



# **Document 5**

(2016–2017)

**Report from the Parliamentary Ombudsman's Committee for the  
Norwegian Armed Forces regarding its activities in the period  
1 January 2016 – 31 December 2016  
To the Storting**

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## 1. INTRODUCTION

In accordance with the instructions from the Storting (attached), the Parliamentary Ombudsman's Committee for the Norwegian Armed Forces hereby submits this report on the activities of the Ombudsman and the Ombudsman's Committee in 2016.

Pursuant to the instructions for the Committee as approved by the Storting (the Norwegian national assembly), the Ombudsman's Committee is charged with safeguarding the general rights of personnel in the Armed Forces and helping to enhance efficiency in the Armed Forces by means of its activities. The Committee carries out its day-to-day activities independent of the Storting, and members of the Storting may not serve simultaneously as members of the Ombudsman's Committee. The membership of the Committee encompasses individuals with a wide range of backgrounds and experience. The Committee is to consist of seven members who are appointed by the Storting for a four-year term. One of the members is appointed to serve as the chair and is designated as the Ombudsman for the Armed Forces. A vice chair and deputies are also appointed to serve on the Committee.

The instructions state that the Ombudsman is responsible for the day-to-day activities of the office. The Ombudsman receives an annual salary. The other members receive compensation according to the pay scale for parliamentary committees.

On 3 December 2013, the Storting appointed the following members to the Parliamentary Ombudsman's Committee for the Norwegian Armed Forces for the period from 1 January 2014 to 31 December 2017.

### **Members:**

1. Roald Linaker, Ombudsman, Bardu
2. Signe Øye, Hobøl
3. Bjørn Hernæs, Vice Chair, Sør-Odal
4. Sven Flo, Stryn
5. Per Egil Evensen, Halden
6. Åse Wisløff Nilssen, Kongsvinger
7. Irene Lange Nordahl, Sørreisa

### **Deputies:**

1. Kjell Engebretsen, Drøbak
2. Anne Helen Rui, Larvik
3. Kari Lise Holmberg, Skien
4. Monica Molvær, Ålesund
5. Geir Are Winther, Tromsø
6. Mikal Kvamsdal, Oslo
7. Lene Aure Hansen, Drammen

This document is based on the Ombudsman's Committee's activities at meetings and inspections, as well as on the work performed at the Ombudsman's office, including all case proceedings. As usual, the document also contains input and reports from a number of entities within the Armed Forces, all of which have in common that they are part of the work with and for the units and personnel in the Armed Forces.

Oslo, March 2017

Bjørn Hernæs, Signe Øye, Per Egil Evensen, Sven Flo, Åse Wisløff Nilssen, Irene Lange Nordahl,

Roald Linaker, Ombudsman

## **2. The Ombudsman's Committee's activities in 2016**

In 2016 the Ombudsman's Committee carried out the following inspections:

1. Bodø Main Air Base, 132 Air Wing – Bodø
2. Norwegian Joint Headquarters (FOH) – Reitan, Bodø
3. Joint Warfare Centre (JWC) – Jåtta, Stavanger
4. Brigade North – Setermoen (Bardu municipality) and Heggelia and Skjold (Målselv municipality)
5. Sør-Varanger border garrison (GSV)

In addition to meetings during the inspections, the Committee convened in February and December. The Committee has also met with the Minister of Defence, the Inspector General for the Army, the Spokesperson System in the Armed Forces/Conscription Advisory Committee, the Norwegian Defence Estates Agency, the head of the Armed Forces HR and Conscription Centre, and the Border Commissioner. The Ombudsman's Committee also participated in the national conference for the Spokesperson System in the Armed Forces in Stavanger.

### **2.1 Main issues**

The activities of the Committee have resulted in some issues which it wishes to point out in particular:

#### **2.1.1 EBA – property, buildings and facilities**

During its inspections, the Ombudsman's Committee continues to find challenges related to EBA. In this year's report to the Storting (the Norwegian national assembly), there is once again particular reason to call attention to these challenges. Barracks standards are a main

concern for conscripts, as is military housing for employees and their families. In addition there are large contrasts to be found in relation to the various gym facilities, recreational buildings, garages and multi-purpose halls. These factors all affect the working environment as well as quality and effectiveness of training and services.

The Committee's meeting with the Norwegian Defence Estates Agency shows that there is wide-ranging expertise and a clear overview of where new construction, renovation and immediate action are needed. The problem is that resources are limited and it will take a long time to deal with the backlog in maintenance and need for component replacements. Additionally, the ongoing restructuring in the Armed Forces requires significant capacity for new construction.

The Committee found that many new barracks are under construction, which is very encouraging. However, there is a glaring contrast between old and new facilities at certain camps and bases. Adaptation to gender-neutral compulsory military service is not fully completed everywhere. The necessary prioritisation must be made to improve the standard of barracks and some of the officers' quarters more quickly, and to enable these to accommodate gender-neutral compulsory military service. Significant deficiencies remain at several of the larger establishments that carry out recruit training, including among others the camps and bases at Bodin, Skjold, Setermoen, Madla and Haakonvern. The Committee notes that the Armed Forces leadership now requires all barracks to accommodate gender-neutral compulsory military service by 2020. It remains to be seen whether this will be achieved.

### **2.1.2 Restructuring in the Armed Forces**

The Armed Forces has been undergoing restructuring for some time now. In previous Document 5 reports the Committee has expressed concern over many difficult restructuring processes being implemented simultaneously. Restructuring imposes great demands on conscripts and employees alike, not least regarding personnel welfare and good systems for safeguarding it. The Armed Forces is undergoing significant restructuring and changes in personnel organisation, known in the military as HR restructuring. Roughly 300 personnel-oriented positions will be eliminated at the local, regional and central levels. Personnel welfare services are being centralised, located mostly in Hamar and Harstad, to improve efficiency. This measure, however, is predicated on everyone having good access to ICT tools and adequate time for internal administration. Some people have expressed discontent to the Committee about HR restructuring taking some officers away from their primary duties. A new Long-Term Defence Plan was adopted at the end of 2016. As with previous such plans, the Committee is cognisant of the ongoing debate and reactions to this plan but does not maintain a position on decisions taken by the Storting. Where major personnel-related consequences are involved, however, it is our concern that the Armed Forces invest adequate resources to promote predictability and employee participation in decision-making.

### **2.1.3 Spokesperson System in the Armed Forces (TVO) and safeguarding soldiers' welfare**

The Ombudsman's Committee is to inform the Storting on how this spokesperson scheme is

functioning for conscripts. The Committee continues to be impressed by the spokespersons at all levels and confirms that the scheme is functioning very well. The spokesperson scheme is actively involved in a number of cases concerning service-related conditions for conscripts. Over the years these efforts have led to better and better services for conscripts and have played a significant role in building the status of national service today. The scheme also takes part in cases involving non-service-related conditions for soldiers. In this regard the Committee wishes to highlight two areas in particular:

**The Defence Training and Competence (Fokus) Centre** – The Fokus Centre will be substantially downsized and changed, as recommended in the new Long-Term Defence Plan. The Committee feels the centre has provided a good framework for conscripts, enlisted personnel, apprentices, younger officers and others, offering opportunities for education and career guidance, supplementary courses, and continuing and further education. Despite its history of success with good results achieved and a presence distributed across 12 different offices throughout the country in locations where military personnel are stationed, the offices are being closed down and services centralised. The intent is for soldiers to take the initiative themselves to find and follow relevant courses offered at civilian educational institutions, with financial support from the Armed Forces. The Spokesperson System in the Armed Forces believes that centralisation and co-location of the Fokus Centre as it is being restructured will diminish its accessibility. The Committee is concerned that a very sound scheme will now deteriorate and no longer represent a positive contribution to conscripts' non-service-related opportunities. Equally serious is the fact that conscripts are losing opportunities for tailored guidance, supplementary courses and further education. This is unfortunate, not least in terms of gender-neutral compulsory military service and a new officer corps scheme. The Fokus Centre has everything already in place to be a valuable resource in the future. The planned restructuring gives rise to legitimate concerns that this will not be the case.

**The Armed Forces Welfare Service** – In connection with HR restructuring in the Armed Forces, the number of work-years dedicated to the Armed Forces Welfare Service is being dramatically reduced – centrally, and at camps and bases. Although it has been stated that ambition levels remain unchanged, the short-term experience so far is that welfare service programmes have been reduced. It appears that the Armed Forces does not have an integrated plan for how to maintain welfare service offerings for conscripts after the HR restructuring. The Committee shares the conscripts' concerns about this and expects the Armed Forces to ensure that welfare service programmes for personnel are not diminished.

#### **2.1.4 Hand-to-hand combat training**

In the course of 2016 the Ombudsman's office received reports concerning injuries during hand-to-hand combat training. The Norwegian Defence Staff gave the Ombudsman a thorough orientation on the regulations, objectives and purpose of this type of training, and how the training is to be organised and conducted.

The Armed Forces has developed detailed, sound regulations and directives for this area. The objectives and purpose of this training are to provide necessary instruction in hand-to-hand combat in order to disarm an opponent and in the most extreme case survive in combat. Clearly training and practice in hand-to-hand combat are necessary in achieving these goals.

The Army conducts this training primarily after recruit training has been completed, and predominantly only in the combat units. Our experience is that the Navy and Air Force conduct a good deal of this training during recruit training, which is a short, intensive period when there is a great deal to achieve. The Ombudsman asks whether it is necessary to conduct hand-to-hand combat training during recruit training, and whether absolutely everyone must or should take this training? Not all conscripts are to be stationed in positions that necessarily require competence in hand-to-hand combat, and thus this requirement could be differentiated. Additionally, we find that there is disparity in the competency and resources dedicated to this training. The regulations governing the training are good. Thus it is critical that there is adequate expertise and capacity to conduct it.

### **2.1.5 Processing time for security clearances**

In 2014 and 2015 the Ombudsman's Committee called attention to the long processing time required for security clearances. Measures were implemented to reduce this processing time, including extra resources, changes in organisation, better tools and more. In talks with the Norwegian Defence Security Department (FSA), the Ombudsman finds the status of this issue to be significantly improved. The average processing time for security clearance requests has been shortened from 9.6 weeks in 2015 to 6.4 weeks in 2016.

The Committee still received some complaints about long processing time. At the Sør-Varanger border garrison (GSV), for instance, some soldiers felt they had to wait a lengthy period for clearance. Statistics presented by the FSA show that 508 security clearance requests from the GSV were processed in 2016. On average the processing time for these was 4.6 weeks, significantly faster than the overall average, and all were approved.

In accordance with the Security Act, all cases processed by the clearance authority FSA are subject to a case-by-case, overall evaluation. In some cases this may entail longer processing time. Most important are the safeguarding of individuals' constitutional rights and the protection of vital national security interests.

The Ombudsman and the Committee are satisfied that the processing time for security clearances has been reduced and that resources have been added towards this important work.

## **3. Follow-up of issues from last year's Document 5**

In the 2015 Document 5 annual report, the Committee chose to highlight certain recurrent issues. The Committee now wishes to report briefly on the status of some of these matters to keep the Storting (the

Norwegian national assembly) apprised. Significant effort has gone into remedying the deficiencies described last year. However, in the Committee's view, efforts are still needed to address many of these topics. The Committee will continue to follow up these issues during the coming report period.

### **3.1 Gender-neutral compulsory military service**

Overall, the Committee and the Ombudsman find that the introduction of gender-neutral compulsory military service is being well managed, with two very notable exceptions: barracks standards accommodating both genders, and clothing and equipment for women personnel. Although significant improvement and adaptation of barracks has been accomplished, much remains to be done and it is taking too long. The proportion of women performing compulsory military service is steadily increasing, and this will require extra effort. Women are thriving in their national service role but they point to major deficiencies in barracks and personal clothing and equipment. (This issue is also discussed in section 2.1.1 EBA of this document.)

### **3.2 School pupils need more knowledge about the Armed Forces**

Over time the many processes of restructuring and reorganisation have changed the public's view of the Armed Forces. The Ombudsman's Committee is concerned for the Armed Forces' status and reputation in the future. From an institution that was once stationed all across the country, the Armed Forces is now being concentrated in fewer locations, with only a small percentage of conscripts receiving an education under its auspices; the Committee fears that the Armed Forces is distancing itself from the people. The Armed Forces needs to continually replenish its ambassadors to maintain interest in and commitment to compulsory military service and the national defence.

The spokesperson system has long been promoting the introduction of knowledge about the Armed Forces as a competency goal in the school system. There is no requirement at any level of Norway's public school system for pupils to learn anything about the Norway's military. Each year only around 8 000 young men and women (from the total cohort group of approximately 60 000) perform national service, which means that information about the Armed Forces comes primarily from the media or the individual's personal network. Public faith in the ability of the Armed Forces to deal with threats and carry out its assignments has declined, and roughly half the population lacks correct knowledge about what gender-neutral compulsory military service entails. The Ombudsman's Committee agrees with the spokesperson system and feels that politicians must take steps to give this more priority on the agenda. It is important to incorporate knowledge about the Armed Forces into school education. A better understanding of the Armed Forces, what it is and how it is evolving would boost its credibility and increase public trust in its role as the ultimate instrument of power for the Norwegian government.

More objective information may also help to counteract the decline in the Armed Forces' reputation in recent years.



## **4. Summary of the inspections in 2016**

In general the Committee found much to be lauded during its inspections: good leadership with clear points of view, excellent work ethic, and positive working environments. Short summaries of each inspection follow.

### **4.1 Bodø Main Air Base, 132 Air Wing – Bodø**

The proud Air Force history of Bodø Main Air Base is in its final chapter, although flight operations will continue for a few more years, carrying out a QRA mission until 2022. The many employees, although still opposed to the decision of the Storting (the Norwegian national assembly), are resigned to this situation. To ensure that the job is performed as required until everything is closed down, it is important to address challenges relating to predictability for the employees, recruitment, and the need to maintain existing expertise. In this regard, cooperation between the employees and Air Force leadership will be critical to achieving a good end result.

When the main air base is closed and current activities have ceased, there will be a great deal of property and infrastructure that is to be extracted and not repurposed. The Committee understands that this in all likelihood is necessary, but the members are surprised that this wide range of facilities cannot be reused at all.

The Bodin camp, as the Committee understands it, will be a hub point for conscripted personnel and employees in Bodø for many years to come. The Bodin camp is in need of upgrading and higher standards, particularly facilities for conscripts such as barracks and adaptation for gender-neutral compulsory military service.

The Committee notes some dissatisfaction among conscripts and employees regarding follow-up and cooperation with the Norwegian Defence Estates Agency. This needs to be taken seriously.

The Committee is also concerned that the ongoing HR restructuring in the Armed Forces may limit the opportunity for cooperation, employee participation in decision-making and local discussion – and that social and welfare services for the many conscripts in Bodø may suffer.

Despite this historic restructuring and closing of Bodø as a main air base, the Committee is very impressed by the willingness and ability of personnel at every level to carry out good work.

### **4.2 Norwegian Joint Headquarters (FOH) – Reitan, Bodø**

Norwegian Joint Headquarters is recognised as very professional and highly skilled. A comprehensive, unique mission for the country is led and carried out by dedicated personnel with high degrees of skill at all levels.

The Committee takes note of the function of conscripts, who comprise a large share of the workforce at the facility. The conscripts are to be commended for their reliably good work. This is impressive.

The Committee is dissatisfied that too many conscripts are still waiting for security clearance. This must be followed up.

### **4.3 Joint Warfare Centre (JWC) – Jåtta, Stavanger**

The Ombudsman's Committee got a good impression of the JWC, with a particular focus on conditions for Norwegian personnel. Highly skilled, experienced, motivated employees and good leadership were evident.

There are certain challenges for the Norwegian employees in terms of compliance with the Working Environment Act. In a multinational environment within NATO, there will be different views on essential questions related to e.g. scheduling and compensation for working time. The Committee had the impression that some of this was being resolved, such as an extra monthly compensation that the employees see as recognition of their efforts.

The Committee found that the personnel in NATO units, even in Norway, feel somewhat forgotten and overlooked by the military here at home. How may this be remedied?

Most of all the Committee learned more about what the JWC's activities, and some of the other work carried out at the Jåtta facility, contribute to an essential and necessary effort to safeguard the NATO community, and thus Norway's defence capabilities. This facility offers many opportunities, including for Norwegian military personnel. The Committee is grateful for an enjoyable, enlightening visit.

### **4.4 Brigade North – Setermoen (Bardu municipality) and Heggelia and Skjold (Målselv municipality)**

The Ombudsman's Committee for the Armed Forces was very well received by BrigN and given well-prepared presentations with insight into the status and challenges of the BrigN mission and purpose, as well as information about and conditions in the battalions named in this report.

The Committee feels once again that officers and conscripts alike have good skills and are highly results-oriented in their work. Leadership is very capable throughout, not least in terms of good cooperation and dialogue between leadership, employees and conscripts.

The Committee's inspection of the units in Setermoen and Skjold camps revealed two compact, well-functioning military camps. They have in common that their spacious "classrooms" (the weapons ranges and training grounds at Setermoen and at Mauken - Blåtind) are extremely important resources for the BrigN units. Also, both interact with the civil communities.

The Committee notes that both camps, despite significant renewal and renovation over time, still have substantial EBA deficiencies to overcome before being considered complete. A lack of multi-purpose halls for garage space and equipment maintenance is a pervasive problem for the entire brigade. Similarly, despite significant renewal and efforts to improve living quarters and barracks conditions for the conscripts, several barracks buildings at the Setermoen camp and Skjold camp are in need of rehabilitation and upgrade, not least with regard to the introduction of gender-neutral compulsory military service.

The commander of BrigN expressed great concern about the need for upgrades and replacement of important materiel that is essential for the units assigned to the battalions and brigade to function optimally. Replacements of Leopard battle tanks, combat air defence and new artillery top the list of major, costly procurements. At the time the Committee met with BrigN, all investments were on hold as part of implementing the new Long-Term Defence Plan. Additionally, predictability for dedicated and essential helicopter capacity is needed to maintain the brigade's rapid response time and mobility. All these procurements as well as basic resources for training and practice in Norway and internationally are necessary to enable BrigN to carry out its mission in the future.

Concerns about the HR restructuring in the Armed Forces stand out as a recurrent topic in all talks and meetings. Reductions in HR resources at the units and camp functions entail more assignments for the line officers. Increasing amounts of administrative duties mean more office time instead of field training with the units. The Ombudsman's Committee notes that these concerns have been voiced in other segments of the Armed Forces and will follow this up.

The battalions comprise mainly conscripts. The Committee is impressed by the attitude and skill sets of the conscripts. Despite the challenges in adapting barracks and personal clothing and equipment, the introduction of gender-neutral compulsory military service is well underway, also in the Army's largest operational unit.

#### **4.5 Sør-Varanger border garrison (GSV)**

Inspecting the border garrison gave the Committee a good impression of this specialised environment and its positive culture, with independent border soldiers, dedicated officers and good coordination between the various elements. The unit's many assignments and its cooperation with a number of regulatory levels require high-quality training and service. The garrison's location adds an extra dimension, and new assignments make it necessary to give priority to providing resources for the unit. A significant boost in recent years has brought new border stations and a good deal of new infrastructure and equipment. Still, EBA deficiencies are significant, including barracks facilities, a new administration building, and garage and maintenance facilities. Also, the living quarter standards for employees is at a critically low level. Many of the light all-terrain vehicles are old and require frequent, costly maintenance. Their users point out that replacing them would cut expenses.

The Committee wishes to point out as a particular negative that the GSV is the only unit not equipped with bulletproof vests.

## **5. Other input to the Committee**

The Ombudsman's Committee receives input from Armed Forces units which carry out a significant amount of work with and for Armed Forces personnel. The Committee wishes to highlight certain main points from the input in the following.

### **5.1 Spokesperson System in the Armed Forces**

The Spokesperson System in the Armed Forces (TVO) is a scheme for cooperation between conscripts performing initial military service and the Armed Forces' leadership at the local and central level, including political leadership. The purpose of the system is to safeguard the interests of conscripts and to voice those interests to leadership.

In recent years the TVO Spokesperson System has done a great deal to preserve the Defence Training and Competence (Fokus) Centre and enhance personnel welfare. In connection with the Armed Forces' HR restructuring and the Ministry of Defence's new Long-Term Defence Plan, services that are not related to soldiers' military duties have been reduced. The TVO finds it to be confusing and cause for concern that decisions regarding these services are being taken at different levels; cuts in adult education are being adopted at the Storting (Norwegian national assembly) level, while the reorganisation of welfare services is being carried out internally by the Armed Forces. This means that decision-makers ultimately lose their overview of the services that will be available to soldiers overall.

The TVO has been working to introduce knowledge about the Armed Forces as a competency goal in the school system for a long time. The TVO has also taken active steps to raise awareness about sexual harassment, which is a widespread problem in Norwegian youth culture. It is important that the Armed Forces give priority to activities that help to counteract this phenomenon within the military. In 2016 barracks standards have been another key focal area on the TVO agenda, and it is welcome news that the Ministry of Defence in its new Long-Term Defence Plan is requiring all barracks to accommodate gender-neutral compulsory military service by the end of 2020. When it comes to personal clothing and equipment, the TVO notes that there is still a shortage of very large and very small sizes. Each year the TVO organises an awareness-raising campaign for soldiers. For 2016–2017 this is themed around the “buddy system”, i.e. looking after one's designated partner in the unit.

## **5.2 Armed Forces Joint Medical Services**

The Norwegian Armed Forces Joint Medical Services (FSAN) is the competent authority and force producer for the fields of military and veterinary medicine. FSAN plays a role within, and provides deliverables for, NATO and the comprehensive national defence.

In 2016 FSAN comprised 436 employees. This number was reduced by 107 positions at year's end when responsibility for the infirmaries was returned to the service branches. On 1 January 2016, FSAN implemented a new, less hierarchical organisational framework. This has reduced bureaucracy and led to shorter lines of communication between leadership and the service-providing specialist circles.

Medical services in the Armed Forces are not adequate to ensure adequate medical and veterinary services that function well in peacetime and during crisis and war. To achieve its performance targets, FSAN depends upon cooperation with civilian educational institutions and much of the national health care system. FSAN is also in need of support to supplement its force structure in the form of civilian personnel, who receive satisfactory military training in order to work in the military organisation. This process is underway and is essential to maintaining the functionality of the civilian and military health care system during crisis and war. This requires modernising

the comprehensive national defence as it relates to medical services and public health, and must build on a system for clear inter-ministerial decision-making and coordination.

### **5.3 Norwegian Defence Staff (FST) HR Department**

In 2016 the Armed Forces introduced and implemented a number of restructuring measures in e.g. the Navy, Air Force, FST and the entire HR segment of the Armed Forces. The intention of the restructuring was to establish the Norwegian Defence Staff as a strategic command staff with a new command model in which authority is delegated to unit commanders and transactions are centralised. In lieu of multiple payroll and personnel administrators in each unit, resources have been consolidated into an established specialist circle located at Hamar and Harstad.

Restructuring the FST and HR segment has led to changes in the roles and responsibilities related to Armed Forces' efforts regarding health, safety and the working environment (HSE). The FST HR Department is still the competent authority for military HSE efforts, while technical and executive responsibility is assigned to the Armed Forces HR and Conscription Centre.

FHAMU, the Armed Forces main working environment committee, was evaluated in 2016 with the overall objective of creating a basis for further development and establishing FHAMU as an effective, well-coordinated committee. In 2016 the committee held seven meetings and reviewed 73 cases.

In 2016 the Armed Forces conducted an employee survey for the purpose of continually improving internal leadership and culture. The results reflect the trend from 2015, indicating an overall positive impression of the Armed Forces leadership situation across-the-board. The relatively high scores on balanced leadership conduct (role model, mission focus and orientation towards development) must be interpreted as a positive, as should the relatively low scores regarding passive or negative leadership behaviour. Responses were also positive towards MI, the Ministry of Defence's strategic objective for leaders to mobilise for implementation, and regarding mission-based leadership.

### **5.4 Armed Forces' chief safety representative**

The Armed Forces' chief safety representative (FHVO) was established in 2001 to safeguard the interests of employees in cases involving the working environment. The Armed Forces has established a protective service at every relevant level, with working environment committees and a chief safety representative for each operational unit, and subordinate working environment committees and protection areas/ombudsmen as called for in respect of local conditions and legal requirements.

The Armed Forces is a complex organisation encompassing the entire spectrum of working environment challenges – physical, organisational and psychosocial. Thanks to good control of the physical working environment in the Armed Forces, there are relatively few incidents or injuries caused by physical factors. The political and media rhetoric around the new Long-Term Defence Plan has affected employees' work situation and working environment and bred uncertainty and insecurity. There is an imbalance between assignments and resources in many areas. The FHVO notes that the risk assessment and mapping activities required under the

Working Environment Act are carried out to varying degrees. The FHVO has concerns about reorganising HSE/working environment efforts as an efficiency measure. Restructuring at the central level, the Norwegian Defence Staff, is a particular cause for concern.

The FHVO does not characterise working environment challenges in the military as acute, but nevertheless feels a negative trend is emerging with regard to the focus and systematisation of HSE efforts. In these times of downsizing and efficiency measures, the FHVO recommends that HSE competencies should be strengthened, and that activities to promote a safe working environment are introduced as a means of counteracting negative impacts in the working environment.

### **5.5 Norwegian Defence University College – Defence Training and Competence Centre**

The Defence Training and Competence (Fokus) Centre has been performing a vital societal duty for nearly 70 years. Its primary target group comprises conscripts, enlisted soldiers and petty officers, military apprentices and officer candidates during their candidate training. The Fokus Centre receives its assignments from the Head of the Defence University College. Assignments primarily comprise counselling and career guidance, courses relating to specific jobs/careers, and courses/educational offerings up to and including the university/university college level and tailored to individual competency needs. In addition the Fokus Centre is involved in the new initiative to offer all soldiers introductory information about the military as a profession.

There is now a minimum of mass-produced courses, while more individualised measures are on the rise. The bulk of courses are aimed at improving marks from upper secondary school, particularly for soldiers with a general academic education background. For those with a vocational training background, the most popular programmes are qualifying supplementary education in the form of e.g. certification. Substantial cuts have also been made in the course portfolio for group instruction. All recreational-based courses have been cut; the portfolio now consists solely of courses categorised as continuing and further education.

The new Long-Term Defence Plan has a significant impact on Fokus Centre services. By the end of 2019, the 12 current Fokus Centre offices will be closed and incorporated into the Armed Forces HR and Conscription Centre in Harstad. This restructuring process has affected employee motivation and has led to turnover and some loss of skilled personnel.

### **5.6 Armed Forces HR and Conscription Centre**

The Armed Forces HR and Conscription Centre is responsible for coordinating, initiating and, together with the operational units, carrying out all recruitment measures for the Armed Forces. Importance is attached to measures to increase the proportion of women, recruit more personnel with technical skills and increase recruitment to the special forces.

The FPVS is responsible for practical aspects of position appointments, skills building and the posting of officers below the rank of colonel, with the exception of the T35 scheme (permanent employment contracts for personnel up to 35 years of age), which is delegated to the heads of the Army, Navy and Air Force.

The Armed Forces is Norway's largest apprenticeship enterprise. At the end of 2016 there were 578 apprentices in the Armed Forces in 31 different trades. The number of apprentices is stable at this high level, and 26 per cent are women.

Through a two-part examination and classification scheme, the Armed Forces has set up good requirements for selecting suitable men and women to perform compulsory military service. With the introduction of gender-neutral compulsory military service in 2015, the Armed Forces now has access to all the young people in a cohort group. Part 1 of the call-up is an online declaration, which 97 per cent of the 2016 cohort group submitted. Close to 19 800 of the most suitable candidates were summoned to Part 2 for testing and samples. The FPVS has placed special emphasis on quality assurance of the Part 2 medical examination to prevent errors, and all candidates must answer 55 questions about their own health in order to avoid *underreporting* of health concerns.

The provision of legal and financial counselling for employees, officer loan schemes and use of the holiday resort at Håøya island were discontinued in 2016. The number of housing units in areas deemed acceptable rental markets was reduced by 100, and this downscaling of the housing portfolio will continue until 2021 as part of the Armed Forces' profit realisation plan. The stated level of ambition for provision of future welfare services remains unchanged for conscripts, but services for employees and their families are being sharply curtailed and will not be prioritised.

## **5.7 Chaplain Corps**

In 2016 the Chaplain Corps serviced the religious and life stance needs of Armed Forces personnel, with special emphasis on conscripts and operational units.

The Chaplain Corps conducted religious services in the field, church processions, commemorations, prayer sessions, baptisms and weddings – in and outside of Armed Forces churches and chapels, in the field, at bases, aboard Navy vessels, and during manoeuvres and live operations.

Effective 1 January 2017, two new positions have been established – field imam and field mentor for secular humanism – both within the Chaplain Corps' existing framework of positions. The two new positions offer service to those soldiers with non-Christian religious beliefs and life stances.

Effective 1 August 2016 the Chaplain Corps was reorganised, as well as reclassified from being an operational unit to a budget and performance unit, subordinate to the Norwegian Armed Forces Joint Services. The head of the Chaplain Corps has new instructions with executive responsibility for field chaplain duties and is directly subordinate to the Chief of Defence.

## **5.8 Judge Advocate General**

The report from the Judge Advocate General applies to 2015, due to the tardiness of certain units in submitting their reprimand reports, despite follow-up reminders. This may be partially explained by the disciplinary rules for certain units stipulating a comprehensive reporting process. In other cases, likely explanations involve the commander being unaware of his/her legal obligation or that a unit's expert personnel have been replaced without replacing necessary competency.

Regard for the legal rights of the person reprimanded is a fundamental component of the scheme for the review and control of reprimands. The total number of reprimands reviewed by the Judge Advocate General's office for 2015 was 465. This amounts to a reprimand rate of 5.6 per cent per soldier work-year, compared to 6.5 per cent for 2014.

For 2015, 24.95 per cent of these reprimands were issued for alcohol-related infractions, compared to 23 per cent for 2014. Absence without leave comprised 14.19 per cent and weapons offences 18.72 per cent.

Monetary fine is still the most common disciplinary action, imposed in 81.72 per cent of cases. Arrest is the most radical disciplinary action, and is reserved for the most serious disciplinary cases. In 2015, arrest was imposed in 4.52 per cent of cases, compared to 6.7 per cent in 2014.

## **6. Other activities**

The Ombudsman and his administrative director also conduct meetings and talks year-round with Armed Forces representatives, employee organisations and individuals upon request. In particular the Ombudsman wishes to mention the annual meeting with FST HR and the Department of Competence and Joint Legal Services at the Ministry of Defence.

The Ombudsman or his administrative director participate in all TVO courses throughout the country, giving presentations on the Parliamentary Ombudsman scheme. The Ombudsman also visited Andøya Air Base and the Coastal Ranger Command in Harstad.

The Ombudsman also participates in international activities through the Geneva Centre for Democratic Control of Armed Forces (DCAF). Norway has a longstanding tradition of cooperating in this work and is an important contributor. Each year the Ombudsman attends the International Conference of Ombuds Institutions for the Armed Forces, which in 2016 was held in Amsterdam with the theme "Veterans". The Ombudsman presented the Norwegian regime for veterans in connection with international operations before, during and after deployment.

Additionally, the Ombudsman participated in a conference held by the Organization for Security and Co-operation in Europe (OSCE) and paid a visit to the Austrian Ombudsman.

There are many countries seeking to implement the Norwegian ombuds model, and the Ombudsman and his administrative director strive to support these efforts through DCAF and OSCE as far as possible.

## **7. COMPLAINTS**

### **CASES REVIEWED BY THE OFFICE OF THE OMBUDSMAN**

In 2016, the Office of the Ombudsman reviewed 22 registered cases submitted by conscripts. In addition to the formal, registered complaints, the office provided input and advice on numerous enquiries, and thus helped to resolve cases in an informal manner. The case topics most frequently submitted are



discussed below. The Ombudsman ruled partially or wholly in favour of the complainant in roughly 25% of the cases in 2016, which appears to be a stable figure. Most of the complaints are reviewed by the director of the Ombudsman’s office, who is a legal expert.

Types of cases for conscripts:

<b>Types of cases for conscripts:</b>	<b>2015</b>	<b>2016</b>
Compulsory military service, conscription, registration	0	3
Call-up, appearance, exemption, postponement	9	2
Posting, transfer, change of location, demobilisation, etc.	5	5
Conditions of service, security clearance, testimonial of service	4	9
Leaves of absence	0	1
Disciplinary and criminal cases	1	0
Remuneration, financial conditions	2	1
Illness-related cases	3	1
Social welfare cases	2	0
<b>Total</b>	<b>26</b>	<b>22</b>

## **7.1 CONSCRIPTED PERSONNEL**

### **Compulsory military service – conscription, registration**

The Office of the Ombudsman received three written complaints and handled numerous telephone enquiries in this category in 2016.

Most of the enquiries concern matters related to rights, alternatives to national service, the opportunity to choose one’s service start-up date, and requests for a new service location. The Ombudsman’s role in this type of case often consists of providing input and advice, and in our view the Armed Forces HR and Conscription Centre goes to great lengths to comply with the conscripts’ personal wishes. Clarifying discussions often lead the conscripts to decide that they do not need to lodge a written complaint.

Some enquiries concern individuals who want to perform national service, but who have not been called up or who have been exempted on medical grounds. Many mistakenly believe that they have a right to perform national service since there is a principle of general compulsory military service. However, the number of people called up to national service is based on the needs of the Armed Forces, and some individuals have therefore been disappointed that they do not get the opportunity to serve.

### **Call-up, appearance, exemption, postponement**

Two cases in this category were registered in 2016. In addition, the Office of the Ombudsman handled several telephone enquiries that did not need to be registered as formal cases.

Applications for postponement of/exemption from refresher exercises usually result in a relatively large number of enquiries from people who believe that being absent from work or away from home will cause great hardship for both their employers and their families. Self-employed individuals often cite financial ramifications for their business as grounds for exemption. In general, the regulations on postponement of or exemption from service have traditionally been strictly enforced.

Cases in this category that are relevant for consideration often require a thorough investigation of the soundness of the grounds put forward by the applicant and a careful assessment of the applicant's personal interests in relation to the Armed Forces' service-related needs. In the Ombudsman's experience, however, the military authorities strive to meet the personnel's needs when these are well justified.

### **Time accumulation, time credits, change of location, length of service, reduction of service, etc.**

No cases in this category were registered in 2016.

Enquiries in this category often concern the maximum number of work hours permitted per week. Work hours for those liable for national service are regulated in the "*Provisions on conscription and compulsory military service, part 5 – Management of personnel during national service*", which states that all categories of personnel performing national service are to have roughly the same number of hours of service. The stipulated time of service must not exceed 42.5 hours per week or 42.5 hours on average per week over a 12-week period.

### **Posting, transfer, change of location, dismissal, demobilisation, reduction in rank**

Five cases in this category were registered in 2016.

Additional cases were resolved without the need to enter them as written cases. These concerned situations which sometimes were based on a misunderstanding of the facts and regulations. The Ombudsman is able to easily clear up this type of misunderstanding by telephoning the relevant unit. Occasionally the Ombudsman receives enquiries from conscripts who are dissatisfied with their transfer to a new service location or to another type of service. Such cases may arise as a result of a discretionary assessment of a conscript's suitability for a particular type of service or training. In some cases, information of a socio-medical nature comes to light which gives grounds for an individual assessment

by the proper authority within the Armed Forces. Also included in this category are occasional cases in which a conscript requests early demobilisation in order to begin an educational programme or assume a new position. It appears that most of these cases are resolved in keeping with the conscripts' needs.

### **Conditions of service, security clearance, proficiency reports**

Nine cases in this category were registered in 2016.

The Ombudsman also received several enquiries from conscripts who had questions involving comparison of the conditions of service in the various military units or branches, as some conscripts wonder whether the conditions of service in other units may be more advantageous.

A recurrent theme is the lack of security clearances. In many cases, it has taken an unreasonably long time for conscripts to receive a security clearance. The Ombudsman has discussed this problem with the Armed Forces, and in 2016 there were fewer such enquiries, indicating that the problem is less serious now than in previous years.

In some cases, the proficiency report issued after conscripts complete their national service generates enquiries from individuals who believe they have performed better and deserve higher marks than indicated in the report. The Ombudsman's course of action is to assess whether formal errors were made when the proficiency report was issued and whether any discretionary assessments are based on biased or irrelevant considerations. In other cases, the conscript did not meet the three-week deadline for lodging a written complaint, and then the Ombudsman cannot help to resolve the matter.

### **Leaves of absence**

One written complaint in this category was registered in 2016.

In addition, the Ombudsman received a number of enquiries involving questions about the interpretation and practice of the leave of absence directive. When a leave of absence is granted on welfare-related grounds, the conscript's duties must often be transferred to other personnel, and it is therefore crucial that the other conscripts feel that the directive is being implemented in a fair and equal manner as much as possible.

### **Disciplinary and criminal cases**

No cases in this category were registered in 2016.

However, the Office of the Ombudsman provided general advisory services, focusing on the importance of the person disciplined to make use of the ordinary complaint procedures within the Armed Forces.

### **Remuneration – financial conditions**

One case in this category was registered in 2016. Various questions about regulations were answered on the telephone as well.

Cases of a financial nature may be registered under other special types of cases, e.g. social welfare cases, living allowance, business contribution, financial compensation cases, etc.

#### **I – Living allowance**

The complainant began his studies at the Norwegian Defence Military Intelligence School on 20 June 2015 and lived in a shared flat. He received approval for a living allowance of NOK 5 500 per month. The complainant also stated that he had to move out of his shared flat and that he signed a new rental contract beginning on 1 January 2016 with a monthly rent of NOK 14 000.

The complainant stated the following: *I rented a flat before I began going to school, and therefore I have a right to a living allowance during my studies. I had to move out of my old flat when I was accepted to military intelligence school because it was a shared flat and they wanted permanent tenants. It is primarily on this basis that I am seeking renewal of the living allowance to which I am entitled. In addition, the school prefers that we do not share a flat with others due to the nature of our activities and the sensitivity of the information. It is not possible to rent a flat on my own at the previous price, which is why I am seeking an increase in the allowance. I was assured by a former employee of the social welfare office that this has always worked out before and that it should not be a problem. I was told to find a new flat because I needed an active contract in order to get approval for the living allowance. I am now paying for the flat myself, but will be forced to move out if I do not receive a living allowance.*

The application from the Unit for Military Culture and Traditions (FAKT) refers to Section 4.1.4.6 of the Armed Forces' Service Manual, which state: *Should a conscript's status or home rental fees change while the conscript is performing national service, the case shall be reviewed again.* In a letter dated 26 January 2016, a case administrator at FAKT recommended approval of the application.

The Armed Forces Housing and Welfare Service denied the application in a decision on 8 February 2016, as it did not find regulatory grounds for approving an increase from NOK 5 500 to NOK 14 000 per month.

On 10 March 2016, FAKT lodged a complaint with the Armed Forces HR and Conscription Centre (FPVS), which upheld the denial. The decision states: "The FPVS cannot support an increase in living expenses on the basis that the individual needs a more secure place to live because he or she must bring

home or work with sensitive or unclassified information in his or her flat...It is also normal for cadets to apply for a studio flat at the school... The FPVS recommends that the cadet applies for a studio flat at the school.”

Firstly, the Ombudsman wishes to express his surprise at the active role played by the case administrator at FAKT. The case administrator acted almost as the complainant’s lawyer. This is unusual and moreover leads to confusion between the various units of the Armed Forces.

In addition, the Ombudsman asked FAKT to document that the income requirement was satisfied upon approval of the living allowance of NOK 5 500. However, we have only received bank statements showing that the rent was paid, and cannot find any documentation of income. It is therefore not possible to check whether the complainant himself had sufficient funds to cover his living expenses, cf. Section 4.1.2 of the Armed Forces Service Manual.

With regard to the interpretation of Section 14.1.4.6 of the Armed Forces Service Manual, paragraph two points to marriage and separation/split-up. Consequently, the Ombudsman assumes that this provision is intended to regulate changes of this category or cases of a normal rent increase. The case at hand concerns a dramatic rent increase of 154 per cent, and this lies most likely outside the intent of the regulations. Moreover, in this case there is a change in the complainant’s living situation after a relatively short time, and thus the question may be asked whether the income requirement pursuant to Section 4.1.2 must be viewed in relation to a rent of NOK 14 000. The Ombudsman also supports the view of the FPVS that the complainant may apply for a studio flat at the school.

The Ombudsman for the Armed Forces therefore concluded that the original decision must be upheld.

### **Illness-related cases, social welfare benefits, compensation, dental care, medical rulings, etc.**

One case in this category was registered in 2016.

Complaints regarding military medical rulings seem to arise more often when personnel want to perform national service, but are found to be unsuitable for military service for medical reasons. If a conscript is found to be temporarily unsuitable, postponing his or her national service may disrupt his or her planned timeframe related to education and/or employment. While the military doctors appear to show great understanding for the practical drawbacks that an unwelcome medical ruling may create for the conscripts, in some cases the medical ruling results in the necessary decision to demobilise the conscript, especially due to the risks of the health-related consequences should he or she perform military service.

During their military service, conscripts will sometimes hesitate to bring up personal problems with their respective military superiors. In these cases, it is important for the Ombudsman to ensure that contact is established between the individual and the relevant professionals in the unit, such as doctors, psychologists, clergy, social workers, etc. In this type of case, issues may arise related to injuries

sustained during military service performed many years ago, and problems may resurface several years after the event occurred.

### **Social welfare cases**

No written complaints in this category were received in 2016.

However, the Ombudsman gave advice in response to verbal enquiries from conscripts who had a variety of questions relating to social issues. In some cases, the Ombudsman was asked about regulations and documentation needed to support applications.

In general, cases in this category are thoroughly reviewed by the social welfare case administrators in the respective units and the appeals body, the Armed Forces Housing and Welfare Service.

## **7.2 ARMED FORCES EDUCATION ACTIVITIES**

In 2016, the Ombudsman responded to enquiries in this category by providing advice to the individuals involved. As a result, their cases were resolved or they found that they did not wish to submit a follow-up complaint.

Most of the complaints in this category concern conscripts who failed their admission tests for officer candidate schools or who were dismissed from military academies for various reasons.

### **I - Expulsion**

Complaint regarding expulsion from the Army Officer Candidate School, with case processing as follows:

- Complainant begins at the Army Officer Candidate School in August 2015.
- Complainant given a verbal warning on 21 October 2015 regarding insufficient leadership qualities. Complainant does not acknowledge the point about a lack of motivation.
- Written warning issued on 19 January 2016, as the complainant did not show adequate improvement in the areas of development stated in the verbal warning. Deadline for improvement is set for 19 February 2016.
- Officer's assessment in the period 1 August 2015 to 12 February 2016 with a mark of F (not passing).
- Minutes of the meeting of 3 March 2016 show that the school advisory board recommends expulsion because the complainant does not satisfy the requirement regarding suitability as a military leader, cf. Section 14.3 of the Regulations regarding education in the Armed Forces.
- The commander of the Army Officer Candidate School decides to expel the candidate on 8 March 2016.

- A petition is filed on 17 March 2016 to gain access to all case documents.
- Response to the petition on the release of documentation on 30 March 2016 gives access to case paperwork relating to the calling of the meeting of the school advisory board as well as the minutes of the meeting, but not the internal case documents.
- A second petition is filed to gain access to documentation on 5 April 2016.
- Response to the petition on the release of documentation on 11 April 2016 concludes the following: “You are not granted access to Officer Candidate School’s internal observation journal, but you have previously been given access to excerpts from the observation journal and the officer’s assessment. You are given information about your ranking amongst the class in connection with selection for different jobs, but please note that the members of the school advisory board are not informed of the ranking, and it is therefore not relevant for the decision beyond the fact that you received a low ranking. The Army Officer Candidate School has no additional documentation that may be regarded as actual information in the case, and therefore refers to the date of the deadline for filing a complaint.”
- Complaint regarding the school commander’s decision is submitted on 15 April 2016. The complainant asserts that that a procedural error occurred because he did not receive all of the documents prior to the meeting of the school advisory board, and the documents were handed over only after a petition was submitted. He also asserts that he improved his performance dramatically after the verbal warning, and he questioned the accuracy of the written warning as the officer’s assessment was made by inexperienced instructors.
- Response to the complaint of 21 April 2016 in which the Army Officer Candidate School acknowledges there was an error in the delivery of the case documents prior to the meeting of the school advisory board, and concludes that it will hold a new meeting. The school also rejects the assertion that the complainant was assessed too strictly.
- Comments to the complaint of 27 April 2016 in which the following are noted:
  - The Armed Forces is the professional party.
  - The instructors are younger officers with limited experience, knowledge and authority for such a demanding role in the assessment and handling of both difficult and critical personnel cases.
  - The observation journal appears somewhat deficient, the heading is incorrect, and the document is not set up chronologically.
  - The document “Feedback – Army Officer Candidate School” is not included in the case documents.
  - A procedural error occurred, as the written warning was not given until 50 days after the observation period following the verbal warning. This warning is therefore invalid, as are the subsequent meeting of the school advisory board and related process.
  - Health evaluation of the complainant without medical expertise.
  - “Revised officer’s assessment” is a document they were not familiar with, and must be handed over.
  - “Ranking within the team”: Is this a sufficiently good qualitative method of evaluation that it can be used as an argument in the school advisory board?

- “Ranking for selection for different jobs” does not correspond with what was presented for the school advisory board and denied in the petition.
- Minutes of the meeting of the school advisory board on 29 April 2016, with a recommendation that the original decision must be upheld.
- Decision of 4 May 2016 from the Army which supports the recommendation of the school advisory board and forwards the case to the Norwegian Military Academy for a final decision.
- Addendum to the minutes of the meeting of 9 May 2016, with various corrections/elaborations of specific items in the minutes of the meeting of the school advisory board.
- Decision by the commander of the Norwegian Military Academy on 23 May 2016 to uphold the decision on expulsion.

It is not the role of the Ombudsman to re-examine the decision of the school advisory board/school commander. We may only check to see whether the regulations have been applied correctly or whether case procedure has been properly carried out. The *Regulations regarding education in the Armed Forces* (RUF) give various reasons that cases must be reviewed by the school advisory board. Sections 12.3, paragraphs 4 and 5 state: *“Cadets/students must be informed of any reduced mark in Suitability as a Military Leader (SML) as soon as possible. The school commander, or a person authorised by the school commander, must have a conversation with and give a verbal warning to the cadet/student concerned. The conversation must result in a written plan with a certain deadline by which improvements must be made in specified areas. If improvements are not made, a written warning must be issued. Throughout the process the school must ensure that there is signed documentation relating to observations, feedback and conversations. If the cadet/student does not make progress in the specified areas within a stipulated timeframe, the case will be reviewed by the school advisory board, cf. Section 14.1.”*

In addition, Section 12.5, second paragraph, states: *“If the cadet/student receives a failing mark (F or “below average”) as the mark for SML, the school advisory board must advise the school commander on whether the cadet/student should be dismissed or expelled from the school, Sections 14.1 and 14.3.”*

The provision in Section 12.3.4 which states “If improvements are not made, a written warning must be issued” does not specify a time period between the verbal and written warnings. The subsequent paragraph does state, however, that progress must be made within a stipulated deadline to avoid a review by the school advisory board. Therefore, the Ombudsman finds that, although it can be seen as unfortunate, the lapse of a period of 50 days between the verbal and written warnings does not mean that the regulations have been applied incorrectly. Moreover, the school advisory board may review the case in question on another basis, i.e. in accordance with Section 12. 5, as the cadet received a mark of F – not passing.

In addition, it is the Ombudsman’s view that selection is carried out by multiple competent instructors in an objective, thorough manner. Although the Armed Forces is the professional party, the individual complainant is provided good representation on the school advisory board and through opportunities to lodge a complaint. Furthermore, the power balance issue is the same in all employer-employee conflicts.



An error was made when all the case documents were not handed over prior to the first meeting of the school advisory board, but this problem was corrected by holding a new school advisory board meeting. This did not have an impact on the outcome. Finally, the Ombudsman wishes to point out that the outcomes of both school advisory board meetings were unanimous.

Thus, the Ombudsman does not find that the school commander's decision regarding expulsion involves errors in the application of the regulations or procedural errors relating to the case, and concludes that the original decision must be upheld.

## II - Expulsion

The Norwegian Officers' Union (NOF) states that review of the case has been ongoing for almost one year as have the errors resulting from it, and this has inflicted an undue burden on the complainant. The time used on this case has deprived the complainant of the opportunity to continue his career or education, and he will be left with absolutely nothing to show for his three years at the Royal Norwegian Naval Academy (SKSK). The NOF asks the Ombudsman to consider allowing the complainant to submit his bachelor's thesis on 2 December 2016 for assessment.

The Ombudsman has obtained documentation from the Royal Norwegian Naval Academy, and it appears that the sequence of events is as follows:

1. Decision regarding expulsion on 21 December 2016:

*"On the basis of Sections 12.1 and 14.3 of the RUF, the school recommends expelling X from the educational programme at the Norwegian Naval Academy with a vote of 9 in favour and 1 opposed (1 abstention)."*

2. Decision of the appeals case on 29 March 2016:

*"Five members voted to recommend that the decision to expel the complainant be set aside. Four voted that the decision regarding expulsion should be upheld."*

3. Letter dated 7 April 2016 from the commander of the Norwegian Naval Academy to X:

*"...I find it strange and worrying that X changed his statement and other witnesses 'adjusted' their statements retroactively. Consequently, I want to re-open the disciplinary case and ask the Military Police to investigate why the statements were changed and whether the witness statements contain factual errors..."*

4. Decision regarding expulsion on 2 November 2016:

*"The appeals committee reviewed your appeal on 21 October 2016 and decided that your appeal cannot be approved and thus the decision regarding expulsion must be upheld."*

*"On this basis, you are hereby expelled from the Norwegian Naval Academy."*

The Ombudsman notes that some time has passed between the first decision on expulsion from 21 January and the final decision on 21 October 2016. However, this is to be expected in an appeal process, and the Ombudsman does not find that the amount of time used on this case significantly exceeds the

normal case processing time. The complainant must therefore accept the consequences of lost time in relation to civilian education.

The Ombudsman cannot otherwise see that the case procedure has involved formal errors or deficiencies. The actual basis for the expulsion has not been assessed, but it appears to be in accordance with applicable regulations.

It should also be emphasised that the Ombudsman for the Armed Forces is a parliamentary appeals body, and thus not a part of the defence sector. As such, we cannot decide whether the complainant may submit his bachelor's thesis for assessment.

The Ombudsman concludes that the original decision must be upheld.

### **7.3 CASES CONCERNING OFFICERS**

A total of 36 cases in this category were reviewed in 2016, compared with 26 cases in 2015.

In some of these cases, the decision was modified and thus the complainant found that it was unnecessary to pursue further measures. Most of the complaints from officers fell into the following categories: position appointments, passing over an individual for an appointment, admission to schools, service burden, and various types of financial cases.

Some enquiries concern contracts signed between personnel and their units in which disagreements have subsequently arisen regarding the provisions of the contract or whether the contract is valid vis-à-vis applicable collective wage agreements. There are also issues related to military proficiency reports and disciplinary cases, as well as questions from personnel who were denied the opportunity to perform international service.

#### **I – Holiday leave**

The complainant states that he has lost two summer holidays during a two-year period due to his service in international operations. His last tour was an ad hoc assignment that was not clarified until three weeks prior to departure. He was able to take only five days of holiday prior to departure, and he took the remaining holiday at the end of the year. He believes he is entitled to compensation, as he was not able to take three consecutive weeks of holiday during the main holiday period. The complainant also asserts that several people in his unit have been granted compensation on this same basis.

Armed Forces HR and Conscription Centre denied his request in a decision on 18 November 2015. The decision states: *“Compensation for lost welfare is compensation for non-financial loss on the basis of the disadvantage caused to an employee for an inability to take his/her legally established holiday during the holiday year. The reason that the holiday was not taken must be due to the employer’s deliberately or*

*negligently failing to ensure that the employee has taken his/her holiday, cf. Section 5, of the Holidays Act and Section 6 of the Basic Collective Agreement. There must also be a causal connection between the misconduct and the lost welfare, and it must be possible to anticipate the loss. You have not documented that you have requested three consecutive weeks of holiday during the main holiday period. It is also noted that you have used 34 days of holiday leave in the period from 1 January 2011 to 31 December 2011. The criterion of liability in Section 14 of the Holidays Act has not been met, and compensation for lost welfare can therefore not be approved.”*

The letter dated 8 January 2016 from the Ministry of Defence states: *“The Holidays Act states that an employee may demand to take his/her main holiday, which consists of 18 work days, during the main holiday period. This period runs from 1 June to 30 September of the current holiday year.*

*If an employee of the Armed Forces has taken part in an international operation, and the employee’s period of service in the operation overlaps with the main holiday period as defined in the Holidays Act, it is the ministry’s view that there will be very few cases in which there are grounds for compensation pursuant to the Act as a result of lost welfare. This will of course depend on a concrete assessment of the case.*

*Employees who leave the country to take part in international operations will often know about the assignment well in advance of departure. Moreover, it is also often the case that the employee himself/herself requests to serve in an international operation. These are important aspects that must be given weight when assessing whether an employee may demand compensation for lost welfare pursuant to the Holidays Act.*

*If the employee knows that service in an international operation extends over the entire or a large portion of the main holiday period as described in the Holidays Act, there is no basis for compensation for lost welfare. In this case, it is not important whether such holiday is requested or not. Therefore, it will be primarily those cases when the individual employee must depart for the assignment on short notice, and consequently cannot take the agreed holiday leave during the main holiday period, that are encompassed by the compensation-related safeguard under the provisions of the Holidays Act. In addition, in these cases it will also be a point of consideration whether the employee who has been in international service nonetheless has been able to take his/her legally required holiday at times other than the current holiday year.”*

The Ombudsman refers to Section 6 of the Holidays Act which states that the employer has a duty to ensure that an employee takes his/her legally required holiday. Pursuant to Section 7, however, the employee must demand to take his/her main holiday during the main holiday period.

Compensation pursuant to the Holidays Act is regulated in Section 14 which states: *“If an employer or someone acting on his behalf deliberately or negligently fails to ensure that an employee has holidays and receives holiday pay in accordance with the rules of the present Act, the employer becomes liable to pay compensation.”*

The complainant has not provided information about financial loss incurred as a result of his inability to take three weeks of holiday during the main holiday period, and as such this demand must be related to lost welfare.

Thus the question here is whether the complainant has been granted holiday in accordance with the Holidays Act. It is indisputable that he has taken all of his lawful holiday during the holiday year. Likewise, it is established that he did not demand to take three weeks of holiday during the main holiday period. The law does not require that parts of the holiday are taken during the main holiday period. As a general rule, the employer and employee may agree as to when holiday will be taken during the course of the holiday year. If the employee wishes to take holiday during the main holiday period, however, the employer has a duty to comply with this request.

In the Ombudsman's view, failure to demand to take holiday during the main holiday period will not result in compensation liability for the employer. The complainant has taken all of his legally required holiday, and thus the conditions of compensation pursuant to Section 14 of the Holidays Act have not been satisfied. In addition, in this specific case the complainant himself asked to take part in international service, and it must be expected that this service would require the employee to be overseas during the main holiday period. Even if the employee had demanded to take holiday during the main holiday period, it is doubtful that this would have resulted in compensation liability for the employer.

The complainant states that many others who have served in international operations have been granted compensation for lost welfare. The Ombudsman is familiar with cases where compensation for lost welfare was granted pursuant to Section 14 of the Holidays Act, but these are all cases in which employees were not able to take all of their legally required holiday during the holiday year.

The Ombudsman for the Armed Forces therefore concluded that the original decision must be upheld.

## II – Position appointment

The complainant states that she applied for three vacant positions with the Norwegian Military Chaplain Corps (FPK), but was not found to qualify for any of them. She says that FPK argued that she did not satisfy the requirements set out in the job vacancy announcement, which required two years of service experience. However, the complainant believes that service as a conscript academic officer should count as service experience. The complainant also asserts that there is a “negative endorsement” about her in FPK. She also states that a male substitute was hired in the position of field pastor, even though he did not apply for the position. The complainant feels she was passed over and wants to know what comments have been recorded about her as a person.

FPK states that there are four separate appointment processes: substitute positions at Gardeskolen recruit school (GSK), Telemark Battalion (TMBN), Rapid Response Force (HRS) and a permanent position at HRS.

FPK says that applicants who do not satisfy all of the non-negotiable requirements of the job vacancy announcements will normally not be assessed. The job vacancy announcements at TMBN and HRS set a requirement of minimum two years of experience as a field pastor, and the complainant's period of service does not satisfy this requirement. In its assessment, FPK emphasised that service as a conscript academic officer is regarded as national service and thus does not qualify as service experience. FPK refers to the regulations regarding appointments (Armed Forces Personnel Manual, part B) in which service as a conscript academic officer is not explicitly defined in relation to service experience.

FPK also notes that in the application for the position at GSK, the complainant did not attach a transcript of marks from her Cand. Theol. studies. Although there is no stated requirement regarding marks, formal competency is part of the qualification principle. With regard to her assertion about a negative endorsement, FPK has denied the request for disclosure as there is no such endorsement to disclose. Endorsement is a system that is used when personnel in active service submits an application through official channels. In that case there is a right to access, but the complainant is not in service at FPK, and none of the applications have therefore been submitted to FPK for endorsement. Of course as the appointing body, the field chaplain in charge has conducted internal assessments of the complainant. This is not an endorsement, but rather an assessment carried out by the Head Chaplain of the Armed Forces. FPK believes that this assessment is exempted from disclosure pursuant to the regulations regarding Section 16 a and b of the Public Administration Act.

Furthermore, FPK states that the appointment processes for the positions at HRS and TMBN were concluded without hiring anyone, as there were no qualified applicants. Later, however, a person with an employment relationship with FPK was transferred to TMBN. FPK states that the vacancy had presented challenges and that there is no connection between these two processes.

The Ombudsman notes that a decision to appoint an individual to a position is regarded as an individual decision according to the Public Administration Act. However, pursuant to Section 3, second paragraph, second item, of the Public Administration Act, a decision regarding an appointment is exempted from the provisions requiring grounds to be given for a decision, provisions concerning appeal, and provisions concerning reversal of a decision. Thus, there is no administrative legal mechanism for appealing a decision regarding an appointment. Such a decision may be brought to the Ombudsman for the Armed Forces, which may assess whether the rules regarding case review have been followed, but the Ombudsman cannot reverse the actual decision. For the person who has been unfairly passed over, this may result in a claim for compensation for lost future income.

It is general practice in the central government administration to hire the best qualified applicant in relation to the requirements set out in the job vacancy announcement. The ranking of candidates is only intended as a recommendation for the hiring committee, which is responsible for taking the final decision.

In the Ombudsman's view of this specific case, the complainant does not satisfy the non-negotiable requirements of the position at TMBN or of both positions at HRS, as she does not have two years of

service experience. However, it could be discussed whether service as a conscript academic officer should be included, but it is the employer that has the final authority to establish the non-negotiable requirements of the job vacancy announcement. In the Ombudsman's view, service as a conscript academic officer does not need to be included provided that this practice is applied to all applicants. In other words, the most important thing is that all of the candidates receive equal treatment. For the future, however, the Ombudsman recommends that more precise information is included in the job vacancy announcement to avoid any misunderstanding.

With regard to the position at GSK, the Ombudsman finds it somewhat formalistic that the application was rejected because the applicant failed to provide transcripts from her theology studies. If the application had been approved, there would have been two candidates. Good practice shows, however, that the employer may choose the applicant who is most suitable from among the qualified applicants. It therefore appears that FPK acted in accordance with the regulations when it selected the other applicant on the basis of suitability.

The next question is whether there were any "irrelevant considerations", which would constitute a procedural error. The Ombudsman has, through personal inspection, read the assessment to which the complainant was not given access. The assessment, which addresses the period when the complainant served as a conscript academic officer, is unbiased in its form, but gives a negative impression of the complainant's work performance by referring to, for example, her lack of availability. The Ombudsman believes this is highly relevant to emphasise and that disclosure may be denied with reference to the regulations regarding Section 16 a and b of the Public Administration Act. In this case, however, the Ombudsman believes it would have been a wise decision to allow disclosure.

With regard to the other matters addressed by the complainant, the Ombudsman believes that they have less relevance for the complaint. It is noted here that in our opinion, the employer may transfer other employees to fill job vacancies.

The Ombudsman concluded that the original decision must be upheld.

#### **7.4 CASES CONCERNING CIVILIAN EMPLOYEES**

Four written cases were registered in 2016, as compared with three cases in 2015.

In addition, the Ombudsman responded to telephone enquiries about general civil service law, position appointments, financial compensation, etc. Some situations were clarified between the parties, resulting in solutions that did not require the Ombudsman to open and review a written case. Civilian employees must first make use of the appeal procedures available via the ordinary administrative body/employer before the case can be brought to the Ombudsman.

The Ombudsman also receives complaints for which the Armed Forces do not have decision-making authority, e.g. pension cases and tax cases, and which the Ombudsman for the Armed Forces does not have the authority to overturn. Any cases handled in accordance with provisions for state civil servants in general are referred to the Parliamentary Ombudsman.

#### I – Overtime / additional work

The complaint concerns a demand for overtime pay / pay for additional work during sick leave.

The complainant was on active sick leave from 19 May 2010 to 10 June 2010, but worked 100 per cent, and then went on 50 per cent sick leave up to 15 June 2010. The complainant's work as a safety representative was done in addition to his regular duties, and he is demanding that this is paid as 10.5 hours of overtime and 17 hours of additional work.

The Union of Civilian Personnel in the Armed Forces refers in this case to Section 4.2.1 of the Agreement on wages and working conditions for Head Safety Delegate and Safety Delegate in the Armed Forces: *“The Head Safety Representative/Safety Representative has the same normal working hours as the rest of the unit. Duties of the safety representative that must be performed in addition to normal working hours in accordance with Section 10-4 of the Working Environment Act, are to be remunerated as overtime hours, cf. Section 6-4, paragraph 3, of the Working Environment Act, if this time is not already planned.”*

The demand was denied by the Armed Forces because the overtime was neither planned nor agreed upon, nor is it possible to require a person on sick leave to perform such work.

The complainant asserts that there is no condition stipulating that overtime must be required or agreed upon for compensation to be warranted. According to legal precedent (Norwegian legal publication “Rettens Gang” 2008, p 1204), it is sufficient that there exists consent, customary practice or a need to work overtime.

In response to an enquiry from the Ombudsman, the FPVS stated that it is normal practice for employees to perform their safety representative duties as part of their regular positions. This is regardless of whether they work a shift or during the day. The time which the complainant uses to perform safety representative duties is covered by the unit where he works. This means, for example, that he can take time off with pay from his primary job, e.g. for a day, in order to perform his safety representative duties. If additional work is needed, this must be clarified in advance, as is the case for all employees and their supervisors. As far as the FPVS is aware, the safety representative duties have been performed within normal work hours with the local employer facilitating this. The local employer confirms that he did not order the complainant to work overtime. The employer also states that in his absence there are others in the unit who can fulfil the safety representative role.

In his assessment the Ombudsman notes that the rules on overtime pay are regulated in Section 10-6 of the Working Environment Act. Moreover, Chapter 7.3.13, Section 13, item 1, first sentence of the

Personnel Handbook for State Employees states: “Overtime work must be required and controllable and limited in accordance with conditions set out in the Working Environment Act.”

In the Ombudsman’s view, the essential issues in this case are whether the conditions for overtime/additional work have been satisfied and whether a person on sick leave can work overtime/perform additional work.

When an employee is sick, he/she has a reduced capacity to work. An employee on 100 per cent sick leave should not work at all, but with a part-time sick leave the employee should only work the percentage for which he/she is not on sick leave. All work exceeding the specified sick leave will be in conflict with the entire sick leave system.

With regard to the conditions for use of overtime work or additional work, the Ombudsman has as a basis that the same terms and conditions apply in both cases. There appears to be consensus between the parties that the employee did not notify his superior of the overtime work or additional work he performed and that the employer did not require such work.

In the Ombudsman’s view, the legal precedent referred to is not relevant in this case, as it applied to a private entity with financial interest in working overtime. For the government administration, however, there is no economic advantage in using overtime, and moreover there is neither consent nor customary practice for the use of overtime. In addition, the Armed Forces states that others with safety representative duties could represent the employee concerned. In other words, it was not necessary for the employee to work overtime in this case.

The Ombudsman concluded that the conditions for the use of overtime or additional work have not been satisfied, and is moreover surprised that the safety representative is not familiar with the rules regarding overtime, especially in connection with sick leave.

The Ombudsman concluded that the complainant is not entitled to remuneration for overtime and additional work as a safety representative in the period from 19 May 2010 to 15 June 2010.



## **8. INSTRUCTIONS FOR THE PARLIAMENTARY OMBUDSMAN'S COMMITTEE FOR THE NORWEGIAN ARMED FORCES**

(Storting resolution of 21 April 1952, cf. Recommendation S. No. 56 for 1952 with amendments approved in a Storting resolution of 9 April 1956 which increased the number of committee members from five to seven (Section 2 of these instructions), amendments approved in a Storting resolution of 12 June 1989, cf. Recommendation S. No. 189 (1988–1989), Storting resolution of 14 June 2000, cf. Recommendation S. No. 234 (1999–2000) and Storting resolution of 7 November 2003 in which it was decided to appoint deputies and a vice chair, cf. Recommendation S. No. 20 (2003–2004).)

### **Section 1**

The Ombudsman's Committee shall seek to safeguard the basic rights of Armed Forces personnel and help to enhance efficiency in the Armed Forces by means of its activities.

### **Section 2**

The Ombudsman's Committee consists of seven members who are appointed by the Storting for a four-year term. The same number of deputies are appointed at the same time. One of the members is appointed to serve as the chair and is designated as the Ombudsman for the Armed Forces. Another member is appointed to serve as the vice chair. The Ombudsman is responsible for the day-to-day activities of the office. If the Ombudsman is not able to attend a meeting of the committee, the meeting will be led by the vice chair. If the Ombudsman is temporarily prevented from carrying out his or her duties due to illness or another reason, the Storting may appoint a deputy to perform the service for as long as the Ombudsman is absent. The deputy also leads the committee meetings. For an absence up to three months, the Ombudsman may authorise a civil servant at the Ombudsman's office to take over the daily management of the office.

The Ombudsman receives an annual salary. The salary is set by the Presidium of the Storting. The other members receive compensation according to the pay scale for committees.

### **Section 3**

The tasks of the committee are as follows:

- a) to address issues raised by elected spokespersons or personnel regarding utilisation of service time and the conditions under which personnel serve, such as the personnel's economic and social rights, issues regarding training and welfare, cantina operations, pensions, equipment, clothing, diet and housing.
- b) to handle enquiries from civil servants in the Armed Forces when other provisions do not require the matter to be dealt through official channels.

### **Section 4**

The elected spokespersons and personnel in the Armed Forces may direct enquiries to the Ombudsman outside of the official channels given the limitations stated in Section 3, litra b, above.

### **Section 5**

The cases that are to be reviewed are prepared and submitted in general by the Ombudsman. The members may individually or as a group submit cases or request that cases be brought forward for review. The Storting, the Storting's Standing Committee on Defence, the Minister of Defence or the Chief of Defence may submit cases to the Ombudsman for an opinion. Enquiries directed to the Ombudsman in cases stated under Section 3, litras a and b, may be submitted to the Ombudsman's Committee only when they are of a general nature or are of common interest. The Ombudsman seeks to resolve cases by making direct contact with the authorities that he/she believes are most relevant to address them.

In connection with cases submitted to him/her, the Ombudsman has the right to seek out information from all parts of the Armed Forces provided that security concerns do not prohibit this.

### **Section 6**

The Ombudsman's Committee shall send a report of its activities to the Storting at the end of each year. A copy of the report must be sent to the Ministry of Defence. The Committee may also send a report on individual cases to the Storting throughout the year, when it so desires. To the extent that the Committee finds it necessary, it may submit the results of an inspection or course of study to the Minister of Defence in the form of a report.

### **Section 7**

The Committee shall hold its meetings as often as is deemed necessary.

### **Section 8**

Documents from the Ombudsman's Committee shall be prepared by the Chair of the Committee on the Ombudsman's letterhead. Case documents from the Ombudsman's Committee/the Ombudsman are part of the public record. However, the Ombudsman shall take the final decision regarding whether a document should be exempted from public disclosure pursuant to the Freedom of Information Act or on the basis of special considerations related to the Committee's or the Ombudsman's activities.

Documents concerning the budget or internal administration of the Ombudsman's Committee/the Office of the Ombudsman may be exempted from public disclosure. Minutes of the committee meetings and documents exchanged between the administration and an employee are not part of the public record. Cases regarding public disclosure of documents from the Ombudsman's Committee shall be reviewed and decided by the Ombudsman.

"The Ombudsman's case documents" is understood to mean correspondence between the Ombudsman and an individual or between the Ombudsman and the public administration. Documents produced during the public administration's review of the case are not regarded as public documents under the Ombudsman.

The Ombudsman has the same duty of secrecy as the public administration. Members of the Ombudsman's Committee and the Ombudsman's staff also have the same duty of secrecy.

Duty of secrecy also applies after a person has left the service.

The Ombudsman shall keep records in accordance with provisions of the Archive Act.