness had subsequently tried to exploit his knowledge in relation to the bookseller. The Ombudsman recommended that witnesses should only be informed of charges when this was essential. (1955).

In two letters from prisoners, the prison authorities had included a leaflet, which showed the recipient that the letters came from prisoners. The authorities later regretted this procedure in a statement to the Ombudsman (1955).

But the principle not only applies to the police. On the same lines as the above-mentioned cases is for instance FOB 1991.185, where a local authority had produced particularly noticeable envelopes for debt collection and a particularly conspicuous van to drive around to bad payers.

It is good administrative practice to try to empathise with the citizen and imagine how the other side may experience the actions of the administration:

In connection with a renewed petition for mercy from a life prisoner, the Ministry of Justice initiated a psychiatric examination of the prisoner. Referring to the medical assessment, the Ministry rejected the petition, but the Minister of Justice had already talked to the media about the case. He had spoken in favour of mercy on the radio, but later in the day rejected it. With his first statements the Minister had created an expectation of mercy and the Ombudsman stated as a general rule that it would have been good administrative practice to notify the party of the decision before informing the public. (1995).

Foster families are not parties to cases about the return of foster children to their natural parents. The authorities are therefore not legally obliged to involve the foster family in such cases. However, it is good administrative practice to inform the foster family well in advance of the return. (1995).

In continuation of this, the authorities should be aware whether the citizens should be given the status of an actual party to the entire case or during particular phases of the case:

In connection with the appointment of a vicar, a parish council was divided into a majority and a minority each supporting its own candidate. The minority later lodged a complaint with the Ministry of Ecclesiastical Affairs and the Ombudsman. The Ombudsman did not express criticism of the Ministry for failing to treat the minority as a party to the case, but in the present circumstances it would nonetheless have been in accordance with good administrative practice if the Ministry had heard the minority before making its decision (1989).

The authorities are responsible for ensuring that misunderstandings do not arise:

The chairman of a tribunal had had a conversation with an applicant for a post. The applicant subsequently alleged that the chairman had bullied him into withdrawing his application because he favoured another candidate for the post. There was no proof, but the Ombudsman stated that the chairman should have realised that the conversation he had with the applicant might result in the latter withdrawing his application and therefore should not have had it (1971).

The requirement of friendliness applies to the administration generally and therefore also in relation to the staff. In 1977, the Ombudsman thus stated in a case concerning the extension of a teacher's probation period that the wish for hearing of parties found some support in Section 20 and Section 31, subsection (1) of the Public Servants Act and various other legal provisions, but another reason to hear the parties was the obligation of public authorities to pursue considerate personnel administration.

A lieutenant appointed on a contractual basis was discharged as a result of homosexual relationships with two privates. A later criminal case was dropped because of the state of the evidence. Although the discharge was based on considerations of principle, the Ombudsman found many indications that the authority tried to find the mildest possible decision. Referring to the lieutenant's long period of service and the fact that there had been no basis for instituting criminal proceedings, the Ombudsman considered it reasonable that the Ministry of Defence attempt to find suitable civilian work for the lieutenant. (1955).

The principal of an approved school dismissed a permanently employed engineer. The Ombudsman stated that it would have been reasonable to issue a warning first (1956). In 1957, the Ombudsman gave a general outline of his views on warnings.

A DSB employee was downgraded from grade 17 to grade 10 because of misconduct. The man was approaching sixty and although the Ombudsman could not take for his basis that DSB was obliged to warn the employee of the proposed downgrading, it would have been appropriate to inform the man, thus enabling him to resign in order to avoid or limit the downgrading, so that his misconduct did not affect his pension (1978).

The requirement of a considerate personnel policy appeared in the following case when the Ballet Union at the Royal Theatre complained because a former artistic director was engaged as a guest producer of a ballet he had previously successfully staged. The complaint was signed by 47 of the company's 63 dancers and related to complaints some years earlier about among other things the artistic director's relationships with several of the female dancers and the subsequent institution of an official investigation, which was closed when the artistic director left the country. The theatre management among other things argued that the problems must be overcome for art's sake and did not conceal that it needed a success. The Ombudsman stated: "It is understandable that the case may have caused concern among the

members of the Ballet Union. However, all things considered, I have to conclude that the theatre management in engaging the artistic director as a guest producer has not made a decision which I can criticise as unreasonable in relation to the ballet company and the public." (1958).

The theme is mentioned in a preliminary statement from 1999, where the Ombudsman says that the management naturally has the right to decide for instance which doctors to appoint at a hospital, but that it would be most in keeping with the principles of good public administration for the management to have involved the doctor who would be the head of those appointed in the decision process. In 1998, he states that it is neither in accordance with good administrative practice nor reasonable expectations of public sector personnel policy to let a matter have consequences for an employee when there is doubt about what has been communicated in a superior-subordinate relationship.

Conversely, considerate personnel administration must obviously have its limits. In 1959, a disciplinary investigation should have been instituted in a case involving a high-ranking diplomat and 1957 the Ministry of Education should similarly have instituted an ordinary investigation as soon as it learned that a senior staff member had borrowed large sums from two temporary employees at the National Museum of Cultural History. In connection with a media story about an engineer in the Ministry for Greenland taking two years' holiday with pay, the Ombudsman stated that as a general rule caution should be shown in appointing public servants with less than two years' service to positions with a higher basic salary than the one indicated in Section 6, subsection (5) of the Public Servants Act. (1956).

Requirement that the Administration Should be as Open as Possible

The issue of openness in the administration is controversial. The media themselves have a keen desire that disclosure applications should be processed quickly and the number of rejections limited a minimum. In several cases, the Ombudsman has pointed out the possibilities of giving increased access to the files and in various ways supported the desire for a more open administration. In relation to the issue of continuing access to the files, the Ombudsman stated that continuing access may be granted within the terms of Section 4, subsection (1.2) of the Access to Public Administration Files Act (1993). Among other things, openness around the problems and deliberations of public authorities is a prerequisite of the public involvement and social debate sometimes called for. In 1977, the Ombudsman thus stated his wish that the authorities, in this case the Danish Arts Foundation, "provide the public with information about the basis of decisions whose 'correctness' is questioned or contested in the public debate, as such information may contribute to a better foundation for that debate."

A journalist was refused access to the customs authorities' database list of possibly asset-stripped companies. The refusal was made on the wrong legal basis and the Ombudsman wrote: "However, it follows from good administrative practice that caution should be shown in refusing media requests for access to examine all cases of a particular nature or cases logged during a particular period. Unless otherwise stipulated by the rules concerning professional secrecy ..." (1995).

This starting point was followed up in FOB 1998.403 in a case concerning disclosure of an accident register in the Danish Medicines Agency, where the Ombudsman states: "In assessing whether a journalist should be given access to the files even though the cases have not been identified, cf. Section 4, subsection (3) of the Access to Public Administration Files Act, it may in my opinion also be taken into account whether finding the cases or documents would present significant difficulties or considerable administrative inconvenience."

The relationship of the administration with the media has occasioned several questions:

An employers' association lodged a complaint against a branch manager of the Danish Working Environment Service, who had made critical comments to the media about a particular company and the trade generally. The Ombudsman stated that as a starting point the authorities are entitled to publish cases, which may be disclosed under the rules of the Access to Public Administration Files Act. The authorities are not generally precluded from trying to influence the citizens and those subject to law through the media. (1996).

A principal was dismissed after an official investigation. The press later published an article based on an interview with the social services director. It was difficult to distinguish between actual quotes and the words of the journalist and the headline was for instance Religious fanaticism behind principal's dismissal. During the interview, the social services director should have made it plain that the principal's religious persuasion had nothing to do with the dismissal (1970).

In connection with a major bank case, the director of the bank made incorrect statements about the bank's situation. The Government Inspectorate of Banks and Saving Banks reprimanded the director for this, but in addition the Ombudsman believed it would have been most correct if the Inspectorate had publicly denied the inaccurate information about its approval of the bank's activities (1958).

Some statements to the press about a late county highway surveyor had been unfortunately phrased, as the wording suggested the inspector had either been dishonest or failed to act in the economic interest of the public. The statements were even more regrettable as a police investigation had established that the inspector had not committed any offence (1957).

A musician lodged a complaint because the police had made condescending and incorrect allegations against him during a press conference. The Ombudsman drew attention to the importance of ensuring that statements to the press are made in such a way that misunderstandings and ambiguities are avoided (1955).

About the administration's information to the media about cases which had been or were being considered, the Ombudsman in 1978 among other things said: "both the nature and extent of this information activity - which is thus outside the scope of the administration authorities' obligations under the Access to Public Administration Files Act - must largely be at the discretion of the individual authority.

This also applies to the question of which level of the administrative hierarchy should undertake the above-mentioned service-style information activity in relation to the media ..."

In 1977, the Ombudsman recommended that the Ministry of the Interior consider the desirability of establishing rules for the health and social services concerning for instance patients' right to talk to the press while hospitalised.

An open administration is characterised by its will actively to inform and advise externally in relation to the citizens and internally in relation to other parts of the system. Before Section 7 of the Public Administration Act came into force, the obligation to give the citizens adequate guidance appeared in numerous cases.

In 1957, the Ombudsman thus stated that Randers County had made an error during a negotiation of conditions by failing to inform the couple that visiting rights agreements were not binding on the authorities.

As there was public interest in easy access to the police regulations, the Ombudsman asked the Ministry of Justice to consider the possibility of not only publishing the regulations in the Danish Legal Gazette, but also having them printed at the public expense for sale to private individuals. (1959).

Although the Ombudsman could not criticise the National Board of Health's view on the case, the complainant had had reasonable cause to raise the question of the Board's obligation to give guidance to a doctor's patients about various preparations. (1959).

In 1976, the Ombudsman recommended that the Ministry of Justice advise guest workers granted residence permits that the permit automatically lapses if they remain abroad for more than six months.

Similar cases are found in 1978 about guidance in connection with confirmation grants, in 1978 about guidance to pensioners and in 1977 about guidance on the sick pay system.

A more general formulation is found in 1977, where the importance of adequately informing applicants is stressed. 1976 and 1977 contain cases concerning the importance of the authorities advising of the risk of reformatio in pejus in complaint cases. FOB 1978.340 and FOB 1978.422 stress the importance of giving guidance to the courts of first instance.

Of course there were also limits to the obligation to give guidance before Section 7 of the Public Administration Act. A police sergeant had advised an advertising agency about the taxation rules. That was not a success. The advice was incorrect and the police took steps to prevent a repetition of the mistake. (1958). In a press statement about a cod-fishing ban, the Danish High Commissioner for Greenland had incorrectly implied that the necessary legal basis for the ban existed. (1980). In 1980, the Ombudsman stated that it would have been desirable for the social authorities to have advised a parent

couple about the relevant rules in relation to the custody issue, but found no grounds for taking further action as it must be taken into account that a lawyer had represented both parties during the case.

Cases after the Public Administration Act came into force include FOB 1990.240 concerning the authorities' obligation to translate an important letter to a Turkish guest worker. In 1989, the Ombudsman criticised the National Board of Industrial Injuries for failing to inform a complainant about obvious possibilities of getting compensation under the Compensation Liability Act and in 1989 and 1991, the Ombudsman demanded that the authorities provide the name of caseworkers at the citizens' request. In FOB 1989.168, the Ombudsman touches on the consequences of guidance errors in connection with a young woman's attendance at the social services department.

Requirement that the Administration Should Create Trust

Trust between citizen and administration is based on a wide range of circumstances. It is surely beyond any practical doubt that the administration will solve its tasks in the best way and the citizens are in a better position if a relationship of trust is created. Numerous factors, general and particular, may affect the trust between citizen and administration. In 1982, a local authority had allowed construction activity to start before the necessary permissions had been granted and in 1980, the Ombudsman recommended that DSB introduce rules similar to those existing for the police concerning the sale of unclaimed lost property.

FOB 1978.631 reports a case involving council staff 's prior claim to day care in local authority institutions and FOB 1992.222 reports a case concerning slowness to acknowledge errors made in the system. The Ombudsman stated that by its slowness to acknowledge some circumstances pointed out by the complainant, the authority failed to meet the requirements of good administrative practice.

The principle of trust often appears together with one of the other fundamental considerations: friendliness or openness:

A prison had included a leaflet in letters from the prisoners. The leaflet enabled the recipient to see that the letters came from prisoners (1955).

In a maintenance assessment case, the police had appeared at the complainant's residence to examine him about his finances. The complainant had not been given advance warning of the visit. (1957).

A local authority wished to make its collection of arrears more efficient. It had a special car painted in conspicuous colours with the text debt collection. Envelopes for debtors were clearly marked in the same way. Among other things, the Ombudsman stated that as a general principle, public authorities must act correctly and considerately in every kind of case (1991).

Of course the behaviour of the staff can increase or reduce the trust in the administration. The staff should therefore for instance remember to telephone if they have promised the citizen to do so (1957).

In a case concerning the tying-up of an inheritance, the Ombudsman stated that factual considerations dictate that the heir should not be contacted about the confirmation of tying-up provisions during the testator's lifetime (1958).

The qualification rules partly originate in considerations of trust, but various situations cannot be picked up by the rules. Here the requirements of good administrative practice are far-reaching:

A police sergeant paid the fine of a former informant. Such positive actions can also impair trust (1955).

FOB 1955.151 considers whether a university teacher may accept cigars from the students 'in not insignificant numbers' (1955).

Without considering the case in detail, the Ombudsman emphasised the correctness of investigating a case concerning the integrity of the police with particular seriousness - especially as any negligence might endanger road safety. (FOB 1956.118).

In FOB 1979.97, the Ombudsman stated that public employees using the authorities' letterhead for private correspondence must make it unequivocally clear to the recipient that the letter in question was private.

Obtaining proof and avoiding doubt about what has been done and said in a case also create trust:

In a case concerning waiting times for prisoners wanting to speak to the prison staff, the Ombudsman touched on the obligation to obtain proof if the prisoners withdrew complaints or applications. He referred to the possibility of asking the prisoners to sign a note confirming the withdrawal request. (FOB 1977.288).

A National Tax Tribunal employee had had oral communication with a taxpayer about a case. Eight months then passed with new investigations, including oral questions to other authorities. It would have been most correct if the employee had made notes of his conversations with the other authorities about his proposed recommendation for the decision. (FOB 1958.216).

It was impossible to establish retrospectively when the National Tax Tribunal had handed a case over to the General Commissioners of Taxes. It was regrettable that not even a brief note had been made in the case about some negotiations conducted with the Commissioners and that it was impossible to say when the case had been handed over. (FOB 1959.47).

In FOB 1989.138, the Danish Environmental Protection Agency acting as the secretariat of a fund had failed to make a note of a call to the complainant about suspending the case pending further information from him. The Ombudsman stated that the duty to make notes under Section 6 of the Access to Public Administration Files Act is a manifestation of a general legal principle obliging public authorities to make notes of all significant transactions in a case, which do not appear from the file.

Entirely in line with this case are several subsequent statements, for instance FOB 1994.424, where the Ombudsman criticised the Ministry of Foreign Affairs for its failure to make a note of informing the complainant during a conversation that he was unlikely to receive a reply to his disclosure request within the ten-day deadline.

During the Minister of Taxation's Thursday reception, the complainant and his lawyer had been given the impression that a final decision on their case would not be made until a new meeting had been held and the Minister had had time to study the case. That did not happen - a decision was made and the Ombudsman referred to Section 12 of the Access to Public Administration Files Act then in force, corresponding to the provision in Section 21 of the current Public Administration Act. (1981).

Involving the citizens in the case as much as possible creates trust. It is therefore good administrative practice to involve the citizens and especially the parties to the case. This viewpoint was expressed in several Ombudsman statements before actual rules about it were laid down in Sections 19-21 of the Public Administration Act. The principle is for instance seen in 1980 in a case concerning a father's access to his children. The Ombudsman took it for granted that a psychiatrist's statement about the father, which formed the basis of the decision, must not be based solely on observations of the mother and one of the children. This was unreasonable treatment.

In 1955, the hearing of parties principle is related to the inquisitorial principle: in the case of a Ministry of Foreign Affairs employee, the Commission should have questioned the employee and put before him the entire background before making a recommendation: "This was the only way to make completely sure the Commission did not take its decision on the basis on incomplete evidence."

The connection with the inquisitorial principle is maintained in several cases, including FOB 1956.133, FOB 1956.177 and FOB 1959.41. FOB 1961.75 touches on the principle corresponding to the current provision in Section 21 of the Public Administration Act: on grounds of principle it would have been most correct for the customs authorities to meet an importer's request for a discussion of a customs case, even though this definitely would not have changed the decision.

In 1977, the expression good administrative practice is used in connection with the hearing of parties principle. It is phrased as follows: "In several cases I have expressed the opinion that I consider it most in keeping with good administrative practice for an authority to inform the complainant or applicant of factual information of significant importance to the final decision received during the processing of a

complaint or application, if the latter is not already aware that the authority has received this information ...". The wording is repeated in 1979. In 1980, hearing of parties is connected with the information obligation and the Ombudsman stated: "The special duty which an authority in my opinion has to ensure that this information is correct may be met in other ways than by making a survey. It could for instance be done by putting the evidence before the person who as applicant or complainant is a party to the case (contradiction). The Ombudsman added that in numerous cases he had stated that it was most correct to hear the parties if the conditions were present. In 1982 (p.133), the term good administrative practice finally disappeared from the hearing of parties' argumentation. Now the Ombudsman said that in several instances he had stated as his conception of law that in some cases the authorities must hear the party. In 1986, he states that the hearing of parties rules of the Public Administration Act are essentially simply a codification of an existing accepted legal principle concerning hearing of parties. This, possibly debatable, point of view was repeated for instance in FOB 1987.89.

In 1977, the Ombudsman speaks in favour of the need to hear the parties before making a decision with delaying effect on a complaint. In 1978 and 1987, the Ombudsman discussed the hearing of parties issue in connection with dismissals. FOB 1993.348 deals with hearing of parties in cases, which are not decision cases, but nonetheless informed by a need to involve the parties. FOB 1992.312 concerns information and hearing of applicants about the composition of a selection panel. Similarly, it is good administrative practice to inform citizens that an investigation has been instituted as soon as the need for concealment no longer applies (1997).

Trust is also created for instance by obtaining consent to important transactions even if it is not legally required :

In 1991, the Inland Revenue Department had charged back a wrongly paid-out sum by arrangement with the Savings Banks Association, but without involving the citizen. The authorities could have informed the citizens affected and fixed a date for voluntary payment. If the money was not repaid, the case could then be consigned for collection.

In 1997, the Ombudsman commented on the authorities' non-statutory right to extend the scope of a complaint case. The Unemployment Benefit Committee had extended a complaint case and among other things obtained file information about the complainant without his consent - precisely what he wanted to avoid. The Ombudsman stated that in general consent must be obtained before the authorities procure information about a complainant's private affairs.

Trust is also consolidated by giving the citizen broad access to being represented or assisted by others:

On behalf of the National Board of Health, three doctors were to investigate the quality of a particular kind of hip operation. Former patients were summoned for the investigation and allowed to bring one of

their nearest. A case resulted and the authorities argued that Section 8 of the Public Administration Act did not apply at all as it was not a decision case. The Ombudsman replied that it is a fundamental principle of Danish administrative law that a party to a case may at any time be represented or assisted by others (1997).

Requirement that the Administration Should be Efficient, with Good Routines etc

Good administrative practice is not only directed at the administration's relationship with the citizens; it also covers requirements relating to the internal conditions of the administration, and good case processing routines for instance help to meet the requirements accruing from the legal principle that cases must be adequately elucidated before a decision is made. Similarly, orderly conditions in the administration make it easier for everyone to decide on any disclosure issues, which might arise.

It is therefore good administrative practice to have orderly conditions, including efficient routines: in FOB 1967.102, 1959.67, 1959.199 and 1961.178 the Ombudsman recommended efficient procedures serving to reduce waste of time during the case processing. He based his recommendation on the Arrears Control Order from the Prime Minister's Office of 11 January 1951.

In 1956, the Ombudsman suggested using temporary staff during scheduled holidays. FOB 1957.197, FOB 1958.158 and FOB 1982.101 contain examples of unnecessary case processing steps. The Ministry of Justice Guide, Item 202ff, now covers such unnecessary procedures.

Proper records should be kept; in 1974, the Ombudsman among other things stated: "In my opinion good administrative practice dictates that as far as possible incoming mail should be logged immediately after receipt (the same or the following day) and thus before the relevant documents are passed on for processing." This point of view is followed up for instance in 1993. The issue of logging and good administrative practice has been touched on repeatedly in Danish administration history. The first instance was in a directive of 22 August 1740 in connection with cases that had disappeared in the Exchequer. Logging and orderly conditions were also themes in the Administration Commission's Report of 1923, in the work of the Public Administration Commission from 1946 and again in the Administration Committee of 1960. The Danish National Archives followed up with rules and guidelines for establishing archives and logging systems.

Registers of unprocessed cases must be carefully kept. A letter from a member of parliament to the Minister of the Interior about the appointment of a county head of department was destroyed immediately after it had been read. The letter should have been added to the file. (FOB 1980.242).

Manifest errors must naturally be avoided: see for instance FOB 1971.142, 1958.177, 1959.23 or FOB 1956.134 where a letter by an oversight was not sent. In 1982, the Danish State Education Grant and Loan Scheme Authority sent a reminder even though it had previously prolonged the time limit until a complaint case had been processed. FOB 1983.93 deals with a situation where outstanding tax became

due as a result of an error made by the taxation authorities. The Ombudsman recommended that the authorities apply the provision in Section 37 of the Tax Act, allowing whole or partial tax remission, even though remission is normally granted only in straitened circumstances.

A publicly advertised meeting may not be summarily cancelled.

Careless work must be combated and cases may not be thrown out. If a case has disappeared and the party asks about it, the authorities should admit that the case couldn't be found.

The problems caused by erroneous shelving internally and in relation to the citizens are mentioned several times, for instance in FOB 1958.38, 1955.21, 1957.213 and 1958.246. Letters may not be returned unopened, but must be answered.

Shelving of cases must be announced. Other important decisions must likewise be communicated to the citizen. Similarly, it is in accordance with good administrative practice to inform the citizen if the authority is not prepared to wait any longer for various actions or information.

In many cases, the administration should adopt decisions and communication in writing and signatures should be accompanied by a signature stamp (FOB 1959.201), which refers to a Circular from the Prime Minister's Office of 14 November 1949. The Circular was reissued on 25 June 1960. This again illustrates how good administrative practice to a great extent bases its argumentation on norms already existing in the administration.

The authorities must prioritize efficiently and it may be necessary to remind staff of generally prevailing routines in the authority. Conversely, there is a general aversion to unnecessary red tape. Efficiency naturally must not impair the guarantee that the decisions made are right and factually correct.

Numerous routines help safeguard the other principles on which good administrative practice is based, cf. above concerning friendliness, trust and openness. As a starting point, enclosures should be returned to the party, especially if this has been repeatedly requested. The authorities are also expected to reply to reminders. The Ombudsman has commented on this issue in numerous cases, including FOB 1996.129. Previously he could refer to the Circular from the Prime Minister's Office of 12 October 1973; now the reference is to the Ministry of Justice Guide, Items 206-208, which is the equivalent of this view. In continuation of this, good administrative practice dictates for instance that the party is informed if a case is making slow progress. This is another area where good administrative practice is derived from attitudes already existing in the administration. In 1983, the Ombudsman referred to Circular No. 221 from the Prime Minister's Office of 11 September 1978 concerning notification when cases are making slow progress.

It would also have been best if the Inland Revenue Department had informed a lawyer that his request for oral procedure in a case had been filed too late (1980). The authorities are expected to keep track of

the cases themselves, which for instance includes sending reminders when there has been no reply to submissions etc.

Conclusion

The Ombudsman has not created the substance of good administrative practice, but systematized and developed it on the basis of already existing norms. It is rooted in values fundamental to the citizens of a democratic society.

The concept is dynamic. Thus some elements of good administrative practice became actual rules of law with the Access to Public Administration Files Act and the Public Administration Act of 1987. Good administrative practice has spread and in this country the development of good practice is continued not only by the Ombudsman, but also for instance the National Audit Office, the Data Supervision Authority and many others.