

# Judging Judges: The Special Court of Complaints in Denmark (Den særlige Klageret)

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The Swedish Constitution of 1809 established a balance of power between the King and Parliament, following alternations of Royal and *Riksdag* domination in the Eighteenth Century. As a check on this balance, the Instrument of Government provided for a Parliamentary Ombudsman for Justice (*Riksdagens Justitieombudsman*, commonly abbreviated as "JO"). The four Estates of Parliament were to convene only once every three years, and the JO was set up as an interim watchdog, directed "to supervise the observance of laws and statutes."<sup>1</sup> To ensure the rule of law, the JO monitored the work of policemen, prosecutors, judges, and jailors. In 1816, for example, Sweden's first Ombudsman, Friherre Lars August Mannerheim, brought charges against a local judge for permitting a son to testify against his father and for delay in the proceedings against several defendants, and he brought charges against the entire chamber of a Stockholm court for faulty procedure in a criminal case; all of the judges were fined.<sup>2</sup>

Until 1976, Swedish judges and other civil servants were subjected to mild criminal sanctions for breach of duty (*tjänstefel*), and the Ombudsman could initiate or even conduct prosecution. Now the Ombudsman must rely exclusively upon remonstrance – which had become his mainstay even before the repeal of criminal responsibility.<sup>3</sup> Today, there are four Swedish Ombudsmen. Three of them cover the vast administrative apparatus which has developed in this century. One, JO Anders Wigelius, has pretty much the same ambit of authority as did his predecessor Mannerheim. Presently, slightly more than 7 % of the workload of the Swedish Ombudsman office growing out of complaints relates to the courts, and another 4 % is directed against prosecutors. Even excluding police and prisons, then, about 10 %

of the work of the office concerns the administration of justice. (See Chart 1.) The following are examples of prosecutions instigated by the Ombudsman under the old *tjänstefel* system:

- a judge of a local court for having neglected to order a person in custody to be set free after trial;
- a chief judge of a local court for not having entered judgement in due time;
- a judge of a local court for having shouted at a female clerk.<sup>4</sup>

The situation in Finland – which was an integral part of the Swedish Kingdom for centuries prior to the Napoleonic wars – is comparable. About 10 % of the Ombudsman's workload relates to courts (8.5 %) and prosecutors (1.5 %). (See Chart 2.) The following are some of the criticisms levelled by the Finnish Ombudsman:

- a district court judge had ordered that a person who had been taken for treatment into a mental hospital should be put under guardianship, this on the basis of a deficient medical statement and without giving the person a hearing;
- through carelessness, a municipal court had faultily calculated the investigative-detention time to be deducted from the time of imprisonment;
- the presiding judge of a section of the municipal court had not given a prisoner a summons he had applied for;
- one of the judges of a municipal court had not delivered the record of a case within the prescribed time;
- a public prosecutor had not presented to the court all the evidence available to support a charge.<sup>5</sup>

That the courts are within the Ombudsman's purview is considered as commonplace in Sweden and Finland. Professor Walter Gellhorn reports that "Most [Swedish] judges . . . seem genuinely enthusiastic about the Ombudsman, whom they regard as an able jurist and a good human being. No judge who was interviewed in 1964 suggested that the present system of supervision should be abandoned."<sup>6</sup> Despite the favorable experience in Sweden and Finland, the Danes excluded the judiciary from the Ombudsman's jurisdiction when they enacted an Ombudsman statute in 1954, and the Ombudsman offices which have since been created in Australia, Canada, New Zealand, Norway, and the United States have emulated the Danish exclusion. Yet, there was a special reason for the action in Denmark which does not prevail elsewhere: the Danes already had an instrument for judging complaints about the behavior of judges. As Professor Gellhorn puts it:

[T]he Danish Ombudsman has no power to deal with judicial administration. This exception is a major departure from "the Swedish Prototype," for much of the Swedish Ombudsman's energies are devoted to policing the judiciary. In Denmark complaints about the behavior of judges can be lodged either with the presidents of the several courts or with a special Court of Complaints . . . Apparently the Court of Complaints is little used by persons who have been offended by judges; the number of complaints received by that body annually is said to be on the order of six, while court presidents are thought to receive perhaps ten additional complaints that a judge has been unnecessarily sharp-tongued or dilatory . . . Many of the approximately 215 judges in active service have had considerable experience in the Ministry of Justice before being appointed to the bench. Confidence in their probity is universal, so far as one can gauge the matter on the basis of personal interviews with all manner of occupational groups."<sup>7</sup>

Under Law No. 113 of March 15, 1939, the Danes created a Special Court of Complaints (*Den særlige Klageret*) with two responsibilities: 1. to pass on requests for reconsideration of previously closed criminal cases; and 2. to hear complaints against judges. The former function has received most of the attention of Danish scholars, while the latter has been neglected in the literature. Article 49(1) of the Danish Code of Civil Procedure (*Retsplejeloven*) provides that:

"Anyone who considers himself injured by improper or unseemly conduct on the part of a judge in the exercise of his official duties can within 14 days file a complaint with the Chief Public Prosecutor (*Rigsadvokaten*) for presentation to the Special Court of Complaints."

When sitting to consider the reopening of cases, the Special Court has five members, including a judge from each of the three levels of courts, an academic jurist, and a practising attorney. Only the three judges sit when the Special Court adjudicates complaints against judges. All five members (and five alternates) are appointed by the Queen upon the recommendation of the Minister of Justice for non-renewable ten-year terms. (After the first ten years, an entirely new Court was appointed; since then, because of premature departures, the terms have become staggered.) The member from the Supreme Court is automatically President of the Special Court. The inclusion of law professor and a lawyer (chosen from four nominated by the bar association) as members of the Special Court of Complaints was meant to invoke the third-party principle, i.e., the decision whether to permit a new trial of a criminal case was not to be made solely by the peers of those who had reached the original decision. That these non-judicial members are excluded from disciplinary cases is an inconsistency; the principle that no one should be a judge in his or her own case has equal if not greater application to complaints against judges. While all complaints against judges are potentially embarrassing, many reconsideration cases – e.g., those in which new evidence has been discovered – do not reflect unfavorably on the original tribunal.

Judge C. Bang, who sat on the Special Court of Complaints through its second decade (1949–59), credits Professor Stephan Hurwitz for having kept the lay (albeit "law") members off the Court in disciplinary matters.<sup>8</sup> According to Professor Hurwitz, the original proponent of the Special Court of Complaints, Minister of Justice K. K. Steincke, had wanted a court composed exclusively of non-judges. It was a substantial victory for Steincke's opponents that disciplinary matters were to be heard solely by the judicial members of the Court. In his appraisal of the first ten years' work of the Special Court Hurwitz states:

"This proposal [for a disciplinary court] was seen – and rightly so – as an attack on the independence of the judiciary and a discrediting of the judges' ability and will to maintain justice within their own ranks. No true need for legislation of this sort existed. It was a concession to circles which to an unreasonable degree had

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succeeded in sensationalizing a single judge's circumstances.

... As could have been foreseen, cases of complaints against judges would be of little significance either in number or weight. In the preceding ten years there have been an average of four judge-cases a year and hardly in any instance any complaint which could justify the creation of a special judicial organ for its consideration."<sup>9</sup>

Inspired by the experience in neighboring Sweden, the Danes mandated an Ombudsman office in the Constitution which they enacted in 1953 (Art. 55). In the implementing legislation which ensued (Law No. 203 of June 11, 1954), it was established (Art. 1) that "The official activities of judges fall completely outside the Ombudsman's competence." Stephan Hurwitz was appointed as Ombudsman in 1955.

As already indicated, the explanation for the exclusion of judges was that complaints against them could be brought to the Special Court of Complaints. The pertinent parliamentary committee report noted, however, that official acts of judges outside the courtroom and all of the official acts of temporary judges were outside the purview of the Special Court. The committee suggested that the jurisdiction of the Special Court of Complaints be expanded to include whatever was excluded from the Ombudsman's competence.<sup>10</sup> In 1959 the jurisdiction of the Special Court of Complaints was expanded to include official acts outside the courtroom and to include all professional judicial personnel (Law No. 218 of June 11, 1959), while the Law on the Parliamentary Ombudsman was changed to exclude subordinate judicial personnel in addition to the previous exclusion of judges (Law No. 205 of June 11, 1959). Ombudsman Hurwitz supported this adjustment of jurisdiction between his office and the Court.

The expansion of the Special Court's scope in 1959 is some evidence of its general acceptance, further evidenced by its present forty-year longevity. The heated debate which surrounded the Court of Complaints at the time of its creation has long since subsided. There would seem to be little practical reason now not to include the two non-judicial members of the Court on the panel when disciplinary cases are heard.<sup>11</sup> Commenting on the Court's second decade (1949-59), Judge Bang found no difference in the general approach of the three judicial judges and the two non-judicial judges in reconsideration cases, and noted the "splendid cooperation" which they enjoyed: "this accession of other jurists than judges has brought

to the deliberations of the Court a certain freshness, freedom from all formality, and a broader base. . ."<sup>12</sup> In an interview in October, 1976, Supreme Court Justice A. Blom-Andersen, a member and President of the Special Court of Complaints, expressed sentiments similar to those of Judge Bang, and agreed with my speculation that an equally harmonious relationship would ensue if the same non-judge members were to serve on disciplinary cases.

Article 49(7) of the Code of Civil Procedure states that:

If the complaint is found to be justified, the Court of Complaints can express its disapproval of the judge's behavior or impose a fine on him; if the conduct evinced by the judge is found to be of grave character, or if he had previously been sentenced by the Court of Complaints for conduct of such character, he can be removed from office.

Professor W. E. von Eyben calculates that there were 50 complaints against judges brought to the Special Court over the first twelve years, and that only one was found to be justified.<sup>13</sup> Covering the first twenty years, Judge Bang provides the following statistics and explanation:

While the Court of Complaints handled 40 complaints against judges in the period from July 1, 1939, to June 30, 1949, in the subsequent [ten years] we have reached decisions in 49 cases. Of these about one-third were rejected as not pertaining to the Court of Complaints' competence . . . , while about two-thirds were rejected as unfounded. In some of these, however, we have noted in the premises one or another circumstance (a choice of words, a manner of behavior) which should have been avoided, but which nevertheless was not of such significance that the Court found a basis to express an actual disapproval . . . Only one case has been of a serious nature and led to the removal of the judge in question in the decision of the Court of Complaints of October 16, 1952.<sup>14</sup>

In his definitive study of the reconsideration cases of the Special Court of Complaints during its first 30 years, Professor W. E. von Eyben - who served as the academic member of the Court from 1966 to 1976 - used three research assistants to comb the Court's archives.<sup>15</sup> Professor von Eyben did not treat with the disciplinary work of the Court. With the limited resources at my disposal, I have relied mainly of the brief annual Summaries of Workload issued by the Special Court. The 18 Summaries which I collected (1960-1977, inclusive) from the Court of Complaints secretariat in

the Supreme Court chambers in Copenhagen contain only three categories for cases concerning complaints about judges: 1. suspension of judges (of which there were none); 2. cases which were rejected after hearing; and 3. cases which were disposed of in some other manner.

As compared with the first two decades, the rate of cases filed in the Special Court of Complaints doubled in the third decade (see Chart 3) and redoubled during the fourth decade (see Chart 4), as follows:

Decade	Total Cases	Average Per year
1939-49	40	4
1949-59	49	5
1959-69	89	9
1969-77	159	18

Part of this increase may be attributed to the abovementioned inclusion of temporary judges within the Special Court's jurisdiction, starting in 1956. There were 67 such judges in 1958, and they heard one-third of all the cases adjudicated that year.<sup>16</sup>

Buried in the "Cases Otherwise Treated" are those in which the complaint was sustained. Special Court President Blom-Andersen has supplied the following list:

- 1970 Judge's conduct disapproved
- 1972 Judge's conduct disapproved
- 1974 Judge's conduct mildly disapproved
- 1975 Judge's conduct disapproved
- 1976 Judge's conduct mildly disapproved
- 1976 Judge's conduct disapproved
- 1976 Judge's conduct disapproved.

The number of "disapprovals" issued by the Court has gone up from a single formal reproof during the first 20 years to a total of seven in the seven years from 1970 to 1976. The Court has also continued occasionally to criticize judicial behavior short of official disapproval: Mostly, judges are censured formally or informally when they are rude or overbearing to a defendant, a witness, or a lawyer.

The category of "Cases Otherwise Treated" in Charts 3 and 4 includes the following:

- complaints withdrawn or abandoned;
- complaints filed after the expiration of the 14-day statute of limitations; and,

- complaints summarily dismissed as patently unfounded or previously adjudicated.

The disciplinary decisions of the Court of Complaints may be appealed to the Supreme Court. In one case, a five-member panel of the Danish Supreme Court upheld the Special Court's summary dismissal of a complaint as patently unfounded.<sup>17</sup>

Most of the "Cases Otherwise Treated" are handled by mail. The hearings which lead to rejection or disapproval, on the other hand, are usually public trials, whose proceedings and records are accessible to the public. The press often report the outcome of cases which contain formal or informal criticism of judges, and they identify the judge by name. In 1974, for example, the newspapers carried accounts of the Special Court's formal reproof of a judge's conduct in losing his temper and throwing evidence at the feet of a defendant. Similarly, in 1976, widespread coverage was given to the Court's formal censure of the action of a judge in browbeating the policeman who testified as prosecuting witness in a traffic case.

Professor Hurwitz was right: these matters are too trivial to warrant a full-scale trial before a three-judge tribunal. On the other hand, K. K. Steincke was also right: informal peer review is not enough. Writing in 1943, Steincke characterized the situation which had prevailed before the creation of the Special Court as one in which "it never helped to complain about a judge, because the complaint was always rejected."<sup>18</sup> Yet, ten years later, von Eyben said of the Special Court of Complaints that "people consider it futile to complain to a judge's own colleagues."<sup>19</sup> The Court's record in the 1970's no longer sustains such a characterization, but the self-judging aspect of the Court is still an inhibiting factor which could be lessened by including the two non-judicial members in the Court's disciplinary work. Even greater externality could be provided by adding non-lawyer judges to the Special Court. The Danes have a tradition of using citizens with no legal training as judges. Two such *domsmænd* sit with the regular judge in serious cases in the lower courts. Three *domsmænd* sit with three judges in the intermediate court to hear appeals from the lower courts.<sup>20</sup> The trouble with this idea is that it makes an already cumbersome instrument even more top-heavy.

Another weakness of the Court of Complaints is its lack of accessibility. In 1952, Professor von Eyben asserted that "people are normally completely unaware that this possibility [i.e., the Special Court] exists for complaints about judges' activities."<sup>21</sup> This situation may also have improved somewhat in recent years. It would be useful to survey public opinion on this point. I believe that the results would show that many Danes are familiar with the reconsideration cases, some of which have been highly sensational, but that few are familiar with the Court's disciplinary function, which must be characterized as obscure.

In his Annotated Model Ombudsman Statute, Professor Walter Gellhorn offers the comment that "Traditional immunization of courts against extra-judicial scrutiny into a judge's behavior argues against permitting an American Ombudsman to inquire into a judge's behavior."<sup>22</sup> The same tradition seems to prevail in Denmark and in the rest of the Western world, except that the Swedes (and Finns) have a different perception of judicial independence. The JO was set up in Sweden to ensure judicial freedom from Royal intervention. Gellhorn has captured the contrast:

The [Swedish] Ombudsman's power over the courts is especially interesting to Americans, who think of judicial independence as the very foundation of the rule of law and who tend to equate judges' "independence" with their being unsupervised except by other judges. The Ombudsman acknowledges that foreigners often wonder whether his work undermines the independence judges should have. But he has no fears on that score. "I myself come from the ranks of judges," he has written, "and can assure that I have never heard a Swedish judge complain that his independence and unattached position is endangered by the fact that the [Ombudsman] may examine his activity in office."<sup>23</sup>

In my opinion, the Ombudsman offices in Sweden and Finland do a better job of monitoring judicial behavior than the Danish Special Court of Complaints. The JO's work in this regard deserves further scholarly attention.

External to the judiciary, the Ombudsman is an experienced, full-time specialist in complaint-handling. His availability is well-known to the public. The Finnish JO handled 90 cases involving the courts in 1976 (see Chart 2), as against 26 filed in the Danish Court of Complaints in 1975 (see Chart 4). (With 4,700,000 inhabitants, Finland is nearly as populous as Denmark, which has 5,000,000 inhabitants.) With a population base of 8,000,000, the Swedish JO considered 212 com-

plaints concerning the courts in 1976-77 (see Chart 1). On a per capita basis, the Swedish Ombudsman handles five times as many cases against judges as does the Danish Special Court of Complaints. In 1975, the Danish Ombudsman summarily rejected 74 cases precisely because the complaints "concerned judgement or discharge of judge's official duties."<sup>24</sup> Even though he has no jurisdiction, the Danish Ombudsman receives nearly three times as many complaints against the courts as does the Special Court of Complaints. Moreover, the nature of the complaints against judges entertained by the Swedish and Finnish JO's is broader than that of the Danish Special Court, which are limited almost exclusively to demeanor. As for Sweden, Walter Gellhorn notes:

Abstractly, the Ombudsman is not concerned with the content of courts' decisions (which, in any event, he cannot revise in any way), but only with the question of whether a judge has been acting illegally. Since illegality, in the Swedish view, covers so extensive a territory, consideration of the judge's decisions may be an inescapable necessity . . . [P]art of the Ombudsman's work does involve review of the judges' decisions, not only of their conduct.<sup>25</sup>

The jurisdiction of the Danish Ombudsman office is even broader than that in Sweden. The Danish Constitution specifies (Article 55) that the Ombudsman shall supervise civil and military administration. The Parliamentary Directives instruct the Ombudsman (Article 3) to:

keep himself informed as to whether any person comprised by his jurisdiction pursues unlawful ends, takes arbitrary or unreasonable decisions or otherwise commits mistakes or acts of negligence in the discharge of his or her duties.

Three features of the Danish Special Court of Complaints make it an extremely weak control device: 1. the restrictive two week period within which complaints must be lodged; 2. that it is composed exclusively of judges; and 3. its narrow purview. All three of these would have to be changed in order to vitalize the Court. If the supervision of the courts is to be withheld from the ambit of the Danish Ombudsman, then the scope of review of the Special Court should be broadened to include more than "improper or unseemly conduct" (Article 49(1) of the Code of Civil Procedure) and "conduct which might impair . . . respect and confidence" (Article 49(2)).

A simpler way of accomplishing the same result would be to put the judges under the Ombuds-

man's scrutiny. When Minister of Justice Steincke proposed a special court in 1937, one of the objections raised was that it would be unconstitutional to permit removal of judges by an administrative body (and that a court which had members who served for a fixed term would be such a body).<sup>26</sup> The present Court of Complaints is empowered to impose a fine, although it appears never to have done so, and it may remove a judge, which has been done only once and that at the instigation of the Minister of Justice rather than as the result of a complaint by a private party. Because the Parliamentary Ombudsman's powers are purely recommendatory, this objection would not be pertinent.

In monitoring judicial administration, the advantages offered by the Ombudsman office stem from its unique combination of characteristics. The independence of the Ombudsman contributes to justice as both done and seen to be done, in that it buttresses impartiality and the appearance of impartiality. The expertise of the Ombudsman adds efficiency and effectiveness. All of these contribute to the credibility of the office, and this in turn enhances accessibility. The genius of the Ombudsman institution lies in the fact that the Ombudsman has only the power to investigate and report, but no power to command; the Ombudsman must rely on reasoned persuasion. The first Danish Ombudsman, Stephan Hurwitz, did not want the mantle of authority over judges. The present Ombudsman, Lars Nordkov Nielsen, has not had occasion to express his opinion in the matter. Nordkov Nielsen came to the position of Ombudsman from the Ministry of Justice, where he was a ranking jurist – the same pool from which most of Denmark's appellate judges are chosen. He doubled for a dozen years as Lecturer in Criminal Law at the University of Copenhagen. Now that the Ombudsman office has proved itself for 25 years in Denmark, and Nordkov Nielsen has proved himself for nine, perhaps it is time to consider an essentially modest expansion of authority to embrace courts and judges. Judges should be free from improper influence, whether political or pecuniary, but they should be held accountable. An Ombudsman, as in Sweden and Finland, can help impose accountability without undercutting proper judicial independence.

#### Postscript

Before adding to the Danish Ombudsman's jurisdiction, however, it should be noted that he is overworked, judging from my observation of his office and that of other Ombudsman offices in Scandinavia and elsewhere.<sup>27</sup> The pressure has kept down the number of inspection visits to prisons and has prevented the Ombudsman from establishing a presence in Greenland. The Danish office has been recently reorganized with the addition of a third senior official intended to reduce Nordkov Nielsen's workload. Based upon the Swedish system of separate Civil and Military Ombudsman offices which prevailed at the time the Danish office was created, the Danish Constitution permits the appointment of two Ombudsmen. Finland has added an Assistant Ombudsman to share in the responsibilities of office. As already mentioned, Sweden now has four JO's. Perhaps it is time for the Danes to divide the labor among two officeholders.

#### Notes

- 1 Article 96 of the 1809 Instrument of Government, now found in Chapter 12, Article 6, of the 1974 Instrument of Government. See generally Nils Herlitz, *Elements of Nordic Public Law* (Stockholm: Norstedt, 1969), pp. 182–95.
- 2 O. F. Enbom and A. Eisen, eds., "Uppgifter om justitieombudsmansämbetet 1810–1910," in *1911 Justitieombudsmannens Ämbetsberättelse* [hereinafter cited as *JO Report*], p. 46.
- 3 On the dominance of admonition, see Walter Gellhorn, *Ombudsmen and Others: Citizen's Protectors in Nine Countries* (Cambridge, Mass.: Harvard University Press, 1966), p. 206. On the repeal of criminal responsibility, see Tore Modeen, "La Responsabilité des Fautes de Service et des Dommages Causés par l'Administration en Droits Finlandais et Suédois," *Revue Internationale de Droit Comparé* (1976), pp. 51–60, and Bertil Wennergren, "Ansvarsreformen för Funktionärer," *57 Nordisk Administrativt Tidskrift* (1976), pp. 25–28.
- 4 *1970 JO Report* (Summary in English), pp. 523–24.
- 5 *Report of the Parliamentary Ombudsman 1976: Summary and Annotations* (in English), pp. 10–11.
- 6 *Ombudsmen and Others*, p. 239.
- 7 *Ombudsmen and Others*, p. 12. Article 48 of the Danish Code of Civil Procedure (*Retsplejeloven*) provides that "If a judge as such is guilty of neglect or carelessness in the conduct of his office, which is not however of such a nature that according to law entails criminal punishment, or if he manifests-

- ... improper or unseemly conduct, it falls on the president of the court of which he is a member . . . to give him appropriate warning in private. Notice of this decision shall be given to the Minister of Justice as well as to the one who may have complained about the conduct." (Unless otherwise indicated, translations are by the present author.)
- <sup>8</sup> C. Bang, "Den særlige Klagerets Virksomhed" ["The Work of the Special Court of Complaints"], 41 *Juristen* (1959), p. 157. The debate and votes are summarized by Poul Andersen, "Rigsdagen og Domsstolene" ["The Parliament and the Courts"], in *Den Danske Rigsdag 1849-1949*, vol. 5 (Copenhagen: Schultz, 1953), pp. 508-10.
- <sup>9</sup> Stephan Hurwitz, *Respekt for Mennesket* ["Respect for the Person"] (Copenhagen: Gads, 1951), pp. 188-89. Hurwitz applauds the reconsideration work of the Court and gives Steincke credit for its creation.
- <sup>10</sup> Folketingstidene 1953-54, Tillæg B, column 731. In 1956, at the suggestion of the Parliamentary Ombudsman, the Special Court reversed its previous position and began to entertain complaints against temporary judges. See "Den særlige Klagerets Afgørelser" ["Decisions of the Special Court of Complaints"], 92 *Ugeskrift for Retsvæsen*, Afdeling A, pp. 194-95.
- <sup>11</sup> But see the text preceding note 26, below.
- <sup>12</sup> "Den særlige Klagerets Virksomhed," p. 157.
- <sup>13</sup> W. E. von Eyben, "Klageretten gennem 12 År" ["The Court of Complaints Over 12 Years"], *Social-Demokraten* (Copenhagen), April 16, 1952.
- <sup>14</sup> "Den særlige Klagerets Virksomhed," p. 158. The case against the judge who was removed was brought by the Minister of Justice following the judge's conviction for tax evasion in the regular courts. See "Den særlige Klagerets Afgørelser," 88 *Ugeskrift for retsvæsen*, Afdeling A, p. 113. Article 49(2) of the Code of Civil Procedure provides that "If the Minister of Justice finds that a judge may be . . . guilty of conduct which might impair or make him unworthy of the respect and confidence which the judicial calling presumes," the Minister may file a complaint with the Special Court of Complaints.
- <sup>15</sup> W. E. von Eyben, "Genoptagelse af Straffesager" ["Reconsideration of Criminal Cases"], in J. Buhl, et al., eds., *Festskrift til Stephan Hurwitz* (Copenhagen: Juristforbundet, 1971), pp. 217-41.
- <sup>16</sup> See Alf Ross, *Dansk Statsforfatningsret II* (Copenhagen: Nyt Nordisk/Busck; 2d. ed., 1966), p. 546, note 19.
- <sup>17</sup> *Dansk Domsamling*, in 96 *Ugeskrift for Retsvæsen* (1962), Afdeling A, p. 685, column 2. The vindication of judges is also publicized.
- <sup>18</sup> "Den Populære Klageret" ["The Popular Court of Complaints"], *B.T.* (Copenhagen), June 14, 1943, p. 25, column 1. Steincke makes the same point in "Grundloven, Appelretten og Demokratiet" ["The Constitution, the Court of Appeals and Democracy"], 20 *Juristen* (1938), pp. 5-6.
- <sup>19</sup> "Klageretten gennem 12 År," *Social-Demokraten*, April 16, 1952.
- <sup>20</sup> See Kenneth E. Miller, *Government and Politics in Denmark* (Boston: Houghton Mifflin, 1968), p. 178.
- <sup>21</sup> "Klageretten gennem 12 År," *Social-Demokraten*, April 16, 1952.
- <sup>22</sup> The Statute is found in Stanley Anderson, ed., *Ombudsmen for American Government?* (Englewood Cliffs, N.J.: Prentice-Hall for the American Assembly, 1968), p. 160.
- <sup>23</sup> *Ombudsmen and Others*, p. 237.
- <sup>24</sup> *Folketingets Ombudsmands Beretning for Året 1975* ["The Parliamentary Ombudsman's Report for the Year 1975"], p. 12 (translation by the Ombudsman's office). The Norwegian Ombudsman rejected 85 complaints in 1975 because they dealt with the work of the courts. See *Melding for Året 1975 fra Stortingets Ombudsmann for Forvaltningen* ["Report for the Year 1975 from the Parliamentary Ombudsman for Administration"], p. 9. In the same year, the Danish Ombudsman handled only five complaints against prosecuting authorities (one of which he considered to be justified), while the Swedish and Finnish JO's took care of 117 and 17, respectively, as indicated in Charts 1 and 2.
- <sup>25</sup> *Ombudsmen and Others*, p. 238.
- <sup>26</sup> See Poul Andersen, "Er Lovforslaget om den særlige Appelret Grundlovstridigt?" ["Is the Proposed Law on the Special Appeal Court Unconstitutional?"], *Ugeskrift for Retsvæsen* (1938), Afdeling B, pp. 17-23, and compare Carl Rasting, "Er den Foreslaede Appelret i Strid med Grundloven?" ["Is the Proposed Appeal Court in Conflict with the Constitution?"], 20 *Juristen* (1938), pp. 25-30.
- <sup>27</sup> See Stanley Anderson, "Ombudsmen and Prisons in Scandinavia," 66 *Nordisk Tidsskrift for Kriminalvidenskab* (1978), pp. 211-46. For another area in which the Danish Ombudsman has been reluctant to expand his activities, see Stanley Anderson, "The Ombud and Health Services," 2 *Journal of Health and Human Resources Administration* (August 1979), pp. 88-107; single copies will be sent free upon request to the author.

*Chart 1. The Swedish Ombudsman  
Schedule of cases initiated by the Ombudsmen and finished during the period July 1, 1977-Juni 30, 1978.*

Activity concerned	Result				Total
	Closed without final criticism	Admonitions or other criticism	Prosecutions or disciplinary proceedings	Proposals to Parliament or the Government	
Courts	2	3			5
Public prosecutors	1	2			3
Police authorities	6	4			10
Armed forces	13	8			21
Prison administration	6				6
Child welfare	7	26			33
Social and medical care	6	9			15
Execution	9	2			11
Taxation	19	23			42
Miscellaneous	47	44			91
<b>Total</b>	<b>116</b>	<b>121</b>			<b>237</b>



*Schedule of complaint cases finished during the period July 1, 1977-June 30, 1978.*

Activity concerned	Dismissed without investigation	Referred to other agencies or state organs	No criticism after investigation	Admonitions or other criticism	Prosecutions or disciplinary proceedings	Proposals to Parliament or the Government	Total
Courts	75	1	154	17			247
Public prosecutors	24	22	62	10	1		119
Police	84	4	216	38			342
Armed forces	19	1	38	12			70
Prison administration	40	11	253	41			345
Child welfare	55		97	19			171
Social welfare	25		37	2			64
Care of alcoholics	1		3				4
Medical care	102	4	102	14	2		224
Social insurance	52	13	89	7			161
Labour market etc	15	1	25	4			45
Planning	39		23	13			75
Execution	19		65	7			91
Local government	76		38	6			120
Communications	52	2	41	6			101
Taxation	127		122	93			342
Education, culture, State Church	39	3	16	34			92
Agriculture, environmental management, public health	49		53	13			115
Civil service	65	4	39	8			116
Publicity of official documents	25		33	12			70
Miscellaneous	58		53	8			119
Complaints outside jurisdiction and complaints of obscure meaning	138						138
<b>Total</b>	<b>1 179</b>	<b>66</b>	<b>1 559</b>	<b>364</b>	<b>3</b>		<b>3 171</b>

It should be noted that the schedule shows cases *completed during the period, not all complaints lodged*.  
 Source: Report of the Swedish Parliamentary Ombudsmen (Summary in English) (Stockholm: Norstedt, 1978), p. 542.

*Chart 2. The Finnish Ombudsman  
Settled complaints according to their subject-matter.*

1. Complaints		
Reopening a case	58	
Proceedings in law courts	90	
Enforcement of sentences	58	
Proceedings by prison authorities	170	
Ordering into a closed institution	-	
Procedure of guardianship officials	4	
Procedure of police officials	100	
Procedure of prosecuting officials	17	
Procedure of distraint officials	22	
Proceedings by military authorities	59	
Procedure of educational authorities	34	
Procedure of labour officials	7	
Procedure of social welfare officials	55	
Procedure of medical care officials	31	
Procedure of tax-authorities	31	
Procedure of planning and zoning officials	3	
Procedure of administrative officials regarding land-use and water-use	29	
Procedure of transport officials	24	
Procedure of local government officials	55	
Procedure of ecclesiastical officials	3	
Proceedings by other authorities	87	
Actions by private persons	74	
Other matters	40	1 051
2. Self-initiated cases		
Proceedings in law courts	3	
Proceedings by prison authorities	1	
Procedure of guardianship officials	3	
Procedure of police officials	7	
Procedure of prosecuting officials	2	
Procedure of distraint officials	2	
Proceedings by military authorities	25	
Procedure of educational authorities	2	
Procedure of social welfare officials	3	
Procedure of medical care officials	2	
Procedure of tax-authorities	1	
Procedure of transport officials	4	
Procedure of local government officials	3	
Proceedings by other authorities	5	
Other matters	1	64
3. Total number of settled complaints	1 115	

Source: Report of the Parliamentary Ombudsman 1976.

*Chart 3. Complaints Against Judges Filed in the Danish  
Special Court of Complaints 1960-1969*

Year	No. of Cases		Total
	Rejected After Hearing	Otherwise Treated	
1960	4	12	16
1961	4	9	13
1962	4	3	7
1963	1	4	5
1964	2	5	7
1965	1	10	11
1966	0	5	5
1967	0	2	2
1968	0	7	7
1969	4	12	16
Total	20	69	89

Source: Oversigt over ved Den særlige Klageret Afgjorte Sager [Summary of Cases Decided by the Special Court of Complaints]

*Chart 4. Complaints Against Judges Filed in the Danish  
Special Court of Complaints, 1970-1977*

Year	No. of Cases		Total
	Rejected After Hearing	Otherwise Treated	
1970	4	7	11
1971	2	15	17
1972	1	17	18
1973	*	13	13 [plus?]
1974	2	16	18
1975	6	20	26
1976	0	26	26
1977	0	30	30
Total	15	144	159

\*no figure supplied

Source: Oversigt over Afgjorte Sager ved Den særlige Klageret [Summary of Cases Decided by the Special Court of Complaints]