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Nordic legal overseers and institutional openness in crises: Challenges and adaptation during the COVID-19 pandemic

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Abstract

We analyze challenges and adaptation strategies of Nordic legal overseers, the Parliamentary Ombudsmen and Chancellors of Justice in Denmark, Finland, Norway and Sweden, amid the COVID-19 crisis. We study how the accountability capacities of the legal overseers were affected when standard practices of inclusive decision-making were severed, and how they adapted to these challenges. Furthermore, we seek to understand what explains observed variation in the degree of challenges and needed adaptation measures. The observed challenges include increased and sometimes politicized caseload, limited expertise in medical field and conflicting or underdefined mandates among the institutions. The challenges and adaptation were conditioned by institutional traditions and ad-hoc arrangements in crisis management. In Finland and Sweden, the legal overseers became prominent sites for legal and public accountabilities of crisis governance and experienced more acute organizational challenges from increased and politicized caseloads as actors were seeking alternative accountability forums when participation and openness were severed. In Norway and Denmark, where other institutions were prominent in overseeing crisis governance and its legality, the legal overseers had a more pressing need to adapt for an evolving organizational landscape with new ad-hoc arrangements to oversee crisis management. Contributing to institutional approach on accountability and ombudsman research, we find a dynamic relationship between the government openness and legal oversight where the constraints for openness in crisis governance led to various challenges for the legal overseers' accountability capacities but to which they adapted by promoting openness as a right as well as an enabling mechanism for other accountability institutions.

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KEYWORDS

crises, democracy, ombudsman, openness, public administration, state-society relations

INTRODUCTION

This article analyses the challenges and adaptation strategies of Nordic legal overseers, the Parliamentary Ombudsmen and Chancellors of Justice in Denmark, Finland, Norway and Sweden, amid the COVID-19 crisis. We could observe an interdependence and institutional dynamic between government openness and the institution of the ombudsman that has been largely overlooked in the standing literature. Government transparency and institutions of legal oversight such as ombudsmen provide important mechanisms of accountability, but they are also under stress and are tested during crises. Moreover, government openness and transparency tend to get severed in crises affecting the work of accountability institutions. Building on institutional approach on accountability (Christensen & Læg Reid, 2016; Olsen, 2013), we analyse how limitations of institutional openness and transparency during the COVID-19 pandemic caused capacity challenges for Nordic legal overseers and how they strategically adapted to the situation. We identified potential challenges to legal overseers' organizational resources and capacity to exercise their powers, as well as challenges to their institutional mandate (modified from Bovens & Wille, 2021). We also observed legal overseers' institutional 'renegotiation' strategies (Thelen, 2004, pp. 34–35) to adapt to these challenges and contribute to transparency and openness.

According to Christensen et al. (2016), successful crisis management requires legitimacy on all fronts, and realisation of it is conditioned by the organizational and institutional capacities of relevant actors during the crises. We applied this perspective to the ombudsman institution, exploring it as an institution of public accountability that has a particular role in the accountability system in the Nordic countries. The Nordic countries are traditionally characterised by open institutions and broad-based consensual decision-making associated with high levels of citizen trust in government. Identifying crisis management as a context in which such practices of inclusive governance are likely to be challenged, we analyse how this is reflected in the work of the legal overseers and how they contribute to the institutional openness—when standard practices of inclusive decision-making have been severed.

Our study asks, what challenges pertaining to government openness did the Nordic legal overseers face during the COVID-19 pandemic and what adaptation strategies can be observed; and why they differ across Nordic countries?

We found that the problems experienced in government transparency and participation led to attempts for finding alternative means for public accountability, visible in the complaints to the ombudsmen that peaked during the pandemic. The complaints also questioned government decisions, showing attempts to mobilise the ombudsmen as accountability forums even in cases that are not within their mandate. However, the pressures on legal overseers were more pronounced in Finland and Sweden as in Denmark and Norway, where other prominent bodies, such as various research committees, were established to publicly evaluate pandemic-era decision-making and its legality. On the other hand, in these countries, different institutions and new actors have had a need to reflect on their mutual relations and division of labour in the crisis context.

Our article contributes to ombudsman research by adopting an institutional approach on accountability (Christensen & Lægreid, 2016; Olsen, 2013), showing a dynamic relationship between government openness and legal oversight, conditioned by institutional traditions and ad-hoc measures of crises management. We also contribute to the institutional approach on accountability by providing empirical backing for the conceptual framework, but also by complementing it with an assessment of challenges on legal overseers' accountability powers amid crisis (Bovens & Wille, 2021), both limiting their agency and motivating their adaptation strategies. We will next present our theoretical framework and research design.

ACCOUNTABILITY, OPENNESS AND OMBUDSMAN

Ombudsman as an institution of 'Public' accountability in unsettled times

The importance of accountability and openness for legitimacy have been stressed in the studies of crisis management (Boin et al., 2021, pp. 56–58; Christensen et al., 2016; McConnell, 2011). In the literature on crises and accountability, the focus is often on the ability to identify responsible actors and hold them to account after crises (Brändström, 2015; Dawson, 2015; Hart et al., 2008; Nicol, 2018; Romzek & Dubnick, 1987). We wish to highlight a systemic institutional perspective on accountability, where different types of accountability and their institutional arrangements evolve over time and complement each other (Olsen, 2013), but may also be contested and rebalanced in contexts of external shocks or crises (Christensen & Lægreid, 2016). Rather than assuming stable accountability relations, this line of research stresses dynamic accountability relations and their shifts in unsettled times. Building on this tradition, our analysis of the Nordic legal overseers in crises highlights shifts in accountability relations and intrainstitutional dynamic between legal oversight and government transparency.

As an institution of accountability, the ombudsman provides an institutional mechanism for bureaucratic or legal accountability (Mulgan, 2000,

p. 555), but acts as a facilitator for the public as an ‘accountability forum’ (Bovens, 2009). The ombudsman hence potentially touches upon several types of accountability—political accountability, bureaucratic accountability, personal accountability, professional accountability, performance and deliberation (Erkkilä, 2007, 2020). Moreover, ombudsmen may have limited powers to enforce compliance, but provide ‘diagonal accountability’ through public mediation of their decisions that are observed and referred by other institutions (Bovens, 2007, p. 460), highlighting the intrainstitutional nature of accountability.

Previous scholarship has observed changes in the ombudsman institution (Remac, 2013), showing how the institution is evolving and acquiring additional tasks most notably as a guardian of human rights (Langtry & Lyer, 2022; Reif, 2020). In general, there has been a shift from being an institution of bureaucratic and legal accountability to activities as an expert organization (professional accountability), as a mediator (deliberation) and promoting public values in human rights and good governance associated with values (personal accountability). To complement this relatively static view of ombudsman's evolution, we wish to highlight the shifts in accountability relations in unsettled times (cf. Christensen & Læg Reid, 2016).

Mark Bovens' (2009) concept of ‘public accountability’ is helpful here as it allows us to consider the ombudsman's dynamic relationship with the ‘public’ in various senses of the term. The work of the ombudsman is traditionally based on complaints filed by citizens, the general public. This is linked to bureaucratic accountability by which the ombudsman supervises the compliance with public law and regulations as well as the respect for individual rights, particularly in its classic form as a legal overseer. This remains the main activity of Nordic ombudsmen.

The ombudsman derives its effectiveness from the publicity of its decisions that sanction the misuse of power. Hence, it provides an institutional site for the public as an accountability forum, while also relying on the potential measures of the ombudsman. Furthermore, the ombudsman as both an institution and an individual is also a public figure with a media profile, influencing how this institution of accountability functions. The public mediation of the institutions is directly linked to the citizens' awareness of their right to complain.

While handling complaints remains the core function of all Nordic ombudsmen, there have also been increasing attempts to revise the institutions and broaden their mandates, linking also to transnational governance around the ombudsman institution (Pirjola, 2008; Reif, 2009). Such changes to the profile of the institution would also imply changes to it as an expert organization. Professional accountability rests on expert scrutiny and peer review as its mechanisms, and the ombudsman may function as an expert organization in legal matters, and their interpretation of law might have relevance for the legal system and culture more broadly. Moreover, the Finnish Chancellor of Justice

is also increasingly engaged in independent legal advice and reviewing government proposals, making it an institution of constitutional peer-review (compare Van Acker & Bouckaert, 2019).

In many ways, the ombudsman institution is entangled in transparency and the right of access to public documents, an institutional practice that has spread globally along with the diffusion of the role of ombudsman. It would be difficult for the institution to function without such preconditions, but at the same time, the ombudsman acts as a guardian and promoter of transparency. The ombudsman is also engaged in deliberation, operating within the hub of citizens, media, public administration and politics. It prompts public debate but also acts as a channel for citizens to vent their frustrations.

Politization and challenges for the institutional mandate

The public mediation of the ombudsman also links it to the field of politics, potentially challenging its role as an independent legal overseer, but also allowing the institution to communicate its institutional mandate in public and vis-à-vis other institutions. This ‘boundary work’ (Erkkilä & Kauppi, 2017; Gieryn, 1983) marks an opening for its institutional strengthening (recalibration) and renegotiation (Thelen, 2004) of the institutional mandate of the ombudsman, particularly in the times of crises when accountability relations are in flux (Christensen & Læg Reid, 2016, p. 199).

Political conflicts concerning the ombudsman may manifest themself in several forms and contexts (Abraham, 2008; Bakewell, 1986; O’Hara, 2011), touching on the nature of ombudsman as an independent institution of public accountability. The ombudsman has been described as a ‘marker of the limits of politics’ or as an agent between the fields of law, administration and politics (Gammeltoft-Hansen, 2008; Magnette, 2003), pointing to its balancing act in maintaining independence while controlling the use of public power.

The concept of *politization* helps to understand political conflict around the ombudsman institution and its role in institutional change that is often incremental. Politicization can be understood as the ability to contest issues and open a new horizon for action (Palonen, 2003). As an actor and advisor ombudsmen may entrepreneurially (Barco, 2018) promote or oppose certain issues, policies or problem definitions, though this runs the risk of making the institution appear as a proxy for particularistic interests. We see the Nordic legal overseers to have acted entrepreneurially in their attempts to promote openness as an enabling mechanism for accountability in crisis governance.

However, ombudsmen can also be instrumentalised to act as a venue for interest representation by others, such as interest groups and even politicians (Bovens & Wille, 2021; Tavares et al., 2022). Similar dynamics are observed in relation to crisis inquiries, where the set-up of a formal inquiry as well as its scope, mandate and findings can become heavily politicized (Hart et al., 2008;

Stark & Yates, 2021). In our analysis we show how Nordic ombudsmen were used as venues for politicizing government decisions, including through mass complaints.

INSTITUTIONAL FRAMEWORKS OF ACCOUNTABILITY AND CRISIS MANAGEMENT

Nordic ombudsmen and openness

All the Nordic countries¹ have a Parliamentary Ombudsmen. In addition, Finland and Sweden have a Chancellor of Justice, though currently the mandates of the Finnish and Swedish variants differ.² All these accountability institutions have common legal oversight functions but there is a difference in the degree of the formal powers the institutions have in their disposal compared to the softer powers of recommendation. This distinction can be drawn using either a generational approach (Remac, 2013, pp. 64, 66) or a geographical approach (Thorarensen, 2018, pp. 90, 93), based on the constitutional traditions. The first generations or the East Nordic Ombudsmen, that is, Sweden and Finland, are seen as having more formal rights that focus on legal oversight compared to West Nordic institutions of the second generation, that is Denmark and Norway, that emphasise good governance and rely more on soft power of recommendations.

The systems also differ regarding peer institutions. Alternative complaint handling bodies or accountability forums include district courts or administrative tribunals in Norway (Advokatforeningen, 2023; Melton, 1991) and the Swedish Constitutional Committee investigations (Riksdagsförvaltningen, 2023). And while all Nordic legal overseers engage in human rights protection, their profiles differ in relation to national human rights institution (NHRI) tasks (Langtry & Lyer, 2022; Reif, 2020). Denmark, Norway and Sweden have separate human rights institutes for human rights education, research, monitoring and advisory tasks. In Finland the NHRI consists of Human Rights Centre (founded in 2012), its Human Rights Delegation and the Office of the Parliamentary Ombudsman. It has similar tasks as the other Nordic NHRIs but is also tied with the work of Ombudsman, though it does not handle complaints itself. The analysis of the activities of these peer institutions during covid is not within the scope of this paper.

In relation to institutional openness, the ombudsmen are seen to 'facilitate' transparency (Abedin, 2011) or to function as a guardian of transparency (particularly in the EU) (Kostadinova, 2015). In comparative administrative law, government openness is seen as a distinctive characteristic of the Nordic countries (Harlow, 2006, p. 193). Building on previous research (Erkkilä, 2012; Götz & Marklund, 2014; Knudsen, 2003), we understand openness in Nordic societies as a long standing tradition acknowledged as a constitutional 'principle

of openness' (Swedish: 'offentlighetsprincipen', Finnish: 'julkisuusperiaate'), granting access to government documents but also more broadly covering freedom of expression, public access to court rooms and public access to decision-making venues. We can also link this with Nordic tradition of consensus based policy-making (Rainio-Niemi, 2015), involving various actors in specific deliberative bodies. While the liberalist emphases on 'freedom of information' portray it as a citizen right, entailing democratic control and conflict, the Nordic 'principle of openness' is seen as a principle of governing that serves an integrative function for society, where openness of government builds trust and, vice-versa, government can afford to be open because there is no mounting social pressure to get involved in its work (Konstari, 1977; Larsson, 1998).

The above discussion on Nordic openness shows how the actual functioning of accountability institutions depend on their institutional context and peer institutions. Government openness and ombudsmen are Nordic institutional traditions that are often seen to exist next to each other, contributing positively to each other. Access to government information as a mechanism of accountability (Mulgan, 2000) requires well-functioning peer institutions such as freedom of press and speech but also active stakeholders and complaint handling mechanisms such as the ombudsman and administrative courts. On the other hand, the work of ombudsman would not be able to investigate matters without access to information. We identify an interdependence of government openness and legal oversight, through which limitations in the former are also reflected in the work of the latter.

Varied approaches in pandemic management

As Christensen et al. (2016) have underlined, the institutional and organizational framework plays an important role in realizing legitimacy also in crisis governance. From the institutions of accountability, the official crisis inquiries have received the most attention in the crisis governance literature (see e.g., Eriksson et al., 2022; Hart et al., 2008; Resodihardjo, 2006), although the transboundary nature and scale of the COVID-19 crisis has also led many authors to identify challenges in the capacity of such inquiries to offer answers and contribute to accountability (Boin et al., 2021, pp. 92–93; Eriksson et al., 2022).

The governance responses to the COVID-19 pandemic in the Nordic countries varied both institutionally and substantively (Christensen et al., 2023; Laage-Thomsen & Frandsen, 2022; Saunes et al., 2022). This variation can be seen in the institutional frameworks of crisis management. In Finland, the application of a peace-time emergency regulation had a centralizing effect through which decisions were made hierarchically by the national government (Christensen et al., 2023; Neuvonen, 2020) whereas the Swedish system was fragmented, relying much more heavily on the delegated or devolved authority of regional and

local levels as well as independent expert bodies (Christensen et al., 2023; Petridou, 2020). The strong centralization and hierarchical decision-making were also present both in Denmark and Norway although in Norway this was accompanied with consensus-oriented processes (Christensen et al., 2023).

In addition to the formal structures, also the pandemic management strategies and levels of politicisation varied in the Nordic countries. Christensen et al. (2023) have described the Danish and Finnish pandemic management as a politics-led which they associate also to manifest in more restrictive policies whereas they see Sweden as expert-led associated with uniquely low levels of restrictions. Norway sits somewhere in the middle.

RESEARCH DESIGN

To identify potential challenges for the legal overseers arising from the crisis setting, we based our analysis on a modified conceptualization of Bovens and Wille (2021) on the accountability powers that consist of three elements: organizational capacity, capacity in exercising powers, and institutional capacity. Institutional capacity or 'formal powers' (Bovens & Wille, 2021) concern the mandate and the standing of the legal overseers within the politico-administrative framework and especially in relation to other accountability institutions. Organizational capacity or 'organizational powers' refers to the issues related to resources and personnel, whereas capacity to exercise of powers includes assessment of 'impact', 'productivity', 'creativity' or 'salience' in the execution of the institution's mission. Whereas Bovens and Wille (2021) calculate an all-encompassing index from a snapshot assessment we study the dynamics that alter these capacities.

We will then analyse comparatively the observed phenomena by looking whether the institutional contexts in terms of accountability and openness but also in crisis governance arrangements influence the challenges or adaptation measures. Our research design utilizes similarities in the organizational mandates of the Nordic Ombudsmen to investigate the changes associated with the crisis governance arrangements but also to account for the potential impact of differences in the institutional arrangements.

Data and methodology

We structured our analysis around the challenges and adaptation of legal overseers during the COVID-19 pandemic, focussing on how accountability capacities interact with institutional openness in crisis governance. Therefore, we do not provide an overall assessment on legal overseers' accountability capacity as we omitted the work-as-usual from our analysis. Also, we did not assess the relative impact of successes and failures. Instead, we tried to understand how such capacities interact with institutional openness during a crisis as the institutions

face challenges and try to adapt to these independently or within the institutional framework. We identified such challenges and potential adaptation by qualitative analysis of the document and statistical materials about the pandemic governance and legal oversight in the four Nordic countries.

The core documents include the annual reports of legal overseers and online news articles. In addition, relevant parliamentary debates on the annual reports and official reports on the pandemic management have been included. The annual reports written by the institutions, include statistics on their performance during the pandemic, but importantly also ‘process plots’ within ‘performance narratives’ that describe both the challenges the organizations faced but also the actions (to be) taken (cf. Marnoch, 2008). Although these narratives can be skewed for self-legitimising purposes of the public organizations (see e.g., Ryan et al., 2020; Samkin & Schneider, 2010), they nonetheless reveal the priorities, challenges and adaptation strategies as perceived by the legal overseers themselves. Statistics, on the other hand, are an important source when combined with a legal overseer's self-assessments in discerning the impact of the pandemic from general trends in legal oversight. These self-reported data can be then contrasted against the official and media reports together with parliamentary materials to observe the challenges and adaptation from other actors' perspectives.

The annual reports and parliamentary debates were collected from the official websites of legal overseers and parliaments, initially in summer 2022, with updates until autumn 2023. The statistics were compiled from the annual reports. The media reports were collected using web search engines during the same time-period as the annual reports. The search terms for the media reports included the COVID-19 crisis together with the name of legal overseers, both in the local language. Other documentary materials such as official reports or press releases were identified and collected from the relevant official websites as a result of a snowballing technique from the parliamentary, media and annual report materials described above. From these materials, related to the work of legal overseers during the pandemic, we first searched for the reports mentioning any modes of institutional openness and categorized the results according to these modes. These findings were then analysed by organizing them into our analytical framework, comprising the challenges and adaptation strategies for each subelement of accountability capacity: institutional, organizational and exercise of power (cf. Bovens & Wille, 2021).

NORDIC OMBUDSMEN AND OPENNESS IN CRISES: CHALLENGES AND ADAPTATION

Organizational capacity and resources

We now present the analysis on each subcategory of accountability capacity, starting with the challenges and adaptation regarding the organizational

capacities of the Nordic overseers. The most significant challenge is the volume and nature of casework that affected the case handling times. We can observe a general trend of increased casework but within this trend there are additional phenomena that add to the pressures such as peaks in nonadmissible cases or novel mobilization efforts, some of which were against the government's policies. The legal overseers have tried to adapt to these pressures by prioritizing some casework over other and by grouping the complaints.

Volume and handling of caseload during Covid-19

We can observe that the pandemic management measures increased the caseloads of Ombudsmen especially for both of the Finnish institutions (Figures 1 and 2) but also for the Swedish Parliamentary Ombudsman (Figure 3), although in the latter case it is harder to discern from a more general raising trend in caseload that starts already in 2015. Interestingly, the number of complaints to the Swedish Justitiekanslern (Figure 4) declined during the pandemic. This seems to be related to the somewhat different institutional profiles of the Swedish Justitiekanslern and the Finnish Chancellor of Justice. While we see an increase in 2020 in Denmark (Figure 5), there is only limited or modest increase in Norway (Figure 6). The systemic differences are worth noting here because in Norway, district courts or administrative tribunals also actively participate in oversight of legality (Advokatforeningen, 2023; Melton, 1991), potentially visible in the relatively minor increase in the complaints to the Norwegian Ombudsman.

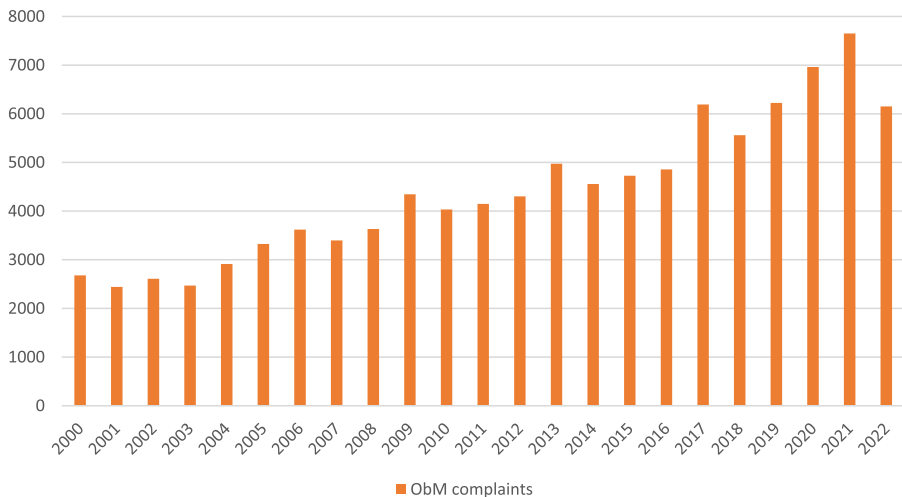


FIGURE 1 Finnish Parliamentary Ombudsman complaints 2000–2022. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com/doi/10.1111/1467-9471.1293)]

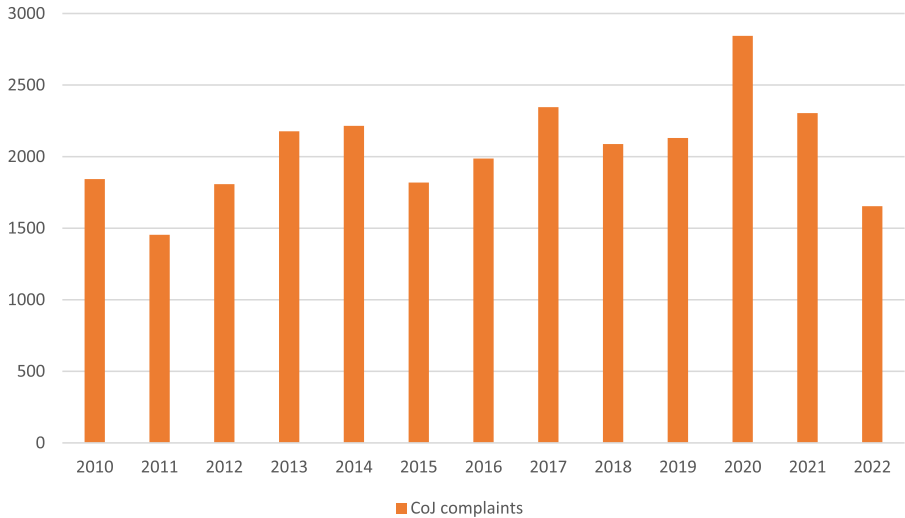


FIGURE 2 Finnish Chancellor of Justice complaints 2010–2022. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com/doi/10.1111/467-9471.1298)]



FIGURE 3 Swedish Ombudsman cases (total) and complaints 2010–2022. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com/doi/10.1111/467-9471.1298)]

We argue that these increases in Finland and Sweden are associated with the apparent institutional dynamic between the reduced inclusiveness and openness of decision-making and the number of complaints to the ombudsman (see also discussion below). Furthermore, we can also see similar developments inside the

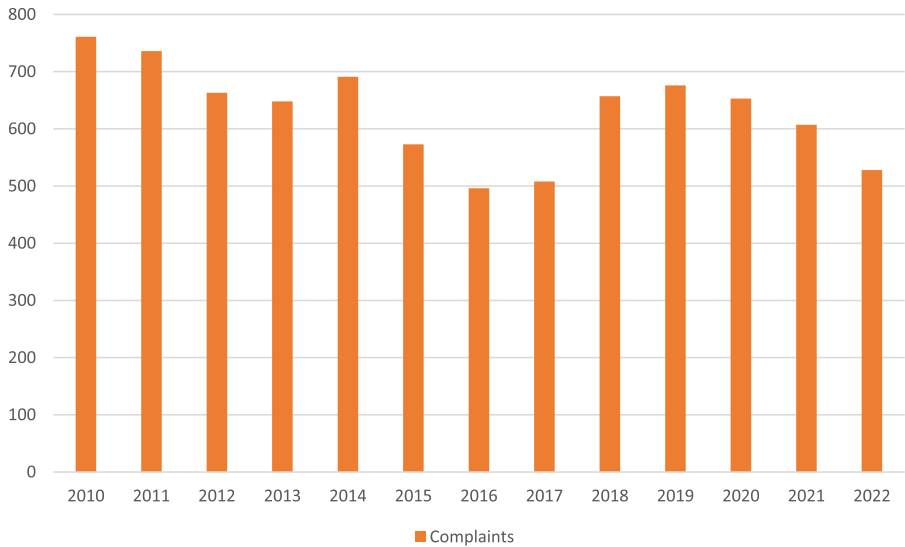


FIGURE 4 Swedish Chancellor of Justice complaints 2010–2022. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com/doi/10.1111/1467-9471.1298)]

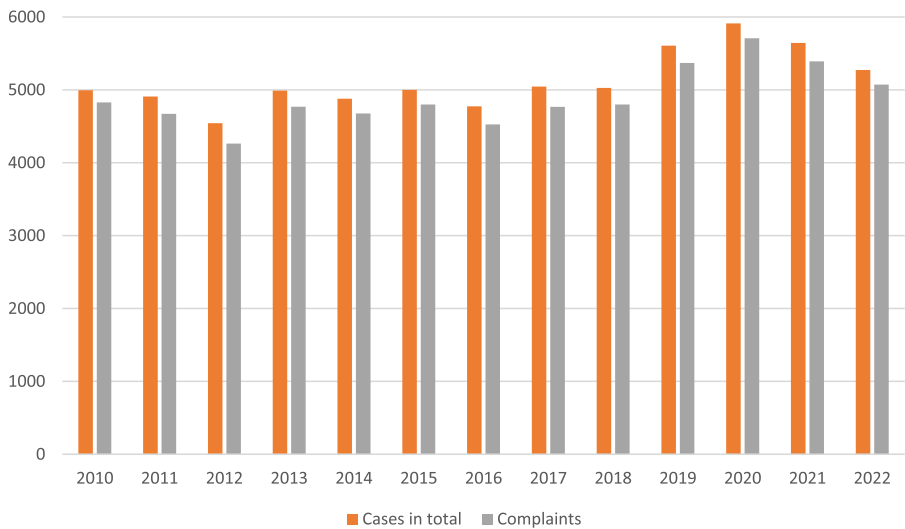


FIGURE 5 Danish Ombudsman cases (total) and complaints 2010–2022. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com/doi/10.1111/1467-9471.1298)]

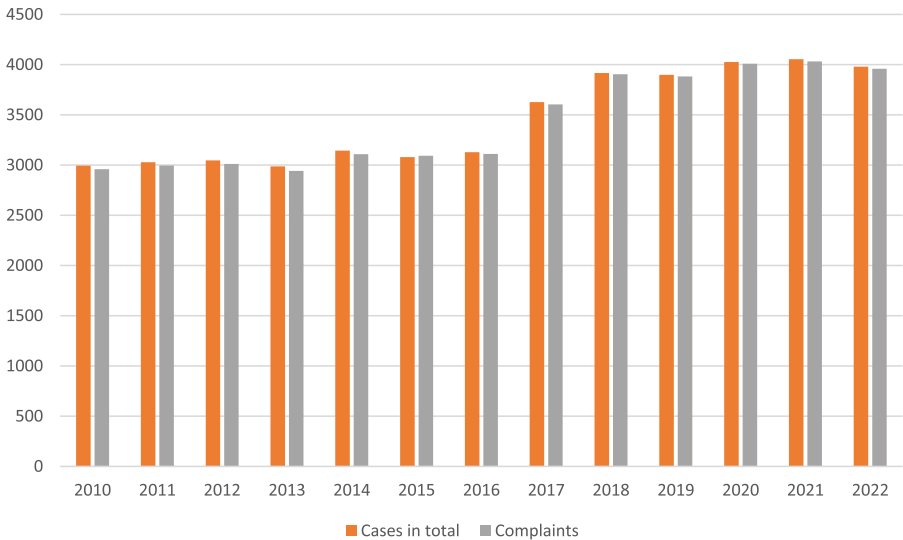


FIGURE 6 Norwegian Ombudsman cases (total) and complaints 2010–2022. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com/doi/10.1111/467-9471.1293)]

caseload in Denmark and Norway although on a smaller scale. This institutional dynamic is identifiable from the targets, sources and types of complaints to the legal overseers during the COVID-19 pandemic that are atypical in the Nordic context, questioning the legitimacy of governance and novel mobilisation strategies for societal conflicts that emerged during the crises.

In Finland such dynamics manifested in the number of complaints concerning pandemic management including exceptionally the complaints about the decisions of the Council of the State and ministries. For instance, in 2020, the Finnish Parliamentary Ombudsman had 953 cases related to COVID-19, whereas in 2021 there were 1106 complaints and 14 of their own initiatives concerning the pandemic. These complaints concerned health matters but also the government restrictions on movement, visits to care units and limitations to business activities (Salminen & Farzamfar, 2022). Likewise, the biggest category of complaints to the Finnish Chancellor of Justice in 2020 and 2021 concerned the Council of State and ministries. This demonstrates a dynamic between legal overseers work and the crises management measures, which in Finland were very centralised by nature, often driven by ministries and even individual ministers. The increase in the ombudsman's cases indicates questioning the legitimacy of governance that is atypical for Finland.

Similar questioning of legitimacy around pandemic management can be seen in Sweden, where there was a particularly significant mass complaint case from which

the Parliamentary Ombudsman received, according to the Ombudsmen's own estimation, around 12,000 complaints at the end of 2021 concerning the COVID-19 vaccine certificate (*vaccinpass*) aimed at the Public Health Agency of Sweden (*Folkhälsomyndigheten*) and the Government (Justitieombudsmannen, 2021a, 2022, p. 13). As the normal number of complaints the Ombudsman receives typically is around or below 10,000, the mass complaint effectively doubled the caseload for the Swedish Justitieombudsmannen which led to the Parliamentary Ombudsman publicly stating that the need to register so many complaints postpones its capacity to actually investigate the issue (Aro, 2021). Decided as a group, the full number of mass complaints is not acknowledged in official statistics, but Justitieombudsmannen's estimate is included in Figure 3 for reference. In the same manner, Swedish citizens complained about the actions of the police in the context of the demonstrations against COVID-19 restrictions, but this did not lead to any action on behalf of the Parliamentary Ombudsman (Justitieombudsmannen, 2021b, p. 24). Such outcomes were usual as the Swedish Ombudsman reported that the most cases related to the COVID-19 did not lead to investigations in its 2020–2021 reporting period (Justitieombudsmannen, 2021b, p. 13).

The mass complaints not only show the Ombudsman as the site of critique or accountability forum amid the crisis management, but the mass complaints to the Ombudsman also indicate the politicization of the ombudsman institution, as it gets drawn to the Swedish debate on the 'vaccinpass'. This also extends the institution of the ombudsman from an accountability forum to a site or instrument of interest mediation (cf. Tavares et al., 2022) that is primarily used to draw media attention to a cause. The 'vaccinpass' case with such a high volume of complaints was highlighted extensively in the Swedish media and the complainants were interviewed (e.g., Hansson, 2021; Källebring, 2021; Linder, 2021; Törnquist, 2021).

Although the effect of the number of cases was not as significant, we can also see similar developments regarding the noneligible cases in Norway and Denmark. The Norwegian and Danish Ombudsmen saw some instances of ineligible complaints related to COVID-19 policies in which the complaints were not first directed to the authorities in question or the authorities were yet to respond (Folketingets Ombudsmand, 2021, p. 9; Sivilombudsmannen, 2021, p. 20). In some cases, erroneous impressions of the mandate of the Ombudsmen have spread among the public as was the case in Denmark regarding the mandate to postpone prison sentences (Folketingets Ombudsmand, 2022, p. 21). Furthermore, in all four countries the legal overseers received complaints about governmental or even parliamentary decisions such as restrictions or vaccination plans and in most of these cases were deemed inadmissible, as the legal overseers have limited remit to oversee political decision-making.

Based on the annual reports of the legal overseers (Eduskunnan oikeusasiamies, 2021, p. 189; Eduskunnan oikeusasiamies, 2022, pp. 164–67; Justitieombudsmannen, 2020, pp. 13–14; Justitieombudsmannen, 2021b,

pp. 11–13; Oikeuskansleri, 2020, p. 9; Oikeuskansleri, 2021, pp. 40–57; Oikeuskansleri, 2022, pp. 35, 42; Sivilombudsmannen, 2022, p. 2), the challenges for organizational capacities from these developments were twofold. The increases of caseload in general, sometimes in steep peaks, require more resources in themselves. As such, the overall case numbers set the constraints for the Ombudsmen in which they need to organizationally cope during the pandemic and therefore for their capacity to promote openness in crisis governance and hold decision-makers accountable. Additionally, the noneligible but potentially politically charged cases also take the time out of investigating the cases that would have suited the mandate of the legal overseers. As we have shown these politicized or mass complaints were associated with changes in decision-making arrangements for pandemic management, observed both in politics and expert led countries. Therefore, due to the limited organizational capacities the investigations were subjected to prioritization and limitations, and as a consequence the accountability functions were further constrained as well.

Coping with the increasing caseload

We now turn our analysis to the question of how the Ombudsmen themselves adapted to the growing caseloads. Here we can identify two adaptation strategies: calls for more resources, for instance when presenting an annual report in the parliament of Finland (Eduskunta, 2022), and reconfiguration of case handling processes. In Sweden, the Ombudsman described overarching joint-decisions concerning similar complaints about the same authority as a method to adapt to increasing caseloads (Justitieombudsmannen, 2021b, p. 14). On the other hand, many institutions adopted a prioritization strategy, explicitly stating the case load and lack of resources as a justification for it, and stressing the importance of investigating the most impactful cases in detail (Eduskunnan oikeusasiamies, 2021, p. 189; Oikeuskansleri, 2021, p. 40; Sivilombudsmannen, 2022, p. 2).

The above discussion shows apparent challenges to the organizational capacity of the Nordic overseers on the one hand through additional caseload, but also portrays them as a venue for channelling social critique during the pandemic, portraying a dynamic relationship between the open government and legal oversight. This can be further identified in the legal overseer's capacity to exercise supervisory power.

Capacity to exercise power

In this section we analyse how the Nordic legal overseers' capacity to exercise their power in relation to COVID-19 governance. We identified that the pandemic challenged the legal overseers in terms of the expertise required. However, partly for this reason, we note that the legal overseers have tried to ensure

openness that enables other accountability mechanisms, such as broad-based participation and peer review through public scrutiny.

Limits and control of expertise

The pandemic challenged the expertise of legal overseers in all countries. The nature of COVID-19 as a pandemic created a peculiar challenge to administrative accountability function of Nordic legal overseers as they lacked the medical knowledge to make individual assessments (Folketingets Ombudsmand, 2022, p. 19; Justitieombudsmannen, 2020, p. 24), for example concerning, vaccination-related cases (Folketingets Ombudsmand, 2022, p. 19). In these instances, the overseers acknowledged their lack of knowledge and declined to make decisions or issue opinions in a casework setting. This meant that the legal overseers were not able to act as checks in some administrative decision-making that was legitimised using medical knowledge.

It is important to note that there were some exceptions when Nordic overseers scrutinized the work of public health experts. For instance, the Finnish Deputy Parliamentary Ombudsman criticized the Finnish Institute for Health and Welfare (*Terveyden ja hyvinvoinnin laitos*) for its misleading instructions to municipalities concerning COVID-19 vaccines (Eduskunnan oikeusasiamies, 2022, p. 178). Furthermore, because our study aims to identify challenges related to the pandemic we have focused here solely on the medical expertise, discounting all those areas of knowledge where the Ombudsmen had a great deal of expertise.

Enabling institutional openness

We can observe an adaptation strategy to limited expertise from the Nordic legal overseers in the form of focussing their casework and advisory activities to the institutional openness of these politics or expert led pandemic management processes. Through this focus they can be seen enabling the other mechanism or institutions contributing to accountability of crisis governance, particularly to participatory quality and stakeholder advocacy as well as public scrutiny and peer review.

Regarding the advisory activities, some of the overseers submitted statements to consultations of related legislative proposals, for instance COVID-19 restrictions. In these statements, overseers have commented mainly on procedural issues related to good governance and legislating such as issues of equity among different groups and regions as well as proportionality (Justitieombudsmannen, 2021b, pp. 18–19). Here the overseers could bring forward distinct viewpoints and indirectly offer potential boundaries for decision-makers but generally not to provide authoritative assessment on the proposal.

From the annual reports, we can identify two key accountability mechanisms or institutions that the Nordic legal overseers heavily promoted in their case work activities during the pandemic, namely participatory quality and related stakeholder advocacy as well as public and peer scrutiny. In terms of participatory quality, the difference between hearing and influencing becomes emphasized. Earlier research (Junk et al., 2021) has shown that especially the hearings for stakeholders with an established relationship with the government were organized during the pandemic, but the execution of such consultations and limited standpoints in decision-making were criticised by legal overseers. Such cases have been brought to the legal overseers by the organized interest groups such as the Finnish hospitality industry pressure group (Orell, 2021) and the Finnish actors' union (Koivuranta, 2021). In a similar fashion, the representatives from the sectors covered by coronavirus restrictions and subsidies, such as individual restaurant owners, complained to legal overseers (Folketingets Ombudsmand, 2022, p. 19; Justitiekanslern, 2022, p. 16; Koskela, 2020).

All the Nordic Ombudsmen investigated and issued decisions on the complaints related to other key mechanisms enabling accountability, that is, the promotion of public and peer scrutiny. Such complaints concerned the right of the public to access information as well as the way and pace the authorities handle these requests for information (Folketingets Ombudsmand, 2022, pp. 56–58; Justitieombudsmannen, 2021b, p. 24; Oikeuskansleri, 2022, p. 48; Sivilombudsmannen, 2022, p. 35). In this regard, particularly journalists emerged as a complainant group in the annual reports (Folketingets Ombudsmand, 2022, pp. 56–58; Justitieombudsmannen, 2021b, p. 24; Sivilombudsmannen, 2022, p. 35). The data sought by journalists included statistics on COVID-19 infections at a local or regional level (Justitieombudsmannen, 2021b, pp. 402–403; Sivilombudsmannen, 2021, p. 27) and correspondence between decision-makers and experts, and international partners such as the EU or WHO (Folketingets Ombudsmand, 2021, p. 55; Folketingets Ombudsmand, 2022, p. 55; Sivilombudsmannen, 2022, p. 35). Additionally journalists complained about the long processing times of these information requests (Folketingets Ombudsmand, 2022, p. 6; Sivilombudsmannen, 2022, p. 20).

When assessing the extent to which these questions were a chosen focus area for the Nordic legal overseers, and thus a form of adaptation, it is worth noting that they also opened their own initiative investigations about the institutional openness of the pandemic management. For instance, in Denmark, the Parliamentary Ombudsman investigated how long journalists must wait for a response to their requests from health officials (Folketingets Ombudsmand, 2021, p. 33). Similarly in Finland, the Chancellor of Justice conducted a review of openness and transparency in the COVID-19 decision-making on its own initiative (Oikeuskanslerinvirasto, 2021) where it noted problems with openness and transparency of decision-making processes but also the

importance of publicity concerning the knowledge and data behind policies as vehicles for public scrutiny and peer review.

To summarize, the pandemic challenged the legal overseers' expertise, led to efforts to ensure openness through broad-based participation, and peer review through public scrutiny. This points to adaptations in which ombudsmen compensate their lack of expertise by promoting openness to enable other accountability mechanisms, such as broad-based participation and peer review through public scrutiny.

Institutional capacity: Institutional conflicts and coordination during COVID-19

In this section we analyse how the Nordic legal overseers' capacity evolved in relation to other accountability institutions within the pandemic governance frameworks. The most important challenge to the institutional capacity has been the establishment of special inquiries that have created potential conflicts and negotiations between institutions. Although the role of legal overseers has typically been limited to supporting the other investigations by feeding information, sometimes this has prevented them from acting as authoritative institutions. The overseers also adapted to this by assuming a responsibility for overseeing the operational openness of these other accountability mechanisms.

Negotiating the institutional mandates

The case most explicitly requiring institutional negotiation was in Denmark, where a mink inquiry (Minkkommissionen) was set up and given the responsibility for investigating the cases related to the government's decision to cull all the minks in Denmark (Folketingets Ombudsmand, 2022, pp. 65–68). The creation of a special inquiry necessitated boundary work (Gieryn, 1983) between the ad hoc overseer and the Ombudsman. This boundary drawing could be seen in the press releases of related cases and in the chapter of the Ombudsman's annual report (Folketingets Ombudsmand, 2022, pp. 65–68) in which the Ombudsman's office explained why they took up some cases and dropped others in relation to the Mink Inquiry's work. On the other hand, in Finland the parliamentary ombudsmen declined a request made by the MPs to conduct a broad review on COVID-19 decision-making and noted that with current resources and mandate it is not possible (Eduskunta, 2022).

Thus, we can see that the institutional mandates of legal overseers have sometimes limited the capacity of these institutions to take the responsibility for broader accountability exercises in relation to the COVID-19 pandemic. In our Finnish example, this was due to the institution's general mandate whereas in the Danish example, it was a result of boundary work in relation to a novel crisis inquiry.

Overseeing and facilitating the openness of inquiries

Although reducing the mandate for its own inquiry, the Finnish Parliamentary Ombudsman stressed that they would be open to offering information for other analyses during the parliamentary debate (Eduskunta, 2022). This is an approach that we can observe more generally in Finland and Sweden where the legal overseers facilitated the work of other inquiries by feeding them information from the legal oversight case work. In Sweden, this is visible in the reports of the Corona inquiry (Coronakommissionen) in which the opinions issued, and the problems identified by the Parliamentary Ombudsman investigations are referred to, but only in a couple of instances (Coronakommissionen, 2021, pp. 317, 357; Coronakommissionen, 2022, p. 174). Similarly, the Finnish Safety Investigations Agency (*Onnettomuustutkintakeskus*) conducted an inquiry on the first wave of crisis management in which they cited complaint statistics and decisions of the Parliamentary Ombudsman and the Chancellor of Justice (Safety Investigations Agency, 2021, pp. 46, 55, 128).

As for the Danish and Norwegian Ombudsmen, they adopted an approach through which they facilitated media's role in scrutiny by enforcing transparency and openness of inquiries. In Denmark, these cases concerned the question of when journalists should be able to get the documents if they are also (potential) materials for an official inquiry or could otherwise affect its work. Here the Ombudsman criticized the argumentation of ministries that the publication would be harmful to the inquiry and stressed the need for the media to have access to documents in one case but in another case uphold the right to retain documents related to the inquiry's work from immediate public release (Folketingets Ombudsmand, 2022, pp. 55–58). Likewise, the Norwegian Ombudsman investigated several complaints about the Coronavirus inquiry (Koronakommisjonen) such as publicity about source materials and the inquiry's correspondence with government departments (Sivilombudsmannen, 2022, pp. 21, 43, 59). In other words, the Danish and Norwegian Ombudsmen took the role of overseeing the openness of the COVID-19 inquiries.

To summarize, the Nordic ombudsmen have engaged in boundary work concerning their mandate vis-à-vis the special inquiries on crisis management during which the legal overseers assumed a role in facilitating the operational openness of the inquiries and feeding them with the information rather than assuming an oversight role themselves.

DISCUSSION

We have explored the challenges pertaining to government openness faced by the Nordic legal overseers during the COVID-19 pandemic and what adaptation strategies can be observed. We further analysed the capacity of Nordic

legal overseers to contribute to accountability and openness of crises management.

We observed that the challenges in openness of crisis governance negatively impacted legal overseers' accountability capacities. Table 1 summarizes our main findings on challenges and adaptation strategies in legal overseer's organizational capacity, capacity to exercise powers, and institutional capacity (cf. Bovens & Wille, 2021), which are present in different degrees for each country (group) as described above and summarized below. The challenges portrayed are constraints to openness in crisis governance that limit accountability. Adaptation strategies are the legal overseers' attempts to promote openness as an enabling mechanism for accountability in crisis governance (cf. Christensen & Læg Reid, 2016).

From a comparative perspective, we see general impacts of a crisis that across Nordic countries, but no systematic differences between the varying approaches to COVID-19 management, be it more expert-led or politics-led. However, there were differences in degree that followed the institutional typologies (geographical or generational), as the Norwegian and Danish ombudsman institutions faced a lesser effect on organizational challenges in terms of caseloads but more active renegotiation against special inquiries to adapt their institutional capacities. In Finland and Sweden, we saw the opposite with more organizational challenges and a lesser need for institutional adaptation.

These differences correspond with the modes of accountability that are sought when openness in governance becomes constrained during a crisis. Our

TABLE 1 Legal overseers' accountability capacities and openness of crisis governance: Challenges and adaptation.

Legal overseers	Challenges from the constrained openness in crisis governance	Adaptation to enable and promote institutional openness in crisis governance
Organizational capacity	Case load (peaks, including transparency complaints) Case type (nonadmissible cases including mobilizations)	Calls for more resources Prioritization and overarching decisions
Capacity to exercise powers	Limited expertise in public health	Promotion of institutional openness for enabling participatory quality and public or peer scrutiny mechanisms by other institutions
Institutional capacity	Limited and conflicting mandates with other accountability institutions, mainly crisis inquiries	Feeding information to inquiries Overseeing and facilitating the openness of inquiries

analysis suggests that the expert and legal but also public accountability were in high demand but that the institutional variation in the provision of the latter two are particularly significant for the Ombudsmen. In Finland and Sweden, where the Ombudsmen are primary sites for legal and public accountability, they face a more substantive organizational challenges stemming from the increased case load compared to those countries that either have pre-existing or ad-hoc sites for legal and public accountability. In Denmark and Norway, opaque crisis management pushed the Ombudsmen to renegotiate their mandates in relation to other forums of legal and public accountability.

The increased caseload and large number of nonadmissible cases, some of which were based on mass mobilizations of complaints, challenged particularly the Finnish and Swedish legal overseers organizationally during the pandemic. Also in the cases where complaints were nonadmissible or led to no sanctions, the ombudsmen provided a forum for public accountability (Bovens, 2009), even if symbolically. Moreover, the complaints to ombudsmen were also used as a platform for politicization, promoting particular interests in the absence of other venues, such as constitutional courts, during crisis. This was most apparent in the Swedish mass complaint concerning the ‘vaccinpass’, but also in Finland, where restrictions on economic activities led to complaints by interest representation organisations, unsuccessful in promoting their cause otherwise.

These differences seem to correspond with the primacy of legal overseers as sites for legal and public accountability within the Finnish and Swedish accountability systems compared to Norway and Denmark, where there are constitutional courts in place for interest representation and legal accountability. Norway also has various administrative tribunals that might be an alternative venue for complaints that were directed to the Ombudsman in Finland and Sweden. Analysing systematically the work of these alternative sites of accountability, including the NHRI, is beyond the scope of this article and a potential topic for future research.

However, the institutional setting also changed rapidly during crises, as ad hoc mechanisms of accountability such as the crisis inquiries emerged. While these may have respected long-standing institutional traditions of state committee system in Norway and Sweden, the inquiries and committees launched to investigate adopted restrictions provided additional accountability forums with potentially conflicting mandates with the ombudsmen. For instance, in Denmark the Ombudsman needed to renegotiate its mandate when a novel legal and public accountability forum, a lawyer-led inquiry, was set up to investigate the culling of minks. The Norwegian Ombudsman also adjusted its mandate when the crisis inquiry in Norway was established as a prominent cite of public accountability to oversee the openness in relation to this new forum, a necessary precondition for this modality of accountability, while being itself less prominent site for public accountability.

Interestingly, our analysis suggests that the Swedish Corona Inquiry (Coronakommissionen) did not have similar effect within the institutional framework. Therefore, compared to their Finnish and Swedish counterparts, the Danish and Norwegian Ombudsman responded to overall differently organized field in the provision of the legal and public accountability with a need for adjusting the mandate with a broader group of prominent institutions. This also involves active boundary work (Gieryn, 1983) in which the institutions actively seek to adapt and renegotiate (Thelen, 2004) their mandate in the context of crises.

CONCLUSIONS

We have studied what challenges pertaining to government openness did the Nordic legal overseers face during the COVID-19 pandemic and what adaptation strategies can be observed; and why they differ across Nordic countries. To conclude, our analysis shows a dynamic relationship between government openness, legal oversight and ad-hoc measures of crises management, conditioned by institutional traditions. Concerning challenges, the pandemic highlighted the need for expert accountability and exposed the Nordic ombudsmen's limited expertise and capacity to supervise the somewhat opaque domain of public health. Here the observed adaptation strategy was to promote institutional openness for public scrutiny and peer review. The ombudsmen empowered other accountability institutions by ensuring that these actors had access to all information they need to scrutinize the decisions, showing how the ombudsmen function in an interplay within their institutional context.

As the adaptation strategy of focussing to the access of information showcases how the core expertise of the Nordic Ombudsmen concerns the legal field, including human and fundamental rights. Moreover, the legal overseers prioritized and grouped decisions as an adaptation strategy to increasing caseload stemming from citizens and interest groups, when crisis management was perceived hindering the fulfilment of their rights.

In addition, as providers of legal accountability, the ombudsmen promoted openness as adaptation measure through the lens of the rights of stakeholders, journalists or public at large. Concerning differences between countries, the general impacts of the crisis were shared by Nordic countries with no systematic differences owing to their COVID-19 management. However, there were differences in degree following institutional trajectories of legal oversight, as the Norwegian and Danish ombudsmen faced less organizational challenges in terms of caseloads but had to adapt their institutional capacities more actively. Finnish and Swedish ombudsmen faced more organizational challenges but a lesser need for institutional adaptation.

The literature sees ombudsmen as guardians of transparency but on the other hand themselves dependent on information access laws. We observed a

broader institutional dynamic where ombudsmen as complaint handling bodies provided a venue for public accountability and enabled other accountability mechanisms by promoting institutional openness during crises. In future research, these institutional dynamics between the ombudsman institution and wider accountability framework should be tested further with other types of ombudsman institutions and preferably in more varying accountability frameworks.

Crises may set accountability relations in flux, but the effects might not be lasting (Christensen & Lægread, 2016). This is largely in line with our findings, but our observation on the potential shift in the public 'use' of the institution related to mass complaints calls for more research on how the legal and regulatory oversight institutions respond when they are instrumentalized by actors seeking political accountability. If the ombudsman as an institution of bureaucratic and legal accountability gets drawn into the domain of political accountability without its own consent, it might find itself in an ever more challenging balancing act between law, politics, and administration. These evolving expectations should be explored further also in other accountability and complaint-handling institutions. For instance, how the public's expectations evolve on what kinds of accountabilities such bodies as (self-)regulatory bodies of press or administrative tribunals can provide.

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CONFLICT OF INTEREST STATEMENT

The authors declare no conflict of interest.

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ENDNOTES

¹ Our analysis does not include Iceland, which was left out for comparability in resources and caseload, as well as access to empirical material linguistically. All documentary material on the Swedish, Finnish, Norwegian and Danish cases was analysed in the original language of publication.

² In addition to similar mandates of overseeing public administration with the Ombudsmen, the Chancellors of Justice in both Finland and Sweden have varying sets of sui generis functions. In Finland, the Chancellor of Justice oversees the courts and judicial system and monitors the Bar Association. In Sweden, these additional functions include acting as prosecutors in court cases regarding freedom of expression and freedom of press, monitoring judicial system and deciding over claims for compensation from state.

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