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of Finland

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TO THE READER

The Constitution of Finland requires the Parliamentary Ombudsman to submit an annual report to the Eduskunta, the parliament of Finland. This must include observations on the state of administration of justice and any shortcomings in legislation.

The annual report is published in both of Finland's official languages, Finnish and Swedish. It consists of general comments by the office-holders, a review of activities, a section devoted to implementation of fundamental and human rights and the use of coercive measures affecting telecommunications as well as some observations and individual decisions with a bearing on central sectors of oversight of legality. It additionally contains statistical data and an outline of the main relevant provisions of the Constitution and the Parliamentary Ombudsman Act. It is over 300 pages long.

This brief summary in English has been prepared for the benefit of foreign readers. The longest section of the original report, a review of oversight of legality and decisions by the Ombudsman by sector of administration, has been omitted from it.

I hope the summary will provide the reader with an overview of the Parliamentary Ombudsman's work in 2009.

Helsinki, 19.4.2010

Petri Jääskeläinen
Parliamentary Ombudsman of Finland

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Jaanis Kerkis p. 7, 11, 16 and 21
Vesa Lindqvist p. 29

1. General comments

RIITTA-LEENA PAUNIO

TOWARDS BETTER SAFEGUARDING OF FUNDAMENTAL AND HUMAN RIGHTS

A key task of the Parliamentary Ombudsman is to oversee implementation of fundamental and human rights in the performance of public tasks. In the early days of February 2010, at the time that I am writing this, it was 90 years since the Ombudsman began overseeing legality in an independent Finland. Activities have consisted since the very beginning of investigations arising from complaints or based on the Ombudsman's own initiative as well as inspections of public agencies and institutions. The Ombudsman evaluates the state of performance of public tasks and reports on it to the Eduskunta, in addition to striving to develop this performance through proposals, initiatives, reprimands and guidance.

The Ombudsman's annual report for 2009 contains, once again, numerous observations of unlawful actions, errors and acts of negligence – minor and major – on the part of authorities and public servants. It also contains the Ombudsman's observations of shortcomings that have been evident in implementation of fundamental and human rights and the statements that international human rights oversight bodies have made about violations of them. Although defects and shortcomings occur, the fundamentals of the situation with regard to protection under the law must nevertheless be regarded as good in its fundamentals in Finland. Administration mainly functions well, social security is good, the public service is free of corruption and protection of fundamental and human rights is comprehensive.

As the Parliamentary Ombudsman, Riitta-Leena Paunio attends to cases dealing with the highest State organs, those of particular importance, and to cases dealing with social welfare, social insurance, health care, and children's rights.

The fundamental rights and freedoms of private people have improved markedly in recent decades. The judicial system provides more comprehensive protection under the law than earlier and makes it possible for everyone to have a case concerning his or her rights and obligations dealt with in a court of law and to use the means of appeal that the law safeguards. The fundamental and human rights of, for example, inmates of institutions must not be restricted without justification that is enshrined in an Act. In addition to national legal remedies, it has become possible for individuals to appeal to certain international oversight bodies and oversight of international conventions is now broad and comprehensive in other respects as well. Yet, this

positive development notwithstanding, fundamental and human rights are still not being fully implemented in Finland.

Last year, the European Court of Human Rights issued nearly 30 judgements concerning Finland in which the State was found to have violated rights that are enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms. What was at issue in the greater part of these cases was the undue length of trial proceedings. All in all, the State of Finland undertook or was required to pay nearly 400,000 in compensation for the violations that the Court had adjudged to have occurred. The judgments are examined in detail in the section of this report dealing with fundamental and human rights p. XXX.

The length of time a trial takes is not, however, the only problem relating to fundamental and human rights in our country. Where general courts are concerned, a lot of attention has been drawn to the duration of especially criminal trials, most recently in the Constitutional Law Committee's submission on the Government's annual report for 2008 (PeVM 1/2010 vp). Attention has for years been drawn to the unduly long time taken by the Social Security Appeal Board and the Insurance Court to process appeals, but without any signifi-€ cant result. There are undue delays in administration as well. One that I shall mention is unlawful delay in processing social assistance applications, numerous examples of which are to be found also in this report. It must be noted that what is involved is last-resort safeguarding of indispensable subsistence.

International oversight bodies have drawn attention in their reports and recommendations to many other problems as well: poverty and marginalisation, alcohol and drug abuse, mental health problems, protracted custody disputes, an increase in the number of children being put in foster care as well as violence against women. They have also expressed criticism of the level of basic social assistance in Finland. For example, the European Committee of Social Rights has regarded the level as low.

The human rights violations for which the European Court of Human Rights and other international human rights oversight bodies have criticised Finland did not come as a surprise. There has long been an awareness of the problems, and various measures have also been taken in an effort to solve them, but without success. Also the supreme overseers of legality have year after year been drawing attention in their statements to many shortcomings, including the delays that I have already mentioned in administration and trials, domestic violence, restriction of the right of self-determination in social welfare and health care without statutory authority to do so, slopping-out cells, placement of remand prisoners in police prisons, and so on.

Thus means must be found to safeguard for people more effectively than currently the fundamental and human rights to which we have made a commitment in the Constitution. Development of legislation, economic resources and a legal interpretation that is amenable to fundamental and human rights will continue to be key means of achieving the objective. But also new means are needed.

Means of this kind include a national recompense scheme for violations of fundamental and human rights, which I brought up in my comment column in the Ombudsman's annual report for 2005, and a national human rights strategy, which I outlined in my contribution in the annual report for 2006.

As I see it, the Government reports on human rights policy that have been developing in recent years are a good instrument for following and an essential precondition for assessing the situation with regard to fundamental and human rights. The report completed in 2009, and which now for the second time contains a comprehensive review of also the fundamental and human rights situation in Finland, is at time of writing being deliberated by the Eduskunta. Central problems relating to fundamental and human rights are highlighted and the international criticism concerning the human rights situation in Finland is also reported.

After the report on human rights policy and the assessments made by the Eduskunta on its basis, the next step must be, I believe, to draft a long-range action plan to eliminate the main problems relating to fundamental and human rights. I have outlined this in, among other contexts, my above-mentioned comment column in the annual report. The Government must define its policy on fundamental and human rights in the Programme for Government and assess the areas of emphasis in redressing the problems. After that, this policy must be implemented in a planned and monitored way. At the same time, the State authorities must commit themselves to ensuring that the requisite resources are obtained. It is good to remember that many fundamental and human rights problems cause significant costs for society. I have noted with great satisfaction that the Foreign Affairs Committee has in its submission on the Government report on human rights (VNS 1/2010 vp) considered an action plan of this kind important.

Secondly, I return to the idea of recompense for violations of fundamental and human rights. I believe it is important that people do not need to turn to international oversight bodies to have violations of these rights investigated, resolved and compensated for. These complaints could be reduced if it were possible for those whose human rights have been violated to receive recompense comprehensively on the national level. The first steps in this direction have been taken now that the law requires that compensation be paid for delays to trials in general courts. In other respects, preparatory work in the matter is under way.

The third way towards better safeguarding of fundamental and human rights is to develop monitoring of these rights determinedly. Inputs have been made into this work as such in the Ombudsman's activities. But I believe there is a need to ponder monitoring more broadly as well.

In conjunction with the revision of the fundamental rights provisions of the Constitution, there was no broader discussion of monitoring of fundamental and human rights nor was the need for it or possibilities of doing it assessed. The Constitutional Law Committee found that monitoring human rights alongside the tasks of the supreme overseers of legality did not in this conjunction require a proposal that new institutional oversight systems be created. The Committee took the view that oversight of compliance with the Constitution is more generally a question that concerns the Constitution as a whole and not just a fundamental rights question, which is being studied separately elsewhere arising from the statement made by the Eduskunta in autumn 1992. To the best of my knowledge, this study did not lead to further measures.

It is obvious, in my view, that independent oversight of fundamental and human rights is needed. As I stated in the foregoing, the question of oversight of these rights has never been examined comprehensively, nor has the role that the supreme overseers of legality play in it. My perception, based on my experience of oversight of legality, is that it would also be advisable to carry out a comprehensive assessment of oversight of implementation of fundamental and human rights in our country. An examination of institutional solutions and internal oversight in administration ought likewise to be looked at in this conjunction. It would be a good idea also to ponder the importance of fundamental and human rights education and training at the same time.

The working group appointed by the Ministry of Justice to prepare for the creation of a National Human Rights Institution will in the course of the spring recommend that it be set up under the aegis of the Office of the Parliamentary Ombudsman. The Foreign Affairs Committee in its submission and the Constitutional Law Committee in its statement on the Government report on human rights policy have considered it important that the Institution be set up at a brisk pace. The national oversight that international conventions require is likewise under preparation. It is evident that the international development will bring additional obligations of this kind in the future. What is regarded as important in the international human rights monitoring system is that safeguarding and oversight of human rights is strengthened nationally and that one oversight body, which thanks to its independence, expertise and the way it takes the view of civil society adequately into account can enjoy trust, is appointed in each country.

In my view, it would be advisable to examine the content and structures of oversight of fundamental and human rights on a more general and higher level than the remit of the working groups currently doing their deliberations. Something that could also be assessed in the same conjunction is how we shall respond to the challenges that the international development will bring in the future. The existing structures can, of course, be developed on the basis of individual needs that arise, but I believe that it is time for also a comprehensive assessment of fundamental and human rights oversight needs in our country.

PETRI JÄÄSKELÄINEN

PRINCIPLES WHEN DEALING WITH A COMPLAINT

Dealing with complaints is one of the Ombudsman's most central functions. He can also choose to investigate matters on his own initiative and to conduct inspections in public agencies and institutions. However, the large volume of complaints has meant that the numbers of own-initiative investigations and inspections have had to be kept at quite a low level. The number of complaints has nearly doubled in the past ten years. Whereas about 2,400 of them were received in 2001, around 4,400 arrived during the year under review 2009. At the same time, the Ombudsman's other tasks, such as those in international cooperation, have also increased.

Something that has been an objective in the Office of the Parliamentary Ombudsman for years is that the time taken to handle a complaint would be one year at most. This objective has been striven for by making the complaint-handling process more efficient in many ways. Thanks to that, it was possible also in the year under review to issue decisions in slightly more complaints than arrived, despite the increase in the number coming in. We have likewise managed to improve the age structure of complaints to some extent, but the objective with regard to the length of the processing period has still not been achieved. It would be important from the perspective of the impact of the Ombudsman's work that more matters could be taken under investigation on his own initiative and that more inspections could be conducted. If the number of complaints continues to grow, as seems to be happening, the achievement of these objectives may recede further into the future.

Naturally, the objectives could be striven for by increasing the resources of the Office of the Parliamentary Ombudsman commensurately with growth in the number of complaints. That is perhaps not possible for economic reasons, and I do not believe that it would be purposeful, either. In my perception, it is possible to handle a greater number of complaints than at present with the existing personnel strength and increase own-initiative activities. However, this presupposes greater discretionary power in handling complaints.

The duties of Deputy-Ombudsman Petri Jääskeläinen include attending to cases concerning courts of law, prisons, enforcement, protection of interests, municipal and environmental authorities, and taxation.

For the sale of comparison, it should be pointed out that in Sweden the Office of the Ombudsman has about the same number of personnel as we have here in Finland, but handles about twice as many complaints. This is possible precisely because the Ombudsman in Sweden has greater discretionary power in the investigation of complaints than is the case in Finland. The Ombudsman in Finland is required by law to investigate a complaint whenever there are "grounds for the suspicion that a subject of oversight has acted unlawfully or failed to fulfil a duty". In Sweden, the Ombudsman has not been obliged in this way to investigate a complaint; instead, the manner in which an individual complaint is handled is a matter for the Ombudsman's discretion.

Procedures in handling complaints

Under the Parliamentary Ombudsman Act, anyone who considers a subject of oversight to have acted unlawfully in a matter within the scope of the Ombudsman's oversight can complain to the Ombudsman. A complaint must be made in writing and must state the complainant's name and contact particulars as well as the necessary information about the matter to which the complaint refers. Thus the formal demands for a complaint are very loose. If, for example, a complaint is poorly itemised, the complainant is given guidance as to how to supplement it and at the same time is sent a copy of the brochure "Can the Ombudsman help you?", which outlines the tasks and powers of the Ombudsman and tells how to make a complaint.

Every complaint is examined at least summarily in the Office of the Parliamentary Ombudsman. The initial steps in handling are to ascertain what the complaint concerns, whether the matter falls within the Ombudsman's powers, has the Ombudsman or the Chancellor of Justice already investigated the same matter or is it currently under investigation by the Chancellor of Justice, is the matter pending in a competent authority or whether a statutory right of appeal exists in the matter.

The Ombudsman does not usually intervene in pending matters. His tasks do not include influencing how an authority should decide on a matter with which it is dealing. If a statutory appeal channel is available in a matter, the party in question should avail of it if only for the reason that the Ombudsman cannot alter or overturn an authority's decision, unlike an appeal instance. If the option of appealing is still open, the complainant is advised how to use it. If the reason for the complaint is delay in handling a matter, the Ombudsman can, naturally, intervene in that matter even while it is pending.

The Parliamentary Ombudsman Act does not require a matter more than five years old to be investigated unless there are special reasons for an investigation. Because it is often difficult and pointless to clear up old matters, the special reasons requirement has been interpreted tightly in practice.

If for some or other of the above-mentioned reasons there is no ground on which to continue with an investigation, the complainant is usually informed of this in a reply to be given within a week. If no such reasons exist and if there is reason to suspect that a subject of oversight has acted unlawfully, the actual examination of the complaint begins. What this means is examining and evaluating the facts of the case and the associated legal questions. This presupposes obtaining the necessary documentary reports and the authority or public servant specified in the complaint being asked to explain the events and make a statement setting out the legal grounds on which the solution was made or the action taken. Documents and other preliminary explanations are often obtained over the phone or by email.

If a case may provide a ground to criticise a subject of oversight for an action taken, an opportunity for that party to be heard must be reserved. In such a case, the complaint letter and its appendices must be sent to the subject of oversight to provide precise information on the matters that are under investigation and may lead to criticism. When the report and statement have been received from the authority, they are sent if necessary to the complainant for information and for a possible response. There may be several rounds of reports and responses. When a case is ready for a decision, it goes onto a waiting list in the order that the complaint has been received or, if there is a ground for urgency in accordance with some other prioritisation principle, to await resolution.

Principles for investigating a complaint

Whether to investigate a complaint and the scope of the investigation should, in my view, be assessed in the light of the following principles:

1. Can the Ombudsman help?

If the error or shortcoming to which the complaint relates can still be rectified and the Ombudsman can contribute to this happening, the necessary measures

are taken in the case irrespective of the seriousness of the matter. What can be involved is, for example, an authority failing to reply to a letter from the complainant requesting advice or concerning a transaction, an authority has not issued an appropriate administrative decision in the complainant's case or a decision by an authority contains a typographical or factual error, which is rectifiable as a self-correction. In situations like this, the authority in question being contacted by the Office of the Parliamentary Ombudsman may suffice to bring about the resolution that the complainant is hoping for.

The situation is often, unfortunately, that there is no longer anything that can be done about the alleged error reported in the complaint, even if it were possible in the course of investigating the complaint to demonstrate the existence of the error. That can be the case when, for example, the official action that contained the error has led to a solution that has already achieved the force of law and can no longer be appealed against through the regular channels and the error was not so serious that it could be a ground for overturning the decision with the aid of so-called extraordinary means of appeal.

2. Is there a need for guidance or recommendation in relation to the matter?

Even though the Ombudsman might not be able to help the complainant achieve his or her desired outcome, it may be appropriate in the case to give the authority guidance for future reference. This can involve drawing the authority's attention to an erroneous procedure so that comparable errors do not reoccur. Even if the authority has not followed an improper procedure, the Ombudsman may have reason to draw attention to aspects that promote implementation of fundamental and human rights. A complaint case may also reveal defects in legislation, whereby there may be reason to investigate it with a view to a possible legislative proposal. If the complainant has suffered damage, inconvenience or distress as a result of an official error, investigation of the complaint may be necessary also for a possible recommendation that recompense be made.

On the other hand, it is possible that an error has already been rectified through an authority's own measures or the procedure or decision of an appeal instance. If what is involved is, say, an error in the way some or other party has been heard, the appeal instance may have heard the party in question, whereby the error has been rectified. It may also be that the authorities are well aware of the error, for which reason an investigation is not necessarily called for even for the purpose of guiding official actions.

3. Will a rebuke from the Ombudsman suffice?

Although the Ombudsman might not be able to help a complainant achieve the desired outcome, and although no need for guidance or a proposal by the Ombudsman is evident in the matter, an investigation of the complaint may be needed in order to express a rebuke. This is the case when the unlawful action or neglect of official duty alleged in the complaint is more serious than trivial. The error may even have been rectified by an appeal instance. However, an appeal body does not assess the reproachability, in the light of the laws binding public servants and criminal law, of the action that the public servant responsible for the error has made. That remains a task for the Ombudsman.

For the Ombudsman to be able to express criticism of an action by a public servant or authority, that party is required under the Parliamentary Ombudsman Act to be given the opportunity to be heard. Already for this reason, the need to express a rebuke leads automatically to an actual investigation of the complaint and the authority being heard.

4. Are an investigation and stance by the Ombudsman otherwise necessary?

There may be a reason to conduct an actual investigation of a complaint even if none of the grounds described above would appear to exist and therefore the complaint would obviously not lead to any measure on the part of the Ombudsman. An investigation by the Ombudsman may have significance in its own right. That can be the case when, for example, the matter is for some reason or another of special importance for the complainant.

Also from the perspective of the trust in official actions that people must feel, it may be necessary for the Ombudsman to study the ground on which an official action or decision has been based. That can be the case if the nature of the matter is such that it may justifiably have prompted suspicions in the complainant. What can also be involved is a question of more general legitimation, for example if the matter has attracted media attention and attitudes to it have been conflicting.

Regulation of investigation of a complaint

In my view, investigation of a complaint should not be linked to an inflexible threshold according to which a complaint must always be investigated when there are "grounds for the suspicion" that an unlawful action has occurred. It should be possible to consider the need for an investigation more analytically in the light of the grounds outlined in the foregoing. If none of the grounds exists, a full-scale investigation of the complaint is generally not appropriate from the perspective of the Ombudsman's tasks and the effectiveness of his work. An inflexible threshold is also misleading in the sense that investigation of a complaint may be called for even though there is no reason at all to suspect that an unlawful action has taken place. That is the case especially when an official decision or action has been lawful in and of itself, but some other course of action would have been better from the perspective of implementation of fundamental and human rights. What has not been taken into consideration in the present regulation on investigating a complaint is the nature and significance of the suspected unlawful action. "Unlawful action" sounds serious, but what may be involved in actual fact is a formal procedural error that is insignificant from the perspective of the final outcome in the matter and about which nothing can be done any longer.

If none of the grounds outlined under the above heading is met in the case of an individual complaint, there should be no need to devote much time to investigating the complaint. That would be the case when the Ombudsman cannot help, there is no need for guidance or recommendation in the matter, a rebuke on the part of the Ombudsman is not necessary and there is otherwise no reason to investigate the matter.

It must be remembered that no complaint is left entirely unexamined; every one is looked at with the aspects outlined above in mind. The extent of this basic study varies according to the nature of the matter. The complainant's personal circumstances may also influence the content of the investigation. If the person concerned belongs to some or other vulnerable group, for example is an inmate in a closed institution, who may personally find it difficult to take care of his or her own affair and present it in a complaint, ex officio study may be broader in scope. Also "within" the complaint the extent of examination may vary. A complaint generally contains several different questions, some of which may provide a reason for a full-scale investigation, but it must be possible to devote less attention to some points, which are irrelevant on the grounds outlined above.

A reply explaining how the matter has been assessed is given to every complainant. The solutions arrived at by the Ombudsman do not acquire the force of law; if a complainant is dissatisfied with the reply, he or she always has the opportunity to explicate the complaint and present new arguments supporting it.

In my view, the extent and depth of an investigation of a complaint should be left to the Ombudsman's discretion in each individual case. At present, several authorities have been given power of discretion of this kind. For example, the police are required by the Criminal Investigations Act to launch an investigation if there is "a reason to suspect" that a crime has been committed. The threshold to initiating a criminal investigation corresponds in terms of the language in which it is couched to the present threshold to investigating a complaint. However, a prosecutor may decide on the basis of a recommendation by the police that a criminal investigation will not be launched or that an on-

going one will be ended. Limiting a criminal investigation can be founded on the same reasons for which a prosecutor may decide not to bring a charge. One such reason may be, for example, the minor nature of the suspected crime and certain other principles on the basis of which going ahead with a criminal trial would not be purposeful.

Investigation of a complaint should be coupled with the task that Section 109 of the Constitution assigns to the Ombudsman, without an inflexible threshold. A complaint should be examined in the extent and depth that the Ombudsman deems necessary in each individual case from the perspective of compliance with the law, the individual's protection under the law as well as implementation of fundamental and human rights. This consideration could be done in accordance with the principles outlined above and allowing for the Ombudsman's anticipated measure (expression of an opinion as a rebuke or for future guidance, a recommendation, a reprimand or a prosecution).

Indeed, the Constitutional Law Committee has taken the view in its submission on the Ombudsman's annual report for 2008 that the Ombudsman must have the possibility of shifting the emphasis in activities onto matters that, to ensure the complainant's protection under the law or due to other fundamental and human rights aspects, require expeditious and effective handling. In the view of the Constitutional Law Committee, the provisions of the Parliamentary Ombudsman Act do not in their present wording prevent an expansion of the discretionary power that is to be used in conjunction with investigating complaints and raising the investigation threshold to at least some degree.

I regard these statements as very welcome. It would be even better if the Ombudsman's discretionary power could be openly stated in the Act. This question is being deliberated by a Ministry of Justice working group.

Every complaint is important

I have always emphasised that there is no such thing as a frivolous complaint. Complaints provide the Ombudsman with indispensable sources of information. It is precisely through complaints that the Ombudsman finds out where an unlawful action or shortcomings in legislation or in implementation of fundamental and human rights may be happening. This does not, however, mean that there would be justification for investigating every complaint in the extent and depth that the complaint procedure allows whenever there is reason to suspect that an unlawful action has taken place.

In the foregoing I have presented the grounds in the light of which an investigation of a complaint should, in my opinion, be assessed. Also minor matters must be investigated when one or other of these grounds exists. What would be essential and especially important is that in cases in which measures by the Ombudsman are needed, a complaint could be investigated and a decision on it issued expeditiously. This is possible if other kinds of cases can be examined more narrowly. In my perception, this kind of expeditious handling of complaints at the Ombudsman's discretion would not weaken, but on the contrary would strengthen and speed up oversight of compliance with the law and promote protection under the law as well as implementation of fundamental and human rights.

JUSSI PAJUOJA

POLICE PRISONS IN A STATE OF FLUX

Only one outside body in Finland that is independent of the administration oversees and inspects closed institutions. Oversight of the legality of their actions has been centrally entrusted to the Ombudsman. The Chancellor of Justice has not had to oversee prisons, police prisons, psychiatric hospitals, and so on since 1933.

The past two decades have seen a significant deepening and expansion of the scope of oversight of legality. With the 1995 revision of the fundamental rights provisions of our Constitution, promotion of fundamental and human rights became one of the Ombudsman's tasks. In closed institutions this means that to a growing degree attention is paid to, besides compliance with the law, treatment worthy of human dignity and appropriate conditions in the institutions.

Deputy-Ombudsman Jussi Pajuoja's duties include attending to cases concerning the police, public prosecutors, Defence Forces, transport, immigration, and language legislation.

In addition to that, legislation has also been revised. A major package of laws, which included the Prison Act, the Detention Act and the Act on the Treatment of Persons in Police Custody, i.e. the so-called Prison Cells Act, came into force on 1.10.2006. The demands that are to be set for activities are enshrined in detail in these Acts. The earlier fragmented regulations have been replaced with precise provisions that create clear rules of the game.

Thus it can be said that from the perspective of oversight of legality the a priori conditions for effective oversight are in order. What, then, are the problems in police prisons?

International demands growing

Finland's accession to membership of the Council of Europe brought a new element, an independent international monitoring body, to oversight of closed institutions. The European Committee for the Prevention of Torture (CPT) conducted country inspections in Finland in 1992, 1998, 2003 and 2008. On its visits, the CPT carried out surprise inspections of all kinds of closed institutions.

With regard to police prisons, the CPT has repeatedly pointed out that they are not suitable for keeping prisoners in long-term – more than four days' – detention. Also where conditions in police prisons are concerned, the positions adopted have gradually been growing more critical. In 1992 the CPT deemed conditions in police prisons good for short-term custody, but on its most recent visit it found that they were only generally speaking acceptable.

Another important international initialism is OPCAT, the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. The preparatory work for ratification of the Optional Protocol is currently in progress at the Ministry for Foreign Affairs. The Optional Protocol requires the creation of a national oversight body. This body will in-

spect places where persons who have been deprived of their liberty are held in custody. The task will bring new international reporting obligations and require an expansion of inspection activities, development of its contents and the use on inspections of expertise in relation to many fields.

OPCAT preparations are still incomplete, but the Ombudsman will be the oversight body. The new tasks have already been foreseen and prepared for in the Office of the Parliamentary Ombudsman. For example, more unannounced inspections than earlier have taken place in police prisons and it has been made possible to increase the number of visits by having them conducted by legal advisers on the Ombudsman's instructions. Efforts have also been made to effect a shift from general inspections to a problem-centred inspection approach with more focused contents.

Centralisation of police operations and old police stations

The operational strategy in the police organisation in recent years has been on regional centralisation. There were 24 police services in Finland at the beginning of 2009. The reduction in the number of police services confirms the long-term trend in police prisons as well. The functions of police prisons are being centralised to those units that are on call round the clock and have an adequate number of clients. In practice, this means those in bigger towns and cities.

Besides regional centralisation, two significant development trends are affecting the position of police prisons. First, there is the question of the building stock; in other words, of police infrastructure. A large proportion of police stations are a product of the building programme for administrative offices in the 1970s and 1980s. Already due to their age, the buildings have reached the stage where they need basic renovation. In addition to just renovation as such, consideration should also be given to their future use. Something that must be decided in conjunction with renovating them is what functions it is purposeful to locate in them.

The core question in relation to police prisons is what categories of persons will be kept in custody in them in the future. It is obvious that some clients are of the kind whose detention is now and will continue to be unambiguously a task for the police. This group includes, for example, persons who have been arrested and detained due to a crime having been committed, those taken into custody to preserve domestic and public peace as well as persons who have been taken into custody because of a threat of crimes and disturbances. These are the police's core clients. Quantitatively, these groups account for just under a third of all persons kept in police prisons each year.

The second question is how those groups in police prisons for the detention of whom primary responsibility resides not with the police, but rather with other authorities should be held in custody in the future. These are remand prisoners and foreigners who have been detained. Perhaps the most difficult question is, however, what to do with intoxicated persons. Are they the responsibility of the police or not?

Intoxicated persons taken into custody

Nearly 150,000 people are detained in Finnish police prisons each year, i.e. 400 a day on average. Of them, 90,000–100,000 are taken into custody due to intoxication.

Keeping intoxicated persons in custody was traditionally a police task, because drunkenness in public was a punishable offence until the 1960s. However, the punishability of intoxication was abolished in 1968. Yet, taking care of intoxicated persons was left to the police.

The Act on the Treatment of Intoxicated Persons entered into force in 1973. It requires the police to take an intoxicated person to a sobering-up station or other treatment facility. A priori, only an intoxicated person who is behaving violently or is known to be violent is placed in a police custody facility.

So far, however, sobering-up stations have remained random projects. There are separate sobering-up stations in only a few cities. In some cases, they are adjacent to or even on police premises. However, the fewness of sobering-up stations means that the police usually place intoxicated persons in holding cells.

Since many police stations are not manned round the clock, intoxicated persons may have to be transported long distances. If a person is not behaving violently and does not pose a danger to his family or others living with him, the police try as a first option to take him to his home or place of residence.

A Ministry of the Interior working group explored the need for sobering-up stations in 2004. It found that 20–25 of them that are open round the clock would be needed. In the view of the working group, a station would need a minimum staffing level of five nurses and five security guards. Supplementing their input would be that of a part-time doctor and possibly a social worker. That way, a station would be able to provide a service round the clock.

The working group outlined three alternative ways in which the network of sobering-up stations could be organised. A sobering-up station operating in detachment from other actors would be the most expensive solution. The starting point in the other models was that a sobering-up station would be set up as an adjunct to either a police station or a hospital. In a police station, the guards would be drawn from the existing personnel, but health care services would additionally be required. As an adjunct to a hospital, nurses, a doctor and security personnel or guards would already be in place.

The question of sobering-up stations came to the fore again when the Police Cells Act was going through the enactment process. The Eduskunta stipulated that the development of the activities of sobering-up stations be studied as a cooperative process between the social welfare and health authorities and the police.

For this study work the Ministry of the Interior constituted a broadly-based working group on 3.11.2009 and set 31.12.2010 as the reporting deadline. The working group is tasked with carrying out a comprehensive exploration of questions of responsibility, powers and resources relating to the taking into custody, transport, placement and treatment of intoxicated persons as well as with recommending means by which it would be appropriate to organise activities.

The working group must also find out about, inter alia, international operational models and practices in neighbouring regions, especially the other Nordic countries, as well as adopt a stance on compensation for costs and how they are shared by various actors. It must also express its opinion on different organisational models.

At time of writing, the working group's deliberations are ongoing. What is clear, nevertheless, is that the alternatives outlined could mean very big changes in the operations of the present police prisons. That would be the case especially if sobering-up stations that operate in connection with a hospital or independently are decided on. From the perspective of police prisons, this would mean two-thirds of their annual client total being transferred elsewhere.

It is not a task for an overseer of legality to adopt a stance on, for example, which of the alternatives presented should be chosen. However, the Ombudsman can draw the attention of a body responsible for legislative drafting to shortcomings that he has observed in the regulations. In this case, the Act on the Treatment of Intoxicated Persons has been giving an erroneous picture of everyday reality for 37 years. The Act requires that an intoxicated person be taken primarily to a sobering-up station or other treatment facility. In practice, the place where the person is put is a police cell. Thus the Act should, as expeditiously as possible, be changed to bring it into line with reality, or else the reality into line with the Act.

Accommodation and treatment of remand prisoners

One of the purposes of the Detention Act is to shorten the times that prisoners are kept in police prisons. If a court so orders, a remand prisoner can be placed in a police prison, but can not be kept there for longer than

four weeks unless there is a very valid reason to decide otherwise. With international practice in mind, even this is a very long time.

The placement of remand prisoners in police prisons is currently under deliberation. The Ministry of Justice has appointed a working group with a reporting deadline of late spring 2010. The working group is tasked with exploring means of reducing the number of remand prisoners in police facilities. It must also examine how responsibility for investigating the crime of which the remand prisoner is suspected and responsibility for keeping him or her in custody can be separated more clearly than is now the case in police functions. It must also study in what way the conditions in which remand prisoners are held in police prisons, such as their opportunities to take part in activities or get outdoor exercise as well as their access to health care services, can be improved.

The foremost problem where remand prisoners are concerned is the long times for which they are kept in a police prison. The average period of detention is around two weeks, but periods of longer than a month are recorded in over 200 cases each year. Police prisons are not, however, designed for such long-term stays in custody and the conditions in them are inferior to those in remand prisons proper.

Placing a remand prisoner in a police prison also has its principle side. There is an international requirement that the authority investigating a crime does not have the suspect in its custody. The idea is to prevent inappropriate means of investigation and pressure. The demand in question is expressed in the CPT's repeated criticism of Finland.

Transferring remand prisoners out of police prisons would be of surprisingly major significance. Although just over 2,000 remand prisoners enter police prisons each year, the long periods for which they are held means that they account for a big share of the prisons' total daily accommodation capacity. Each day, there are about a hundred remand prisoners in police prisons. Since what is involved with intoxicated persons is a large group of clients but a rapid turnover, here the overall effect comes into being in the opposite manner.

It follows from the points of departure in the Detention Act and from international demands that the times for which remand prisoners are kept in police prisons should be further shortened. This would also reduce the average daily number of remand prisoners in the future.

The safety valve of keeping foreigners in custody

More than 1,200 foreigners were incarcerated in police prisons in 2009. Most of them were asylum-seekers whose applications had been turned down and were awaiting expulsion. In addition, people are kept in custody while their asylum applications are being investigated or the preconditions for entry into or sojourn in the country being examined. Persons who are to be deported from the country also for other reasons can likewise be kept in custody.

A decision to place a foreigner in detention is made by a police or Border Guard official belonging to a higher command echelon. The decision must be dealt with by a district court not later than four days after the commencement of detention and thereafter extended in a court at two-week intervals.

The a priori requirement is that persons placed in custody should be transferred to the detention unit run in association with the Helsinki reception centre not later than four days after being taken into custody by the police and two days if the person has been taken into custody by the Border Guard. The operations of the detention unit are regulated by the Act on Treatment of Detained Foreigners and Detention Unit, which sets out in detail what rights a detainee has and how his or her basic needs must be safeguarded. In exceptional circumstances, however – such as when the detention unit is full – a person taken into custody can be transferred to police facilities for even a longer time.

Thus after the initial stage of their time in custody, foreigners should be quickly transferred to the detention unit. The problem is that the capacity of the existing unit is not sufficient. If space in the unit or the number of units were to be increased, also those detained for longer periods could be transferred out of police prisons.

Is criticism of police prisons founded?

A key aspect of the criticism being directed at police prisons is that police cells and their functions are perceived in different ways as being defective. In the case of intoxicated persons who are taken into custody, the issue is that the needs relating to social welfare and health care are poorly taken care of. A police cell is only a place to be confined in and recover and otherwise generally lacks a treatment element.

Where remand prisoners are concerned, the problem is, on the one hand, a matter of questions of principle and, on the other, the fact that police cells are not designed for long-term stays. Remand prisons have been built to cater for remand prisoners, who should be placed in them as quickly as possible. The point of departure in detaining foreigners is the same in that they should be quickly transferred from a police prison to the detention unit.

Who, then, would be left in police prisons? If the reform projects outlined in the foregoing were to be implemented at their most extensive, the only persons placed in police prisons would be the police's basic clientele. They are mainly those taken into custody and detained under the provisions of the Police Act – except intoxicated persons – as well as the Coercive Measures Act and the Criminal Investigations Act.

When one thinks of the reforms and building projects that have been carried through in, for example, the prison service in recent decades, the development of police prisons has been slow. In fact, reform projects launched decades ago – such as keeping intoxicated persons in custody – have not gone beyond their first steps. That is why it is laudable that major reform projects are in the pipeline. Right now really is the time for new and necessary thinking.

2. The Ombudsman institution in 2009

2009 was a landmark year in oversight of legality both nationally and internationally. The Ombudsman institution originated in Sweden, where the post of Parliamentary Ombudsman was created in 1809. The same year saw the Procurator, or the Chancellor of Justice of the Council of State, as he is called today, begin his work in Finland. Both institutions celebrated their bicentenary last year.

In Finland, the second country to adopt the institution, the Parliamentary Ombudsman began work in 1920. The next country to adopt the institution was Denmark in 1955, followed by Norway in 1962. The powers of the Ombudsman are more limited in both of these countries than in Sweden and Finland. The Ombudsman institution later spread to other parts of the world, mainly following the Danish model.

The International Ombudsman Institute, IOI, currently has about 160 members. Some Ombudsmen, however, are regional or local; in Germany and Italy, for example, there is no Parliamentary Ombudsman. The European Union created its European Ombudsman in 1995.

2.1 TASKS AND DIVISION OF LABOUR

The Ombudsman is a supreme overseer of legality elected by the Eduskunta. He or she exercises oversight to ensure that those who perform public tasks obey the law, fulfil their duty and implement fundamental and human rights in their actions. The scope of the Ombudsman's oversight includes courts, authorities and public servants as well as other persons and bodies that perform a public task. By contrast, the Ombudsman has no power to examine the Eduskunta's legislative work or the actions of Representatives, nor the official actions of the Chancellor of Justice.

The powers of the supreme overseers of legality, the Ombudsman and the Chancellor of Justice, are nearly the same. For example, only the Ombudsman or the Chancellor of Justice can decide to bring a prosecution against a judge for an unlawful action in an official capacity. The only exception is oversight of lawyers, which is the exclusive preserve of the Chancellor of Justice.

In the division of labour between the Ombudsman and the Chancellor of Justice, however, responsibility for matters concerning persons in prisons and other closed institutions where a person has been involuntarily confined, as well as deprivation of liberty as regulated by the Coercive Measures Act, has been centrally entrusted to the former. The scope of the Ombudsman's oversight also includes matters relating to the Defence Forces, the Border Guard, peacekeeping personnel and courts martial.

The Ombudsman is independent and acts outside the traditional tripartite separation of powers into the legislative, executive and judicial branches. He or she has the right to receive from the authorities or other parties performing a public task all the material that is needed for oversight of legality. The objective is, *inter alia*, to ensure that the various administrative sectors' own systems of legal remedies and internal oversight mechanisms function appropriately.

The Ombudsman gives the Eduskunta an annual report, in which he evaluates, on the basis of his observations, also the state of administration of the law and shortcomings in legislation that he has observed.

The election, powers and tasks of the Ombudsman are regulated in the Constitution and the Parliamentary Ombudsman Act. These regulations are in Annex 1 to this report.

In addition to the Ombudsman, the Eduskunta elects two Deputy-Ombudsmen. All are appointed for four years. The Ombudsman decides on the division of labour between the three. The Deputy-Ombudsmen resolve the matters assigned to them independently and with the same powers as the Ombudsman.

Ombudsman Paunio resolved cases that related to questions of principle, the Council of State (i.e. Government) and the other highest organs of state. Also included in her oversight are social welfare, health services and social security more generally as well as cases with a bearing on children's rights. The matters for which Deputy-Ombudsman Jääskeläinen was responsible included courts, the prison service, distraint, environmental and local administration as well as taxation-related matters. Deputy-Ombudsman Lindstedt dealt with cases concerning, e.g., the police, the prosecution service, the Defence Forces and education as well as foreigners and language issues. After his term ended (on 30.9.2009) these categories of cases were entrusted to Deputy-Ombudsman Pajuoja. A detailed division of labour is shown in Annex 2.

2.2 THE VALUES AND OBJECTIVES OF THE OFFICE OF THE PARLIAMENTARY OMBUDSMAN

Oversight of legality has changed in many ways in Finland over the course of time. The Ombudsman's role as a prosecutor has receded into the background and the role of developing official activities has been accentuated. The Ombudsman sets demands for administrative procedure and guides the authorities towards good administration.

In conjunction with a revision of the fundamental rights provisions of the Constitution in 1995, the Ombudsman was given the task of overseeing implementation of fundamental and human rights. This changed the perspective on the authorities' obligation to implement people's rights. Since the constitutional provisions were revised, fundamental and human rights have come up in nearly all of the cases referred to the Ombudsman. Evaluation of implementation of fundamental rights means weighing against each other principles that tend in different directions and paying attention to aspects that promote implementation of fundamental rights. In his evaluations, the Ombudsman stresses the importance of a legal interpretation that is amenable to fundamental rights.

The tasks statutorily assigned to the Ombudsman provide a foundation also for what kinds of values and objectives can be set for oversight of legality. The objectives of the Office of the Parliamentary Ombudsman were confirmed in 2008 and a values project was launched at the Office in 2009. To begin the project, the central values of the Office were defined and scrutinised from the perspectives of clients, the authorities, the Eduskunta, the personnel and management. The project is continuing in 2010. This year's theme is on getting values into an everyday setting and working; for example the question of where and when values should manifest themselves in practice.

The values and objectives of the Office of the Parliamentary Ombudsman can be summed up as follows (see next page).

2.3 MODES OF ACTIVITY AND AREAS OF EMPHASIS

Investigating complaints is the Ombudsman's central task and activity. He is obliged under the current Act to investigate all complaints on the basis of which there is ground to suspect that an unlawful action or neglect of duty has occurred. In addition to matters specified in complaints, the Ombudsman can also choose on his own initiative to investigate shortcomings that manifest themselves.

VALUES AND OBJECTIVES OF THE OMBUDSMAN'S OVERSIGHT OF LEGALITY

VALUES

The key objectives of the Office of the Parliamentary Ombudsman are fairness, closeness to people and responsibility. They mean that fairness is promoted boldly and independently. The way in which the Office works is people-oriented and open. Activities must in all respects be responsible, effective and of a high quality.

OBJECTIVES

The objective of the Ombudsman's activities is to perform all of the tasks assigned to him or her in legislation to the highest possible quality standard. This requires activities to be effective, expertise in relation to fundamental and human rights, timeliness, care and a client-oriented approach as well as constant development based on critical assessment of our own activities and external changes.

Tasks

The Ombudsman's core task is to oversee and promote legality and implementation of fundamental and human rights. This is done on the basis of investigations arising from complants or activities that are conducted on the Ombudsman's own initiative. Monitoring the conditions and treatment of persons in closed institutions and conscripts, measures affecting telecommunications and other covert intelligence-gathering operations as well as matters of the responsibility borne by members of the Government and judges are special tasks.

Emphases

The weight accorded to different tasks is determined a priori on the basis of the numbers of cases on hand at any given time and their nature. How activities are focused on oversight of fundamental and human rights on our own initiative and the emphases in these activities as well as the main areas of concentration in special tasks and international cooperation are decided on the basis of the views of the Ombudsman and Deputy-Ombudsmen. The factors given special consideration in allocating resources are effectiveness, legal security and good administration as well as vulnerable groups of people.

Operating principles

The aim in all activities is to ensure high quality, impartiality, openness, flexibility, expeditiousness and good services for clients.

Operating principles in especially complaint cases

Among the things that quality means in complaint cases is that the time devoted to investigating an individual case is adjusted to management of the totality of oversight of legality and that the measures taken have an impact. In complaint cases, hearing the views of the legal norms applied, ensuring that decisions are written in clear and concise language as well as presenting convincing reasons for decisions are important requirements. All complaint cases are dealt with within the maximum target period of one year, but in such a way that complaints which have been deemed to lend themselves to expeditious handling are dealt with within a separate shorter deadline set for them.

The importance of achieving objectives

The foundation on which trust in the Ombudsman's work is built is the degree of success in achieving these objectives and what image our activities convey. Trust is a precondition for the Institutions's existence and the impact it has.

The top echelon and staff of the Office of the Parliamentary Ombudsman, working in a variety of compositions, formulated the Office's values in the course of the year. The values chosen for emphasis were fairness, closeness to people and responsibility.

The Ombudsman is required by law to conduct inspections of official agencies and institutions. He has a special duty to oversee the treatment of inmates of prisons and other closed institutions as well as the treatment of conscripts doing their national service. Inspections are also conducted in other institutions, especially those in the social welfare and health care sector.

Fundamental and human rights come up in oversight of legality not only when individual cases are being investigated, but also in conjunction with, e.g., inspections and deciding the thrust of own-initiative investigations. This report contains a separate chapter which reveals what kinds of fundamental and human rights-related questions arose in 2009 and what kinds of stances on them were adopted (see p. XXX).

In addition, the Ombudsman must oversee the use of so-called coercive measures affecting telecommunications – listening in on telecommunications, telesurveillance and technical eavesdropping. The use of these measures generally requires a court order, and they can be used primarily in the investigation of serious crimes. The use of coercive measures often involves intervening in constitutionally guaranteed fundamental rights, such as privacy, confidentiality of communications and protection of domestic peace. The Ministry of the Interior, the Customs and the Defence Forces are required under the Act to report annually to the Om-

budsman on their use of coercive measures affecting telecommunications.

The Act gives the police the right, subject to certain preconditions, to engage in covert activities to combat serious and organised crime. Through covert operations the police are able to acquire intelligence on criminal activities by, for example, infiltrating a criminal gang. The Ministry of the Interior must give the Ombudsman an annual report on also the use of covert methods. Oversight of coercive measures affecting telecommunications and covert operations is dealt with on p. XXX.

An emphasis on fundamental rights is reflected also otherwise in determining the thrust of the Ombudsman's activities. In addition to oversight of fundamental and human rights, also their active promotion is regarded as being part of the Ombudsman's remit. In connection with this, the Ombudsman has discussions with various bodies that include the main NGOs. On inspections and when investigating matters on his own initiative he takes up questions that are sensitive from the perspective of fundamental rights and have a broader significance than individual cases. The special theme in oversight of fundamental and human rights in 2009 was publicity. The content of the theme is outlined in the chapter dealing with fundamental and human rights (see p. XXX).

2.4 CHANGE PROJECTS

Two projects that will obviously influence the Ombudsman's activities in the next few years were under preparation in 2009.

Preparations for ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) are under way at the Ministry for Foreign Affairs. This presupposes the creation of a national monitoring body. The OPCAT Working Group, which is doing the preparatory work, will probably propose that the Ombudsman act as this monitoring body. The monitoring body will be tasked with inspecting places where people who have been deprived of their liberty are held or can be held, such as prisons, police cells and psychiatric hospitals. This task will bring new reporting obligations and will require an expansion of the Ombudsman's inspections, development of their contents and the use of experts from outside the Office. The OPCAT Working Group has had its deadline extended to 30.4.2010.

The Ministry of Justice appointed its Human Rights Institute Working Group in summer 2009. This body has been tasked with studying possibilities of organising a human rights institution in accordance with the so-called Paris Principles. The starting point in the preparatory work is that the institution would be set up under the aegis of the Office of the Parliamentary Ombudsman. The human rights institution would, among other things, promote human rights, oversee harmonisation of legislation with international human rights, contribute to disseminating information about human rights and develop research and teaching about this matter in schools, in addition to combating all fo rms of discrimination and racism. The institution must be established through an Act, independent and autonomous as well as pluralistic in its composition.

Another task with which the Working Group has been entrusted is to examine whether the discretionary power that the supreme overseers of legality have in investigating complaints can be increased and the time limit within which complaints lapse shortened. The Working Group is drafting the necessary proposals to amend the Parliamentary Ombudsman Act and the Act on the Chancellor of Justice. The deadline for the Working Party's report is 30.6.2010.

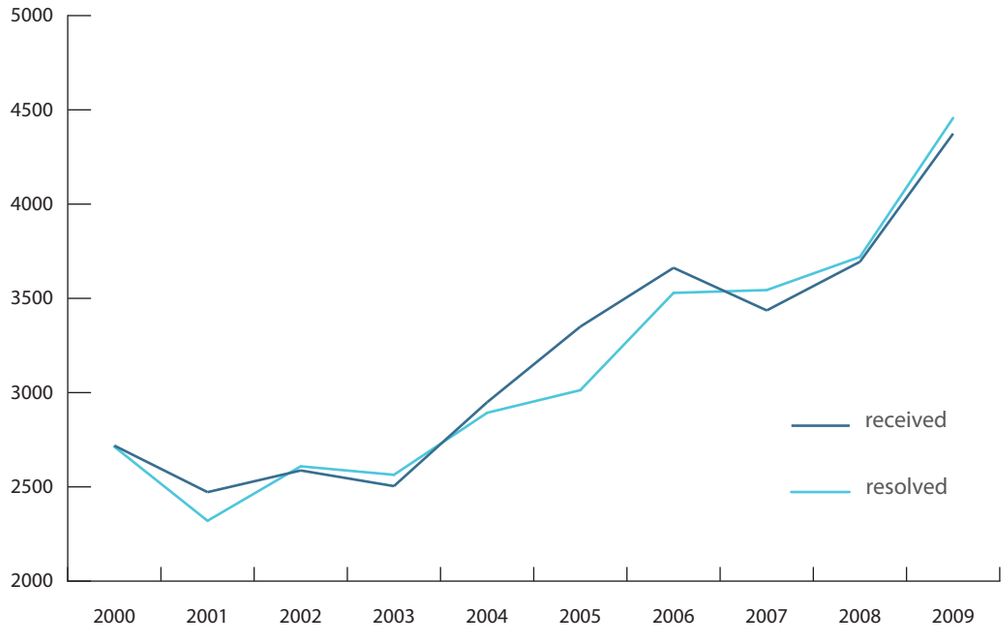
2.5 COMPLAINTS AND OTHER OVERSIGHT-OF-LEGALITY MATTERS

The number of complaints has grown strongly in the past decade. The number received during the year under review was a record and the number of decisions issued was likewise greater than ever before. The number was 18% up on the total for 2008 (3,694–4,374). The number of complaints resolved grew even more robustly, by 20% (3,724–4,457).

Growth in the popularity of electronic transactions has made its own contribution to increasing the number of complaints in recent years. The number of complaints arriving by traditional means – sent by post, delivered in person or faxed – has been gradually declining and correspondingly the number being sent by e-mail has been growing strongly. About 55% of complaints arrived electronically in 2009. It was the first year that email complaints were in the majority. Their percentage share in 2008 was 43%.

Oversight-of-legality cases received

In addition to complaints, own initiatives and other written communications are counted as oversight-of-legality matters. The latter category are enquiries in nature or written communications from citizens concerning matters that manifestly do not fall within the scope of the Ombudsman's oversight of legality or are not clearly specified. These are not recorded as complaints; instead, the notaries and inspectors in the Office reply to them immediately and provide guidance



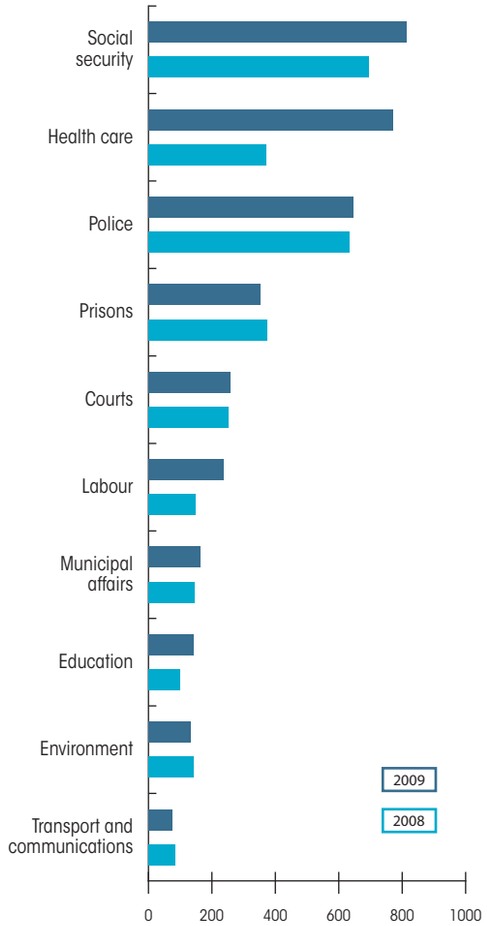
Complaints received and resolved in 2000–09

▮ received ▮ decided on	2008	2009
Complaints	3 632 3 720	4 346 4 458
Transferred from the Chancellor of Justice	62	27
Own initiatives	61 47	72 80
Requests for reports, statements and to attend hearings	33 33	49 47
Other written communications	319 314	322 318
Total	4 107 4 114	4 816 4 903

and advice. In addition, oversight-of-legality matters include reports and statements and invitations to hearings of the Eduskunta's various committees (Annex 3).

The ten biggest categories of subjects accounted for 83% of complaints in 2009. The biggest category was once again the social welfare authorities, which in this statistic include those handling social welfare and social insurance. Within the category, complaints concerning social welfare increased especially strongly, whilst the number concerning social insurance remained unchanged. Health care became the second biggest category of complaint subjects in 2009. Most of the quantitative growth was caused by one single case. The Ombudsman received 345 complaints about the Helsinki and Uusimaa Hospital District's plan to close the Länsi-Uusimaa Hospital in Tammisaari and especially about safeguarding services through the medium of Swedish.

There were no significant changes in the next biggest categories of cases – police, prison service and courts – By contrast, the number of complaints concerning the labour authorities increased markedly. This was due above all to an increase in the number of complaints about unemployment funds. Numerical data on the ten biggest categories of complaint subjects are shown in Annex 4.



Ten biggest target categories in complaints received in 2008 and 2009

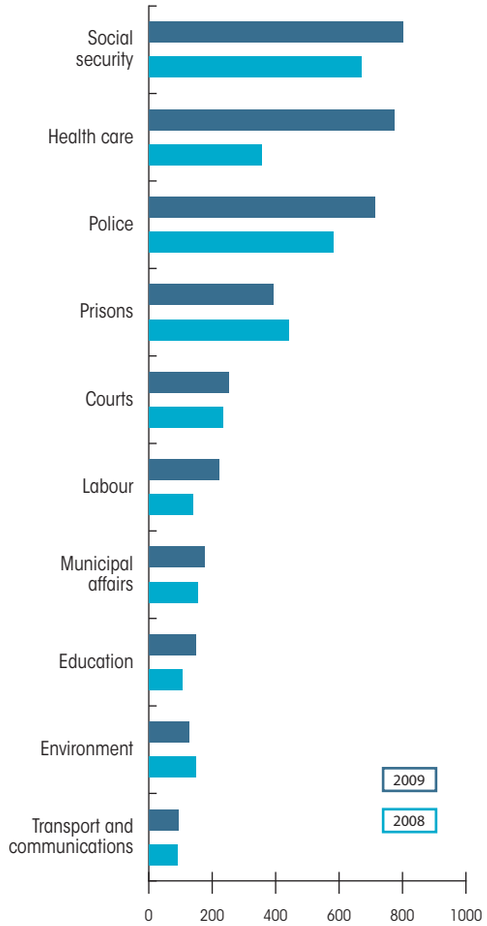
Decisions on complaints

Both complaints received and decisions on them had the same breakdown by subject category. Also the ten biggest categories of subjects accounted for 83% of all complaints in which decisions were issued and the order of size of the categories was the same. Detailed data on the number of decisions broken down by subject group are shown in Annex 4.

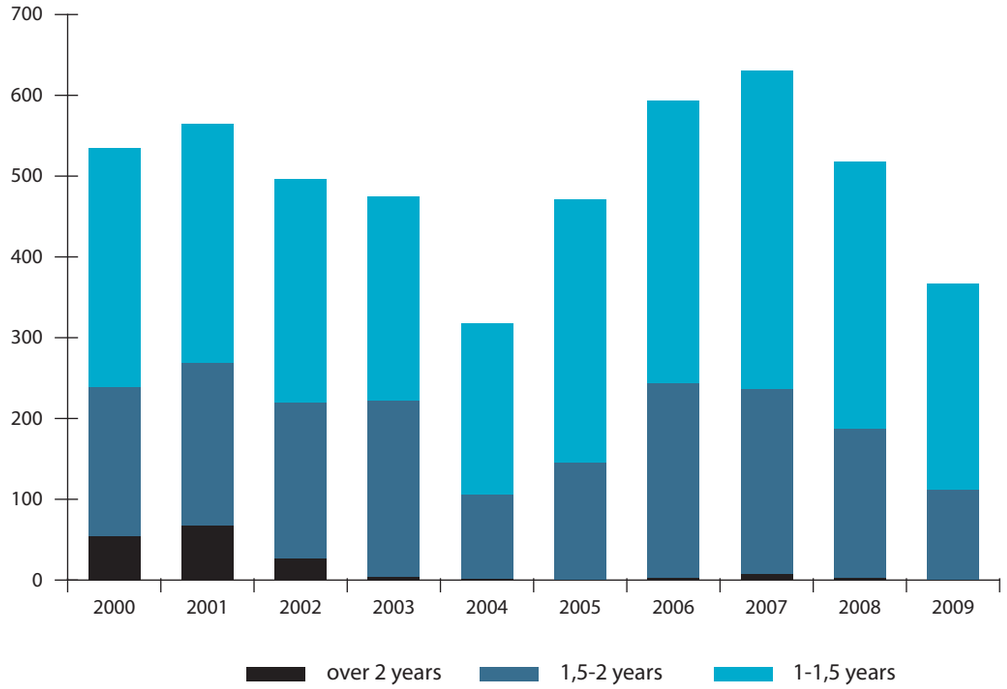
The similarity between the numbers of complaints received and decided on is natural. The weighting of activities between different tasks is determined a priori by the number and nature of cases on hand at any given time. In other words, acute situations in society must be responded to when allocating resources. The aspects accorded special attention here are impact, legal safeguards and good administration as well as vulnerable groups of people.

In addition, the Office of the Parliamentary Ombudsman has the object of ensuring that all complaints are dealt with within a target period of one year. This target has been gradually approached in the past few years. Whereas at the beginning of the decade 50-60 complaints that had been on hand for over two years were still being deferred to the following year, none at all were deferred at the end of 2009. Complaints that have been pending for over a year and a half and over a year have declined correspondingly. At the end of 2009 slightly more than 100 cases that had been pending for over a year and a half and around 250 received more than a year earlier were deferred to the following year.

The average time taken to deal with an oversight-of-legality case was 6.1 months at the end of the year. This is less than the previous year, when the average time was 7.0 months (see table on next page).



Ten biggest subject categories in complaints decided in 2008 and 2009



Complaints pending for over a year at the end of 2009 (31.12)

2.6 MEASURES

The most important decisions in the Ombudsman's work are those that lead to him taking measures. The measures are a prosecution for breach of official duty, a reprimand, the expression of an opinion and a proposal. In addition, a matter may be rectified while it is under investigation.

A prosecution for breach of official duty is the most severe sanction at the Ombudsman's disposal. However, if he takes the view that a reprimand will suffice, he may not bring a prosecution even though the subject of oversight has acted unlawfully or neglected to fulfil his or her duty. He can also express an opinion as to what would have been a lawful procedure or draw the attention of the oversight subject to the principles of good administrative practice or aspects conducive to the implementation of fundamental and human rights. An opinion expressed may be a rebuke in character or intended for guidance.

In addition, the Ombudsman may recommend rectification of an error that has occurred or draw the attention of the Government or other body responsible for legislative drafting to shortcomings that he has observed in legal provisions or regulations. Sometimes an authority may on its own initiative rectify an error it has made already at the stage when the Ombudsman has intervened with a request for a report.

Decisions that led to measures totalled 791 in 2009. This was about 17% of all decisions arising from complaints and matters investigated on the Ombudsman's own initiative (4,537 in all). See table on next page.

MEASURES TAKEN BY PUBLIC AUTHORITIES		Measure						Total number of decisions	Percentages*
		Prosecution	Reprimand	Opinion	Recommen-dation	Rectification	Total		
Public authority	Police		5	134	1	3	143	723	19,8
	Social security - social welfare - social insurance		1 1	124 89 35	3 2 1	11 6 5	139 98 41	806 474 332	17,2
	Prisons		7	99	11	2	119	400	29,7
	Health care		9	66	6	3	84	785	10,7
	Labour		1	70	1	3	75	227	33,0
	Environment		4	26	2	1	33	127	26,0
	Education			29		4	33	150	22,0
	Other subjects of oversight			15	5	5	25	159	15,7
	Courts - civil and criminal - special - administrative			22 21 1	1 1		23 22 1	255 227 28	9,0
	Local-goverment		2	18			20	177	11,3
	Enforcement			15		1	16	93	17,2
	Transport and communications			11	2	3	16	100	16,0
	Defence		1	12		2	15	62	24,2
	Agriculture and forestry			8	1	1	10	62	16,1
	Customs		2	7	1		10	38	26,3
	Prosecutors			7			7	64	11,0
	Taxation		1	4	1		6	90	6,7
	Asylum and immigration		1	4	1		6	74	8,1
	Guardianship		1	4			5	44	11,4
	Highest organs of state			2	1		3	60	5,0
	Church			3			3	24	12,5
	Private parties not subject to oversight							11	
	Municipal councils							7	
	Total		35	680	37	39	791	4 538	17,4

* Percentages of decisions involving measures

No erroneous action was found to have taken place in 13% of cases (598) and there was no reason to suspect it in 39% (1,727). The complaint was not investigated in 31% of cases (1,399).

The most common reason for a complaint not being investigated was the fact that the matter was still pending in a competent authority. An overseer of legality does not usually intervene in a matter that is being dealt with in an appeal instance or other authority. Pending matters that were not investigated represented 20% of cases (910) in which decisions were issued. In addition, matters that do not fall within the Ombudsman's remit and, as general rule, those over five years old were not investigated.

When the complaints that were not investigated (1,399) are excluded from the examination, cases in which decisions involving measures were announced represented 24% of all investigated complaints (733/3,058).

No prosecutions for breach of official duty were ordered. 33 reprimands were issued and 647 opinions expressed. Rectifications were made in 33 cases in the course of their investigation. Decisions categorisable as proposals totalled 20, although stances on development of administration that in their nature constituted a proposal were included in also other decisions.

2.7 INSPECTIONS

Inspection visits to 58 places were made during the year under review (71 the previous year). A list of all inspections is shown in Annex 5. The inspections are described in greater detail in conjunction with the various categories of cases.

Two-thirds of the inspection visits were led by the Ombudsman or the Deputy-Ombudsmen and one-third by legal advisers from the Office. Five inspection visits that had not been announced in advance were to prisons and police detention facilities. The Norwegian Ombudsman Arne Fliflet, who was familiarising himself with his Finnish counterpart's inspections in prisons, went along on one of the visits.

Persons confined in closed institutions and conscripts are always given the opportunity for a confidential conversation with the Ombudsman or his representative during an inspection visit. Other places where inspection visits take place include reform schools, institutions for the mentally handicapped as well as social welfare and health care institutions.

Shortcomings are often observed in the course of inspections and are subsequently investigated on the Ombudsman's own initiative. Inspections also fulfil a preventive function.

2.8 COOPERATION IN FINLAND AND INTERNATIONALLY

Events in Finland

A seminar marking the 89th anniversary of the Ombudsman institution was held on 12.2.2009. Its theme was "The Ombudsman's activities and communications from the perspective of the media". The keynote speakers representing the media were Minna Holopainen, head of editorial office with the Finnish News Agency, Timo Huovinen, head of newsroom at the news channel YLE Uutiset, editorial editor Marjut Lindberg (Helsingin Sanomat) and crime reporter Rami Mäkinen (Oikeustoimittajat ry).

The Ombudsman's annual report for 2008 was presented to the Speaker of the Eduskunta on 28.5.2009, and the Constitutional Law Committee visited the Office on 3.6.2009.

The Ombudsman, the Deputy-Ombudsmen and the staff of the Office gave keynote addresses at and participated in numerous events in Finland during the year. One example of this was a festive speech on the theme of language rights by Ombudsman Paunio at the main event of the Svenska dagen heritage event for Swedish-speaking Finland in Pietarsaari/Jakobstad on 6.11.2009.

The Ombudsman's activities and communications were pondered together with media representatives at a seminar marking the 89th anniversary of the Office in February. Conversing here are Head of Editorial Office Minna Holopainen from the Finnish News Agency (left), Marjut Lindberg, an editorial writer with the daily Helsingin Sanomat, and Rami Mäkinen, a crime reporter with the evening paper Ilta-Sanomat.

International contacts

Ombudsman Paunio served as a member of the Board of the International Ombudsman Institute (IOI) until June 2009. She attended the meeting of the IOI's European section that took place in Vienna on 26–27.2.2009. The IOI's 9th World Conference and the celebrations marking the bicentenary of the Swedish Ombudsman took place in Stockholm on 9–12.6.2009. Ombudsman Paunio, Deputy-Ombudsmen Jääskeläinen and Lindstedt, Secretary-General Pajuoja and Senior Legal Adviser Stoor attended the event, where Ombudsman Painio made a presentation on the theme of "the Ombudsman as Human Rights Defender".

Ombudsmen from many different countries visited the Office during the year: Sozar Subari from Georgia and Armen Harutyunyan from Armenia on 15.5.2009, Yang-sun Chou from Taiwan on 4.6.2009, Javier Moctezuma from Mexico on 15.6.2009, Sayera Rashidova from Uzbekhistan on 22–23.10.2009 as well as Vice-Minister of Supervision of China Yufu Li on 9.11.2009.

Director Morten Kjaerum of the EU Agency for Fundamental Rights (FRA) visited the Office on 2.10.2009 and European Ombudsman Nikiforos Diamandouros on 28.10.2009.

In addition, there were visits to the Office by delegations from, among other places, Turkey, Libya, Angola, Russia, Argentina and Kyrgyzstan.

2.9 SERVICE FUNCTIONS

Services to clients

We have tried to make it as easy as possible to turn to the Ombudsman. A brochure intended for complainants is available in Finnish, Swedish, Sámi, English, German, French, Estonian and Russian as well as on the Internet also in Finnish and Swedish sign language. A complaint can be sent by post, fax or by filling in the electronic complaint form on our web site. The Office provides members of the public with services by phone, on its own premises or by email.

Two lawyers at the Office of the Ombudsman are tasked with advising members of the public on how to make a complaint. They dealt with some 2,700 telephone calls last year and about 160 people visited the office in person.

The Registry at the Office receives complaints and replies to enquiries about them, in addition to responding to requests for documents. Last year, the Registry received about 2,900 telephone calls. There were around 300 personal visits by clients and 350 requests for documents. The records clerk mainly provides researchers with services.

Communications

The media are informed of those decisions by the Ombudsman that are deemed to be of special general interest. About 30 bulletins outlining decisions made by the Ombudsman or a Deputy-Ombudsman were issued in 2009.

In addition, decisions of considerable legal significance are posted on the Internet. About 290 of them were posted during the year. Publications, such as annual reports and brochures, are likewise posted on our web site.

The Ombudsman's web pages in English are at the URL: www.ombudsman.fi/english, in Finnish at: www.oikeusasiamies.fi and in Swedish at: www.ombudsman.fi

At the Office, information needs are the responsibility of the Registry and the referendaries (legal advisers).

2.10 THE OFFICE

The Office of the Ombudsman is in the Eduskunta Pikkuparlamentti annex building at the street address Arkadiankatu 3.

The regular staff totalled 54 at the end of the year. They were, in addition to the Ombudsman and the Deputy-Ombudsmen, the Secretary General, five principal legal advisers and twenty-four legal advisers, two lawyers with advisory functions as well as an information officer and an online information officer, two investigating officers, four notaries, a records clerk, two filing clerks and eight office secretaries. A list of the personnel is shown in Annex 6.

In common with the legislature in general, the Office went over to the Eduskunta's new remuneration system during the year under review.

Some members of staff took part in a study trip to Brussels on 29–31.3.2009. Their tour included visits to the Office of the European Ombudsman, the Parliament and the Commission.

In accordance with its rules of procedure, the Office has a management group comprising, in addition to the Ombudsman, the Deputy-Ombudsmen and the Secretary-General, three representatives of the personnel and the Information Officer as secretary. Discussed at meetings of the management group are matters relating to personnel policy and the development of the Office. The Management Group met 13 times in 2009.

The 90th anniversary of the establishment in Finland of the Ombudsman institution was celebrated in 2009. In honour of the jubilee, the sculptor Hannu Siren designed the Ombudsman sculpture "Kaikki", which means "all" or "everything".

2.11 OMBUDSMAN SCULPTURE

In 2009 it was 90 years since the Parliamentary Ombudsman institution was established in Finland in the 1919 Constitution. In honour of the jubilee year, an Ombudsman sculpture was commissioned from the artist Hannu Siren. It is a serially produced work that is used in the manner of a medal. 20 silver and 150 bronze copies have been made by the mint Rahapaja Oy. The diameter of the piece's spherical part is 44 mm and the dimensions of its ring 4 mm x 4 mm x 80 mm.

The sculpture is called "Kaikki", which means "all" or "everything". Its world of form can be imagined as expressing interaction between the individual and the community, the universality of human rights or the human dignity of the individual whom the Ombudsman protects.

The Ombudsman may award the sculpture to a Finnish or foreign person, authority or organisation that has meritoriously promoted legality and implementation of fundamental and human rights. The silver version is intended as a recognition for exceptionally commendable deeds. A list of the sculptures awarded is kept in the Office of the Parliamentary Ombudsman.

The Ombudsman sculpture has been made in silver and bronze versions. The leather pouch that goes with the sculpture was designed by Hannu Siren together with Ilkka Niskala, who made it.

3. Fundamental and human rights

The most important observations concerning implementation of fundamental and human rights that were made in oversight of legality during the year under review are compiled in this section.

By fundamental rights is meant the rights that are guaranteed everyone in Chapter 2 of the Constitution. Human rights, in turn, refer to the rights of a fundamental nature to which all are entitled under international conventions that are binding on Finland under international law and have been transposed into national legislation. In Finland, national fundamental rights and international human rights complement each other to form a legal protection system.

The fundamental rights that were confirmed in the constitutional revision of 1995 and enshrined in the then Constitution Act were included with unchanged factual contents in the new Constitution that entered into force on 1.3.2000. The international human rights obligations that are binding on Finland have remained largely the same since then. Especially in interpreting and applying human rights, the case law of the relevant oversight bodies, in which the more detailed contents of these rights are explicated and over time partly altered, must be taken into account.

This review begins from the international level with a summary of the year's human rights events. Most of this section is devoted to a review, articulated by fundamental rights, of decisions by the Ombudsman in 2009 that involved implementation of one or several fundamental and human rights.

3.1 HUMAN RIGHTS EVENTS

The fundamental rights dimensions of the European Union legal system have developed over the years. The latest document revising EU treaties is the Lisbon Treaty, which was signed on 13.12.2007 and entered into force on 1.12.2009.

With the adoption of the Lisbon Treaty, the EU became a legal person and can accede to, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Treaty is intended to streamline and clarify the Union's decision making. Under its provisions, the roles, tasks and composition of the institutions are altered to correspond to the needs of an enlarged Union.

The most important reform from the perspective of citizens' protection under the law is that the Union Charter of Fundamental Rights acquires the status of a legally binding document. The Charter defines the fundamental rights of citizens that the Union institutions must observe in their actions. It is binding on also the Member States when they apply EU law. The Treaty will also increase the openness of decision making. Meetings of the European Council, which comprises ministers from the Member States, are open when they deliberate and decide on legislative proposals.

The Vienna-based Human Rights Agency began its work on 1.3.2007. The Agency concentrates in its activities on fundamental rights in the field of Union legislation. It functions as the Union's general expert on fundamental rights, supporting both the Union and the Member States in their efforts to take fundamental rights more comprehensively into account in EU legislation and their other functions. The independent Agency collects, analyses and distributes information about fundamental rights within the area of application of Union law.

The Agency's first operational framework for a five-year period was confirmed in February 2008. It specifies the target areas in which the Agency can, in accordance with its founding decree, collect, analyse and distribute information as well as draft reports and make submissions. The areas of emphasis that have been chosen for the Agency's work include questions relating to racism and discrimination, children's rights as well as to asylum-seekers and migrants.

The principles underlying and the objectives of Finland's human rights policy are set forth in the Government report on Finland's human rights policy (VNS 7/2009 vp). The report was submitted to the Eduskunta on 3.9.2009. In it are examined both Finland's international activities in the field of human rights and implementation of key human rights in Finland. The starting point in Finland's human rights policy is the universality, indivisibility and interdependence of human rights. Promotion of collective rights as well as actions to combat discrimination are also key components of the human rights policy. The policy is pursued openly and with a view to cooperation. According to the report, the Government regards Finnish human rights policy as a means of creating a world that is fairer, more secure and more worthy of human dignity than now.

In autumn 2009 the Ombudsman attended hearings of the Foreign Affairs Committee and the Social Affairs and Health Committee to outline her views on the report. She drew attention in her statements to, inter alia, the fact that the public authorities should have a long-term strategy in order to be able to safeguard implementation of fundamental and human rights. For example, the Government could either in the government platform or in another binding way define its policy lines in relation to fundamental and human rights, i.e. assess certain sub-areas as especially important and urgent focuses of development. After that, the policy should be implemented in a planned and supervised manner. At the same time, the public authorities would commit themselves to ensuring availability of the resources needed to implement the programme.

Secondly, the Ombudsman drew attention to the obligation on the State to provide compensation for damages caused by the exercise of public power, i.e. its responsibility to make recompense for violations of fundamental and human rights. The Finnish legal system does not at present offer effective protection under the law, although the responsibility of the public authorities to make recompense for violations of human rights is regarded as being an intrinsic part of protecting fundamental and human rights.

The Foreign Affairs Committee took the view in its submission (UaVM 1/2010) that the drafting of a national action plan for implementation of fundamental and human rights in Finland would be a natural follow-on from the Report on Human Rights Policy. In the view of the Committee, the national action plan could be drafted early in the next Government's term and combined with drafting of the government platform. The general lines of fundamental and human rights policy would be defined in the government platform and given concrete form in a separate action plan. At the same time, a commitment would be made to ensuring the availability of the resources needed for coordination and implementation of the action plan. Deliberation of the report in the Eduskunta is continuing in 2010.

The Committee of Ministers of the Council of Europe established a committee to deliberate alternative formulations of a convention against violence towards women and domestic and close-relationship violence. The committee's work is continuing in 2010. Finland is participating in it.

Finland is represented in a working group that is examining opportunities to draft an optional protocol to the UN Convention on the Rights of the Child. A decision as to whether or not to extend the working group's mandate will be taken at the spring 2010 meeting of the Human Rights Council.

A working group appointed by the Ministry for Foreign Affairs continued examining the prerequisites for ratification of the Council of Europe Convention on Action against Trafficking in Human Beings. The working group also has the task of further examining the prerequisites for ratification of the Optional Protocol to the UN Con-

vention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine as well as its additional protocols on Prohibition of Cloning Human Beings and Transplantation of Organs and Tissues of Human Origin were ratified in December 2009.

A working group appointed by the Ministry for Foreign Affairs as long ago as September 2006, and which includes also a representative of the Office of the Parliamentary Ombudsman, continued to study the prerequisites for ratification of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It has been proposed in conjunction with the preparatory work on the matter that the Parliamentary Ombudsman be appointed as the national oversight body that the Optional Protocol presupposes. The working group's term has been extended until 31.3.2010, and its work is still in progress at time of writing. Owing to the delay in ratifying the Optional Protocol, the Ombudsman can not unfortunately for the moment participate in the Council of Europe's and the European Union's joint European NPM project, which got under way on 1.1.2010 and within the framework of which there would be the possibility of, inter alia, taking part in various countries in in situ inspections conducted by the authority designated as the national OPCAT oversight body as well as discussing and exchanging experiences on good inspection practices.

3.2 OBSERVATIONS BY HUMAN RIGHTS OVERSIGHT BODIES

In January 2009 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) gave the Finnish Government a report on its inspection visit to Finland on 20–30.4.2008. The Committee's comments are reviewed in the Ombudsman's annual report for 2008. In its report published immediately after the visit the Committee drew attention to especially three shortcomings: remand prisoners being kept in police prisons, the so-called slopping-out cells in Helsinki prison as well as isolation practices in the Vanha Vaasa psychiatric hospital.

The Finnish Government gave its reply to the report on 17.6.2009. In February 2009 a working group was set up to examine ways of reducing the number of remand prisoners kept in police stations. It is also looking into ways of improving the conditions in which remand prisoners are kept in police detention facilities, such as arranging outdoor exercise and other activities as well as access to health care services.

With respect to detention centres for foreigners in Finland it was stated in the reply that the Ministry of the Interior has begun discussions with authorities in various sectors of administration with a view to commencing planning for a second detention unit. A third nurse has been employed at the Metsälä detention unit and new clients have the opportunity to undergo a medical examination as soon as possible after their arrival. In addition, measures have been commenced to arrange for patients to meet a psychologist at the Metsälä unit and for a nurse to make daily calls to persons who are deemed to be isolated.

With respect to prisons, the CPT expressed the hope that Finland would bring its target date of having sanitary facilities in cells by 2015 considerably forward. The number of slopping-out cells in use at the beginning of 2009 was 508. A total of 117 of them were removed in Konnunsuo and Kerava prisons in spring 2009. Their number will decline further in 2011, when Konnunsuo is closed and basic renovations are completed in Kuopio and Mikkeli. After that, there will still be slopping-out cells in the Hämeenlinna and Helsinki prisons. According to the report, possibilities of carrying out basic renovations in them and removing slopping-out cells are being studied. The use of slopping-out cells in the mother-and-child section in Hämeenlinna was phased out at the beginning of 2010 as cell renovation work was completed.

The Committee also drew attention to conditions in the psychiatric ward in Vantaa Prison and recommended that additional personnel be engaged and that the time a special nurse is in attendance be increased. It was stated in Finland's reply that the possibility of converting the ward into a psychiatric hospital operating round the clock was being looked into.

With respect to psychiatric institutions, the CPT recommended that when placing a patient in involuntary treatment or deciding to continue this treatment, the opinion of a psychiatrist who is independent of the treating hospital should be available. The Government stated in its reply to the CPT that the assessment of four doctors as to whether or not the preconditions for placing someone in care are met are required whenever someone is placed in involuntary care. It has been proposed in the national mental health and intoxicants plan that the practice of also requesting the evaluation of an outside expert be created also in psychiatric care. That way, the reliability and openness of decision making as well as the patient's protection under the law could be increased. The need to revise legal provisions is being assessed in conjunction with amendment of the Mental Health Act.

On 3.12.2009 the Council of Europe's anti-corruption body GRECO (Group of States against Corruption) published its evaluation of the measures taken by Finland to implement the recommendations concerning openness of party funding and criminalising bribery. GRECO had given its recommendations concerning an action plan addressing these themes already in December 2007.

GRECO took the view that the new legislation brought into force improved the transparency and oversight of candidates' funding. It also believed that its recommendations had been followed with respect to candidates and noted that similar legislation with the same correct policy thrust was being drafted in relation to party funding. GRECO likewise noted that also reform measures to implement its recommendations concerning criminalisation of bribery had been commenced. In GRECO's view, the Finnish authorities are clearly endeavouring to implement its recommendations concerning criminalisation of bribery. Finland must report on follow-up measures by 30.6.2011.

3.2.1 COMPLAINTS AGAINST FINLAND AT THE EUROPEAN COURT OF HUMAN RIGHTS

A total of 489 new complaints were registered against Finland at the European Court of Human Rights in 2009, considerably more than in the previous years (276 and 268). At the end of the year, 222 complaints were awaiting resolution in Committee composition, 140 in Chamber composition and a Government reply had been requested in relation to 46 complaints. Thus 408 complaints against Finland were pending before the Court (286).

The great majority of complaints made to the European Court of Human Right are not admitted for examination. This is done through a so-called Committee decision (3 judges). The respondent State is not informed of this decision; instead, notification is made, in writing, only to the complainant. Thus the matter does not call for measures with respect to the State. In 2009 a complaint was ruled inadmissible or was struck from the list of cases in 342 cases (461), of which 304 (241) by Committee decision and 38 (13) by Section decision.

In Chamber composition (7 judges) the Court makes a decision as to whether or not a complaint meets the admissibility criteria. A decision confirming a friendly settlement can also be made, whereby the complaint is struck from the Court's case list. Final judgements are given in Chamber composition or by the Grand Chamber (17 judges). In its judgement, the Court resolves a case concerning an alleged violation of human rights or confirms a friendly settlement.

Finland has not ratified the additional protocol to the Treaty of Human Rights that would, inter alia, make it possible in a certain framework for a judgment to be given also in Committee composition.

The Court issued 29 judgments concerning Finland during the year under review, i.e. markedly more than in the previous year (9). In all but one judgment, a violation of a right guaranteed in the Convention on Human Rights was established. The one exceptional

case involved a situation in which the Court had already earlier found a human rights violation, but in which it was dealing, as another case, with the question of the State's liability for compensation. Arising from the judgments, the Finnish Government was ordered to pay compensation sums totalling €204,000 (117,000 due to length of proceedings and a total of €87,000 for other breaches of human rights).

In addition to judgments, the Court also issued very many, 38, decisions made in Chamber composition (13 in 2008). Of these, 28 ended with a friendly settlement between the complainant and the Government (with the Government acknowledging a breach of human rights in 14 of these cases). The Government paid compensation totalling €182,000 in settled cases, of which sum by far the greatest part, i.e. €155,000 was for undue delay in trial proceedings.

In five Chamber decisions the complaint was inadmissible as manifestly ill-founded and in three because domestic remedies had not been exhausted. One complaint was struck from the list of cases because it had been withdrawn, one because of the complainant's passivity and one because the situation had been rectified nationally through an extraordinary appeal.

In altogether 67 rulings (judgments and decisions) in Chamber composition the State of Finland was ordered to pay a record total of €385,000 as compensation in friendly settlements or judgments relating to breaches of human rights (about €165,000 in 2008).

A very exceptional feature during the year under review was the number, 228, of interim measures concerning Finland. Requests for interim measures are generally associated with situations in which a person who has been ordered to be expelled from the country asks for a postponement of deportation until the European Court of Human Rights rules on a complaint made at the same time against being expelled from the country. The Court ruled on 220 of them during the year and granted an interim measure in 139 cases, refused it in 80 cases and in one case found it inadmissible on the ground that it had been made too late. In 20 cases the Court reversed a positive decision that it had earlier made.

By the end of 2009 Finland had received a total of 128 judgments from the Court, and 54 complaints had been decided on (through a decision or a judgment) as a result of a friendly settlement or a unilateral declaration by the Government. The number of judgments finding a violation of human rights that Finland has received from the Court is considerable. Between 1.11.1998 and 31.12.2009 Finland received 99 such judgments, whereas all of the other Nordic countries together received 54 in the same period. In 2009 Finland was found to have violated human rights in 28 judgments, whereas, for example, Sweden and Norway received three each. In one judgment for each country, a human rights violation was established. The Court gave three judgments against Denmark, and human rights violations were established in all of them.

A significant share of the human rights violations found in the judgments against Finland has concerned unreasonable length of trials. In this respect, our legal situation has improved in general courts of law since the introduction on 1.1.2010 of a so-called delay complaint and the entry into force of legislation providing for compensation for delay in a trial. Finland has also received numerous judgments for reasons other than the length of proceedings.

Cases that ended through a friendly settlement

In the cases that ended through a friendly settlement (28) the complainant had withdrawn the complaint to the Court when the State of Finland had offered to pay compensation for non-pecuniary damage and costs and expenses. Associated with some of the cases was a unilateral declaration by the Government, i.e. an admission that a human rights violation has taken place (marked with an asterisk - * - in the table). Most cases that ended with a friendly settlement have concerned undue trial delays, but also other kinds of cases have been settled by agreement.

Viikanoja (6.1.2009)*	Administrative court proceedings	11 years	€8,000
Flemming (6.1.2009)	Civil proceedings		€2,000
Urmas (6.1.2009)	Civil proceedings		€2,200
Kossila (6.1.2009)	Civil proceedings		€1,800
Retva (6.1.2009)	Civil proceedings		€2,200
Lehtonen (6.1.2009)*	Civil proceedings	nearly 14 years	€1,700
Nevala (20.1.2009)	Criminal proceedings	ca. 6 years 6 months	€2,600
Lehtonen (17.3.2009)	Criminal proceedings	nearly 10 years	€9,500
Loukola (19.5.2009)	Criminal proceedings	over 10 years	€10,500
Vuori (19.5.2009)	Criminal proceedings	over 10 years	€10,500
Molander (6.10.2009)*	Criminal proceedings	9 years 3 months	€6,000
Niemelä (17.11.2009)	Criminal and civil proceedings	over 10 years	€13,000
Helin (3.11.2009)	Criminal proceedings		€8,500
Siitonen (6.10.2009)*	Criminal proceedings	ca. 8 years	€9,900
S. (6.10.2009)*	Criminal proceedings		€3,150
Liebkind (6.10.2009)*	Criminal proceedings	n. 10 years	€6,000
Landgren (17.11.2009)*	Criminal proceedings	n. 10 years	€6,400
Lindholm and Venäläinen (1.12.2009)*	Criminal proceedings	n. 6 years 6 months	€5,700
Sormunen (9.6.2009)	Civil proceedings		€13,500
Sormunen (9.6.2009)	Civil proceedings		€13,500
Manner (23.6.2009)*	Civil proceedings	7 years 3 months	€4,300
Liuksila (16.6.2009)*	Civil proceedings	9 years 11 months	€8,000
Tossavainen (5.5.2009)	Administrative court proceedings		€3,800
Oinaala (7.4.2009)*	Administrative court proceedings		€4,500
Manninen (5.5.2009)	Administrative court proceedings		€3,300

Agreed settlements in cases concerning length of proceedings

Tarpeenniemi (5.5.2009)	Court of Appeal screening	€6,000
Jokinen (1.9.2009)*	Respect for the privacy of the home in rendering executive assistance to a summons server	€13,650
Aura (20.10.2009)*	Opening a letter in a hospital without the recipient being present	€7,500

Agreed settlements in cases other than those concerning length of proceedings

Complaints that were ruled inadmissible through a Chamber decision as manifestly ill-founded

In the Ahlskog No. 2 case (6.10.2009) the length of time that a civil case had taken, about 7 years 2 months, did not prove to have been an undue trial delay attributable to the Finnish authorities, because the complainant had through his own actions, such as numerous requests for postponements and notifications of crimes on the part of judges, delayed the court proceedings.

In the Mbengeh case (24.3.2009) the Court ruled as inadmissible a complaint in a case in which a foreign person who had been living in Finland for a long time and founded a family here had been deported to his country of origin because of a drug offence and an order imposed under which he could return to Finland only 5 years after the deportation decision. The person had a son aged about 10 in Finland and otherwise strong ties to the country. The Court has in its case law approved a strict national line on drug trafficking.

The issue in the Huuhtanen case (13.10.2009) was the impartiality of an unemployment security board in a case concerning unemployment per diem benefits connected with one of its employees quitting, citing a poor workplace atmosphere and workplace bullying as the reasons. The Court ruled that the complainant's assertions about the partiality of the instances that had dealt with the case and the impossibility of expressing an opinion on all of the trial documentation were inadmissible as manifestly unfounded.

In the Lappalainen decision (20.1.2009) the Court postponed handling of a question concerning the length a compensation claim case had taken until a later judgment (judgment on 3.11.2009), but in its decision ruled the complainant's complaint relating to freedom of speech inadmissible as manifestly unfounded. What was at issue was decision KKO 2005: 136 of the Supreme Court, in which the Supreme Court had taken the view, correctly in the assessment of the Court of Human Rights, that the public interest associated with information originating in a public trial weighed heavier in the balance than protection of the complainant's privacy (the full name of the complainant, who had committed a grave crime of violence, had been mentioned in a newspaper article).

Cases that otherwise ended with a Chamber decision

A case concerning the transition provision in the Act bringing the Paternity Act into force was struck from the Court's list because of the complainant's passivity when he had failed to reply to letters sent to him by the Court (*Parviainen* 20.1.2009). Several other complaints concerning the same issue are still pending before the Court. One case concerning a tax increase was struck from the list when the complainant withdrew the complaint on his own initiative (Granath 20.1.2009).

The *Parviainen* case (17.11.2009) was struck from the list because the Supreme Administrative Court had, subsequent to a complaint being made to the Court of Human Rights, quashed an appealable decision of the Insurance Court concerning rehabilitation assistance on the ground of processual errors and referred the case back for a fresh hearing.

The issue in the *Janatuinen* complaint (20.1.2009) was interception of a telephone conversation by the police of the wife of a suspect. The Court decided that the case was inadmissible on the ground of failure to avail of domestic legal remedies, because the complainant's wife had not demanded compensation or a penalty in a court, but had instead only complained to the Parliamentary Ombudsman (200/4/01). Failure to exhaust domestic legal remedies was involved in also the *Raninen* decision (17.2.2009), in which the complainant, who was subsequently convicted of murder, should have complained to a court about a prolongation of his time in remand custody in order to be able to complain to the European Court of Human Rights.

The complainant in the *Leino* case (24.3.2009) had not availed of his right to appeal against a decision of the Social Insurance Institution Kela to end his retirement pension, and thus he could not have appealed to the Court without further ado. Also at issue in the case were the reasons on which a later decision of the Insurance Court had been based, and with respect to which the complaint was manifestly unfounded.

Kukkonen No. 2 (13.1.2009)	Administrative court proceedings	6 years 3 months	€4,140
Kaura (23.6.2009)	Administrative court proceedings	4 years 7 months	€5,915
G. (27.1.2009)	Civil proceedings	4 years 9 months	€4,000
Lappalainen (3.11.2009)	Civil proceedings	6 years 1 months	€3,500
Petikon Oy ja Parviainen (27.1.2009)	Civil proceedings	12 years 1 months	€9,000
Horsti (10.11.2009)	Civil proceedings	yli 6 years	€1,100
Jaanti (10.11.2009)	Criminal proceedings	6 years 7 months	€2,500
Taavitsainen (8.12.2009)	Criminal proceedings	7 years 8 months	€7,305
Manninen (14.4.2009)	Criminal proceedings	7 years 10 months	€4,000
Aiminen (15.9.2009)	Criminal proceedings	6 years 8 months	€5,000
Knaster (22.9.2009)	Criminal proceedings	yli 9 years	€3,500
Petroff (3.11.2009)	Criminal proceedings	9 years	€5,000
Nieminen (3.11.2009)	Criminal proceedings	6 years	€3,500
Landgren (10.11.2009)	Criminal proceedings	6 years 1 months	€3,000
Vienonen ym. (24.3.2009)	Civil proceedings	11 years 6 months	€23,800
Toive Lehtinen No. 2 (31.3.2009)	Civil proceedings	9 years 11 months	€5,000
Oy Hopotihoi Suomen Lelukamarit Toy & Hobby Ltd och Matti Kangasluoma (22.9.2009)	Civil proceedings	8 years 3 months	€5,000

Judgments concerning undue delays in trials

Judgments concerning the rights of a suspect and fair trial

The issue in the *Sorvisto* judgment (13.1.2009) by the Court of Human Rights was the undue length of time that a still pending criminal case (9 years 8 months) and civil proceedings (14.5 years up to the Court's judgment) had taken and that domestic legislation did not provide effective legal remedies (Articles 6 and 13) for such eventualities. It was found in the judgment that also Article 8 had been breached when a lawyer's office was searched and a document was seized. The Court took the view that Finnish regulation specifying the scope and content of lawyer-client confidentiality was unclear and noted that there was no independent or judicial supervision when granting the search warrant. The matter must be regulated by clear and detailed provisions, which set guarantees against abuses and arbitrariness. As a result of inclarities in domestic law, the complainant had not been given the minimum protection to which he would have been entitled in accordance with principles of the rule of law in a democratic society.

The question in the *Natunen* case (31.3.2009) was violation of an accused person's rights (under Article 6) when tapes of recorded telecommunications had been destroyed under the provisions of the law then in force

by decision of the police already during a criminal investigation. The requirements of Article 6.1 of the Convention on Human Rights are not met if the question of what criminal investigation material is relevant is left to the decision of the investigating authority either alone or together with a prosecutor. A violation of an accused person's rights, when the police destroyed some of the tapes of recorded telecommunications because they considered them irrelevant to the case, was established in also the Janatuinen judgment (8.12.2009).

The question in the *Vilén* judgment (17.2.2009) was whether the equality of the parties to the case was violated because doctors' statements submitted to a court had not been given to the parties for their information. However, the essential content of the doctors' statements had been incorporated into the statement given to the examination board by the Social Insurance Institution Kela, and on which the complainant was allowed to comment. What was contrary to Article 6 was that the complainant had not been given the opportunity to assess whether the documents included in the trial documents required comments by him.

The debtor who was the complainant in the *Marttinen* judgment (21.4.2009) had received a demand in conjunction with a distraint examination to supply wealth data on pain of a fine, although he had at the same time been the subject of a criminal investigation of a suspicion that he had supplied false wealth data during earlier examinations and bankruptcy proceedings. The Supreme Court had in its decision KKO 2002:116 accepted the procedure, but the Court of Human Rights took the view that what had been involved was a breach of protection against self-incrimination. As a result of the judgment, the Supreme Court later had to quash its earlier precedent decision on protection against self-incrimination KKO 2009:27, which it had issued a few days before the Marttinen judgment, with a new precedent decision KKO 2009:80.

A demarcation by the Supreme Court (KKO 2004:94) was involved also in the *Kari-Pekka Pietiläinen* case (22.9.2009). Deliberation of a complaint by the accused, who had been invited to attend the Court of Appeal in person, had been dismissed when he failed to attend the hearing, although his legal counsel was present. The Supreme Court deemed the action to be in accordance with Chapter 26, Section 1.1 of the Code of Judicial Procedure, and did not take the view that dismissing the case had been contrary to Article 6. 3 (c) of the Convention. The Court arrived at the opposite conclusion, finding the dismissal in the circumstances of the case to be a very strict and severe sanction.

The prohibition on being tried twice for the same offence (ne bis in idem) was the issue in the *Ruotsalainen* judgment (16.6.2009). The Court took the view that a person who had used fuel oil, which is taxed more lightly than automotive diesel, to run his car had been punished twice when, on the one hand, he was fined for his act and, on the other, was ordered to pay three times the fuel excise tax under the provisions of the Automotive Fuel Act. The Court found also the last-mentioned sanction, which had domestically been regarded as an administrative measure, to constitute a criminal charge in the meaning of Article 6. The facts that were the focus of the mentioned procedures hardly differed from each other and had to be regarded as essentially the same from the perspective of Article 4 of the 7th Additional Protocol.

The *R.H* case (2.6.2009) concerned the screening procedure that a court of appeal had followed in a criminal case. The court had, without arranging an oral hearing and examining the matter any further, upheld the sentence handed down by a district court in the case. The Court of Human Rights took the view that it would not have been possible in the court of appeal to determine the credibility of oral testimony without directly examining the accounts personally given by the complainant and the parties to the case.

In the *A.L.* case (27.1.2009) the complainant's conviction for sexual abuse of a child had been based on indirect evidence, namely on the account of an expert doctor who had interviewed the child's mother and the child. Sufficient guarantees from the perspective of the accused's rights were not associated with the procedure in which evidence was given, because he had not been given the opportunity to put questions to the child at any stage of the trial or criminal investigation. The *D.* case (7.7.2009) involved a similar error in a criminal trial, because in a criminal case of a person accused of sexually abusing a small child, the child's account was an essential ground on which the judgment was based, although the child had not been questioned in either the criminal investigation or the trial and the accused had not been given an appropriate opportunity to put questions to the child within the framework of a medical examination.

Judgment concerning freedom of speech

The *Eerikäinen* et al. judgment (10.2.2009) revealed a violation of the freedom of speech. The Supreme Court had in its decision KKO 2001:96 ordered a journalist who had written an article about an ongoing criminal case involving gross fraud, the editor-in-chief and the newspaper publisher to pay damages for infringement of privacy. The Court of Human Rights took the view that the events reported and the quotations had come from the published indictment sheet, something on which the Supreme Court had not adopted a stance. Nor, in the light of the Supreme Court's decision, had it been obvious what significance it had given to publication of a picture of the accused in a criminal trial compared with publishing the person's name. In the view of the Court of Human Rights, the theme of misuse of public funds, which was what the article was about, was a question of societal importance, and the publication of the article had been justified in order to promote public discussion. The Court of Human Rights concluded that the Supreme Court had not presented sufficient reasons for intervening in the complainants' freedom of speech.

New communicated complaints

A response from the Government was requested in relation to 38 new complaints. The number was still very high, although it fell short of the previous year's record level (69 communicated new complaints).

The Court was able to issue its decisions on some of the new communicated complaints before the end of 2009: either because the Government had in the manner described in the foregoing agreed the matter in a way that concluded the proceedings or by expeditiously issuing a decision in the case. 15 of the new complaint cases remained pending or awaiting future resolution. They involved, besides alleged undue delays in criminal trials, civil proceedings and exercise of administrative law (6 cases), also failure to supply documentary material to interested parties (2 cases), a house search and the compatibility with the Treaty of Human Rights of the associated legislation providing for legal remedies, implementation of freedom of speech, implementation of protection against self-incrimination in a combined situation of a distraint examination and the examination of an economic crime, observance of the principle of ne bis in idem in a tax-increase procedure and the economic crime case that followed it, forcible administration of medication as well as the restrictions of freedom of movement that are caused by the Municipality of Domicile Act.

3.3 THE OMBUDSMAN'S OBSERVATIONS

3.3.1 FUNDAMENTAL AND HUMAN RIGHTS IN OVERSIGHT OF LEGALITY

The following text contains a report of the observations concerning implementation of fundamental and human rights that the Ombudsman made in the course of oversight of legality. The observations are based on complaints and own-initiative investigations on which decisions were issued during the year under review as well as on information that came to light in the course of inspection visits. The presentation below is not intended to be the Ombudsman's overall view of the state of affairs regarding fundamental and human rights in Finland. Only a limited sample of information describing the effectiveness with which administration functions is revealed through complaints.

The purpose of the section is to outline a general picture of implementation of fundamental rights in administration and other activities that fall within the Ombudsman's powers of oversight. The feature of the de-

cisions that is specifically highlighted here is their key fundamental and human rights-related content – several decisions will be dealt with in greater detail in the sections dealing with specific categories of cases, where the angle of examination is broader. It has not been possible to include here all of the decisions that are of significance from the perspective of fundamental and human rights.

3.3.2 SECTION 6 EQUALITY

Equal treatment of people is one of the cornerstones of our legal system. It is enshrined in Section 6 of the Constitution. However, an acceptable societal interest may justify people being treated differently. In the final analysis, it is a matter for the legislator to assess the generally acceptable reasons that in each individual situation justify giving people or a group of people a different status. The obligation on the public authorities to promote real equality in society was underscored in conjunction with the revision of the fundamental rights provisions of the Constitution. Equality-related aspects are often invoked in complaints that the Ombudsman receives.

Equality between patients with respect to their access to medical care supplies and equipment is not implemented in all cases, because practices in relation to receiving these items and arranging their distribution vary from one municipality to another. The practices observed by municipalities differ also as to whether a decision in a matter can be appealed against. In addition, some municipalities charge for delivering treatment supplies and equipment to clients' homes, which makes it own contribution to inequality between citizens. It is also unclear how the right to appeal against a charge imposed on a client can be implemented (1860/2/07). A set of guidelines issued by an executive medical doctor that treatment be limited in the final stage of life in a hospital was contrary to the Constitution's prohibition on discrimination insofar as it contained a mention that "for example, seriously mentally handicapped persons do not generally belong within the sphere of intensive care" (3624/4/07).

Real equality between children in day-care centres would be promoted if lactose-intolerant children were offered a substitute beverage instead of milk with their meals. Then, offering the substitute product, in addition to water, to lactose-intolerant children would give also them the opportunity to choose the beverage they had with meals in the same way as other children. In the view of the Ombudsman, this procedure would be in accordance with the objective of real equality and would safeguard the real equality of children in meals catering at day-care centres better than had been done (3722/4/07).

The practices followed by State Provincial Offices in calculating the work experience of applicants for a taxi licence differed from each other, something that the Deputy-Ombudsman did not regard as acceptable from the perspective of equal treatment of applicants for taxi licences. In addition, variation has been possible even within the same province. The fact that what is involved is the right guaranteed as a fundamental one in Section 18 of the Constitution – albeit one that is subject to a permit –, namely to practice a livelihood, emphasises the importance of assessing applicants on a basis of equality (2844/4/07*).

The Alcohol Act did not contain provisions with regard to the eligibility of a person in charge of a place where alcohol is dispensed or of that person's deputy that stated for what length of time the person's earlier behaviour can or should be allowed to be an influential factor when assessing his or her suitability for the task. The interpretation practice varied from one State Provincial Board to another. Also the interpretations of the Ministry of Social Affairs and Health's National Product Control Agency for Welfare and Health (STTV) and those of the Ministry itself differed from each other. The Deputy-Ombudsman did not find the situation acceptable from the perspective of equal status of applicants for the post of manager of a place where alcoholic beverages are served or of a person who substitutes in such a post (1901/4/07*).

A decision by a municipality to compensate for client fees paid by veterans corresponded to solutions adopted in national legislation. Also the practice of compensating for the charges paid by veterans' wives

seemed to support the objective of rehabilitating veterans that is expressed in legislation. What made interpretation of the Municipal Council's decision difficult, however, was assessment of whether the various municipal authorities had exercised their discretionary power lawfully. It must be taken into consideration that a decision to compensate for the health care fees paid by particular groups means an intervention in equality between municipal residents. For that reason, what groups and what fees the decision applies to must be stated unambiguously in the decision (236/4/08).

Equal treatment of prisoners presupposes that there must be acceptable reasons arising from circumstances when they are treated unequally when meeting visitors in different prisons (3016*, 3042 and 3044/4/07).

There were no open prison facilities for female prisoners in the Eastern sanctions region of Finland. From the perspective of equal treatment, it is untenable if the part of the country in which a person lives can determine whether or not a woman serving a short sentence or a conversion sentence has the possibility in practice of being admitted to an open prison (324/4/08*).

The Prison Act gives a prisoner the right to contact the outside by phone. Because persons with impaired hearing can not exercise this right with card phones, the Deputy-Ombudsman considered it advisable and justified that when considering granting permission for electronic communications, a prisoner's hearing disability should be taken into account as a reason for granting permission (1607, 1608 and 1954/4/08).

A Member of Parliament lacked travel documents, but was allowed to leave the country. The regular practice in border checks is that a person is prevented from leaving the country if he or she has defective travel documents. In a situation comparable to the one involving the MP, an "ordinary" citizen would have been prevented from leaving the country because he or she lacked travel documents. The facts that came to light in the case were not sufficient to justify a deviation from the normal practice in a border check and, evaluated objectively, were not tenable, either. Examined from the perspective of equality, the action merited criticism (564/4/07*).

The Social Security Appeal Board advertised a vacant post only on its own notice board. The procedure was not open and public as an action by an authority can be required to be. The practice likewise did not treat all applicants for the post in question equally (2831/4/07*).

Prohibition on discrimination

The prohibition on discrimination enshrined in Section 6.2 of the Constitution complements the equality provision. It requires that no one may, "without an acceptable reason", be placed in a more or less favourable position than others.

The Unemployment Fund for Salaried Employees had an acceptable reason for treating people differently when it processed benefit applications from completely unemployed and temporarily laid-off persons faster than those from persons who had an income while unemployed. That had happened in at least June-August 2009. The processing order followed by the Fund could not be regarded as a procedure which placed its members applying for benefits in unequal positions without a reason. In the view of the Deputy-Ombudsman, however, the Fund must not act in such a way that the times taken to process applications from members who have an income while unemployed would become unduly longer than the time taken to process applications from members who have no income at all while unemployed (2057 and 2098/4/09).

Finnvera Oyj did not violate equality when it offered a form of loan meant for members of only one gender (women entrepreneurs loan). The women entrepreneurs loan promotes and supports business ventures by women in a situation where fewer women than men become entrepreneurs. The objective is to achieve real equality and equal status. The procedure was necessary and proportionate and did not lead to discrimination on the level of the individual, because a similar form of loan, i.e. a small entrepreneur loan, was available also for men (2957/4/09).

The right of children to equal treatment

The equality provision of the Constitution contains a special reminder that children have a right to equal treatment and that they are entitled to influence decisions concerning them to the degree that their level of development allows. On the other hand, as a group with less power and who are weaker than adults, they need special protection and care. The provision also offers a ground on which children can be given positive special treatment to ensure that their equal status relative to the adult population can be safeguarded.

Placing a child in a place in the general conference area of a family support centre without its own bed for nearly a month did not meet the obligation on the public authorities that is to be drawn from the Constitution to safeguard the child's wellbeing while he or she is in care. The procedure was also contrary to the Child Welfare Act (1127/4/08).

3.3.3 SECTION 7 THE RIGHT TO LIFE, PERSONAL LIBERTY AND INTEGRITY

A central objective of the State is to safeguard integrity in accordance with human dignity in society. This is the starting point for all fundamental and human rights. The prohibition on treatment that offends against human dignity applies to both physical and mental treatment. It is intended to cover all cruel, inhumane or degrading punishments or other forms of treatment.

Protection of fundamental rights applies to the individual's life and liberty as well as to personal integrity and security. There are two dimensions to safeguarding physical fundamental rights: on the one hand, the public authorities must themselves refrain from breaching these rights and, on the other, they must create the conditions in which these fundamental rights enjoy the best-possible protection against also private violations. The latter dimension is involved when, for example, people are protected against crime.

Matters that are especially sensitive from the perspective of implementation of a person's physical fundamental rights are the coercive measures and force used by the police as well as conditions in closed institutions and the armed forces. A matter to which the Ombudsman has paid special attention on inspection visits is rooting out the tradition of bullying in the military. Personal liberty and integrity have also featured centrally in inspection visits to psychiatric hospitals, police stations, prisons and units of the Defence Forces. A focus of special attention on inspections of police facilities has been the use of coercive measures, such as arrest and detention, that impinge on the right to personal liberty, but remain beyond the control of the courts.

Personal integrity and security

Section 7.1 of the Constitution guarantees everyone the right to life, personal liberty, integrity and security. Section 7.3 prohibits violation of the personal integrity of the individual as well as deprivation of liberty arbitrarily or without a reason prescribed by an Act. The latter sub-section contains explicatory rules concerning intervention in personal integrity and deprivation of liberty. They apply to both the legislator and those who implement the law. All deprivations of liberty and interventions in personal integrity must be founded on laws enacted by the Eduskunta, and they must not be arbitrary.

Personal liberty is a general fundamental right, one that protects not only a person's physical freedom, but also his or her freedom of will and right of self-determination.

Personal liberty and integrity in health care

Restrictive measures (e.g. isolation, binding or medicating) used against a patient who is restless, confused or violent in a health centre mean a powerful intervention in the right of self-determination. The provisions of the Patient Act do not in this respect meet the requirements of preciseness and clear delimitation

that are set in the Constitution for legislation that limits personal liberty and integrity (1073/2/09).

Acute wards in a hospital did not have the possibility of isolating patients in a separate room, because no such room was available. Therefore the general practice that had evolved was to place the patient in restraints. The use of restraints as a general operational practice was unlawful. The right to security as a fundamental right is accentuated in psychiatric treatment to which a patient has been sent involuntarily. It should have been realised in a closed hospital ward that an unlocked door to the balcony might make it possible for a patient to get out, even though the glasswork of the balcony had been fixed and locked to prevent a patient absconding (1234/4/08).

In care of the mentally handicapped, appropriate recording of use of force is a prerequisite for it being possible to ascertain in retrospect the legality of an intervention in personal integrity and/or deprivation of freedom. When recording the use of coercion, care must be taken to ensure that the description of the reasons that led to the event and of the measures employed is sufficiently detailed (1047/2/07).

The parents in a foster home are not entitled in any situation to use the restrictive measures mentioned in the Child Welfare Act on children placed in foster care, i.e., to tie them up (236/4/08).

Police intervention in personal liberty

Customarily a large proportion of the complaints that come under the heading of Section 7 of the Constitution concern police measures against the liberty of an individual person. The criticism in the complaints is either that there has been no legal foundation for the police action or that it has been contrary to the proportionality-emphasising principles that the legal provisions enshrine. Something to which attention has constantly been drawn on visits to police units is that the reasons for depriving people of liberty must be appropriately recorded. This requirement is associated with the obligation to provide reasons that derives from Section 21 of the Constitution, which will be explained later in this chapter.

A complainant had been arrested on suspicion of having uttered an unlawful threat. Afterwards, in the view of the Deputy-Ombudsman, it would have been justified to ask whether the situation – taking into consideration the principle of proportionality that is associated with the use of coercive measures – could have been dealt with by, for example, talking to him. On the other hand, the matter had to be assessed in the light of the information that had been available to the police when they decided on measures. The fact that the notification to the police had not been made by a person who had felt threatened may have caused imprecision in the details of the matter at the stage where the police were deciding what measures to take (557/4/07).

The Deputy-Ombudsman found it improper that the police had decided to take 10-year-old boys to a police station to clear up a suspicion of a petty theft. With regard to the proportionality principle that must be observed in police activities and the provisions of the Convention on the Rights of the Child, the Deputy-Ombudsman found it very questionable that 10-year-olds were taken to a police station to deal with an offence of this nature (986/4/07*).

A person detained on suspicion of attempted manslaughter was kept in custody for a week too long. When a charge had not been laid within the deadline, the suspect should have been released. A district court ordered his release immediately when the error was revealed after the suspected person's lawyer had made an enquiry about the situation to the district court (1716/4/07*).

A police officer or a guard must on their own initiative enquire from an arrested person whose deprivation of freedom has lasted longer than 12 hours whether he or she wishes to report having been arrested. Making this report must not depend on the arrested person him- or herself requesting that the announcement be made (2943* and 4138/4/08).

Safety

A police patrol in the course of its official duty had encountered a minor child walking along the bank of a motorway. The policemen should have paid special attention to ensuring the child's safety and also trying to find out why the child was walking alone along such an exceptional route. The easiest way in which this can generally be done is by contacting the child's guardians by phone (1324/4/08*).

A child has the right to have a suspicion that there has been sexual abuse against him or her investigated with expertise and to have the relevant examinations conducted expeditiously. What is involved is implementation of the child's fundamental right to safety and personal integrity. Investigation of a suspicion that a child had been sexually abused took unduly long on the whole in a central hospital. It took over nine months to respond to the police's request for executive assistance (1700/4/08*).

The Finnish authorities can not require the procurement of documents of a kind that can cause danger for a refugee or his family members. Refugees themselves or their family members can be assumed to be best placed to assess whether a contact requested by the authorities involves risks. A request for a report concerning a refugee's family members, which presupposes the refugee contacting his own embassy or other authorities in his own country must be viewed with reservations and not complied with if danger can be caused (3565/4/07).

Prison conditions

The last sentence of Section 7.3 of the Constitution contains a constitutional imperative which means that the treatment afforded a person who has been deprived of freedom must meet the demands of, *inter alia*, international human rights conventions. The rights during the time that they are deprived of freedom of persons who have been detained on grounds that are in and of themselves lawful constitute a distinct special group of their own in the Ombudsman's oversight of legality. Numerous cases concerning these matters are resolved each year. The fundamental rights of persons who have been deprived of freedom must not be limited without a reason founded in law.

A questionnaire enquiry among women inmates in a prison revealed two situations in which a prisoner had experienced sexual harassment. The Deputy-Ombudsman stressed the prison's responsibility to ensure that no one intervenes unjustifiably in a prisoner's personal integrity. The prison must by all available means try to prevent all kinds of sexual harassment and take action when events of this type come to light (3095/2/07*).

The suspicion on which a breathalyser test conducted in a prison was based should have had the concrete reasons that the law presupposes and the fact that the prisoner had had the opportunity to consume alcohol and had earlier disciplinary measures relating to intoxicants on his record was not sufficient as a ground for suspicion (2723* and 2726/4/08).

In one police prison there was a possibility for a situation in which a person who had been deprived of liberty could be left without supervision for an hour as no personnel was present in the police station. To leave a person who has been deprived of liberty unsupervised for an hour does not meet the standard that the law requires due to, for example, the risk to safety (1640/4/08*).

There is no specific mention in the Prison Act or the Detention Act of the right of persons in different sections of the same prison to meet each other. What is involved in a meeting is the right to freely establish and maintain contacts with other people. The right to family life can likewise be involved. Granting prisoners the opportunity to meet each other is a matter not only of the right to private life, but given that it is in a prison environment also the right to security. It is a matter for the legislator to decide how these rights must be taken into account. Thus opportunities for inmates of the same prison to meet each other should be regulated by an Act (1304/4/07*).

The present system under which persons can be released on parole leaves in certain situations open the possibility for violations of personal liberty. Release should not be delayed unnecessarily merely because of administrative formalities, and more flexibility amenable to fundamental and human rights should be incorporated into the release procedure (1138/2/08*).

The right to personal safety imposes an obligation on the prison authorities to ensure that circumstances in supervised solitary confinement are safe and that health care personnel are immediately informed when someone has been placed in supervised solitary confinement. Outside official hours and at weekends this would presuppose the creation of an adequately resourced on-call system (133/4/08*).

Prohibition on treatment violating human dignity

Section 7.2 of the Constitution states that no one may be sentenced to death, tortured or otherwise treated in a way that violates human dignity. The prohibition on treatment that offends human dignity applies to both physical and mental treatment and is intended to cover all cruel, inhuman or degrading forms of punishment or other treatment. The provision has largely the same content as Article 3 of the European Convention on Human Rights, according to which no one may be tortured or treated or punished in an inhuman way. When evaluating what is treatment that violates human dignity, one is always to some degree bound by the changing values and perceptions in society and the case law with respect to application of the Constitution and of the Convention does not always have the same content.

The importance of treatment respecting human dignity can arise in quite many different kinds of situations. The Ombudsman is required by the Parliamentary Ombudsman Act to conduct inspections in prisons and other closed institutions to oversee the treatment of persons confined there. The requirements of human dignity sometimes arise in the course of these inspections.

Improper procedure was followed in relation to supervised solitary confinement in prisons in many places. A prisoner had not been allowed to exercise outdoors and the entry of natural light to the cell had been blocked. A prisoner's opportunities to wash had not been appropriately arranged, he was not given anything to read and his opportunities to practise his religion had not been taken proper care of. He was not given writing materials, he had no opportunity to complain to the prison's oversight authority and he was not allowed to phone his family. Supervised solitary confinement of the prisoner had also been continued in a situation where the prerequisites for doing so were not met. On the whole, the treatment accorded the prisoner was a violation of human dignity (1308/4/09*).

3.3.4 SECTION 8 THE PRINCIPLE OF LEGALITY UNDER CRIMINAL LAW

One of the fundamental principles of the rule of law is that no one may be regarded as guilty of a crime or sentenced to a punishment on the basis of an act that is not a punishable offence at the time of its commission. Nor may anyone be sentenced to a more severe penalty than what is provided for in the law at the time it is committed. This is called the principle of legality in criminal law. Problems relating to this only rarely need to be evaluated by the Ombudsman.

The Customs orders a penalty charge for an error in a statistical notification in internal trade within the EU. Its character as either an administrative sanction of the nature of a coercive measure or as a punitive charge is open to interpretation. Even if what is involved were to be an administrative sanction, it does not follow that regulation should not be subject to the requirements of precision and clear demarcation that follow from the principle of legality in administration and the preconditions for limiting fundamental rights (3373/4/07*).

3.3.5 SECTION 9 FREEDOM OF MOVEMENT

The various dimensions of freedom of movement were regulated in greater detail when the fundamental rights provisions of the Constitution were revised. Finnish citizens and foreigners legally resident in Finland have the right to move freely within the country and to choose their place of abode. Everyone also has the right to leave the country. Regulation of entry into and departure from the country by foreigners is also included in freedom of movement.

Complaints with a bearing on freedom of movement often concern the decisions made or procedures followed by the authorities when granting passports. Various forms of social assistance that depend on place of residence may also lead to problems from the perspective of freedom of movement.

3.3.6 SECTION 10 PROTECTION OF PRIVACY

The right to privacy is protected by Section 10 of the Constitution. This protection is complemented by closely related fundamental rights, such as the right to protection of honour and the respect for the privacy of the home and confidential communications. In protecting these rights difficult comparisons of interests often have to be resolved with a view to safeguarding other fundamental rights, such as freedom of speech and the associated principle of publicity or the publicity of administration of the law, which demand a certain degree of intervention in privacy or the revelation of facts associated with it.

The provision in the Constitution concerning protection of privacy also mentions protection of personal data as a part of protection of privacy. The provision refers to a need to safeguard, through legislation, the individual's protection under the law and his or her privacy when personal data are being processed, registered or used.

Respect for the privacy of home

Special attention must be paid to the inviolability of the home when performing a public task. When collecting a psychiatric patient to be taken to a health centre for examination, it would have been reasonable for the ambulance crew to wait for the patient's spouse to open the door for them after they rang the bell instead of going into the dwelling, the door of which was open, after they rang the bell (3536/4/07*, 1836* and 2708/4/08*).

House searches conducted by the police

Whether measures on the part of the authorities that extend into the sphere of domestic peace are founded in law is a matter that often arises when the police conduct house searches.

Whenever the police enter a building that enjoys protection of the sanctity of the home, something that must be carefully considered is what legal provision gives the right to do this. In one case the police had, while dealing with a situation that had originally begun as an alert task, entered a house and removed a shotgun that was later confiscated. The Deputy-Ombudsman took the view that going into the room to get the shotgun was in that situation already examination of a crime and should have been regarded as a house search and the relevant regulations should have been observed, including the obligation to draft a protocol (16/4/08*).

In another case there were grounds under the Police Act and the Mental Health Act for the police to enter the complainant's home. On the other hand, the Deputy-Ombudsman found that the Animal Welfare Act or rendering executive assistance to take back a dog did not in this instance justify entering the complainant's home against his will (331/4/08).

The police did not inform the target person of a measure that intervened in domestic peace, i.e. a house search, without delay as the law requires. The person was informed only about three months after the event (2351/4/07).

The Deputy-Ombudsman criticised a Detective Sergeant for failing to give a suspect who had been arrested the opportunity to be present when a search was conducted at his home (3196/4/07*).

The police had checked the complainant's driving licence and the vehicle documents in the yard of his home. The Deputy-Ombudsman found that the police could have gone into the complainant's yard, which had free access to anyone. The fact that a measure belongs as such to the powers of the police does not confer the right to be present and conduct a measure in a person's home yard if that person demands that the police leave. The sanctity of the home that the Constitution guarantees limits also the police's powers to act. It was unclear in this case whether the complainant had demanded that the police leave. The Deputy-Ombudsman considered it sufficient to draw the attention of the police patrol to the aspects of protection of the sanctity of the home that he had highlighted (3199/4/07*).

In order to protect the rights of a crime suspect, presenting a written search warrant must be a strong main rule, which can be deviated from only in special situations. In this case the essential reasons why a written search warrant was not presented were not stated (2981/4/07).

Protection of family life

Section 10 of the Constitution does not contain a mention of protection of family life. However, this is considered to fall within the scope of the protection of privacy that is enshrined in the Constitution. In Article 8 of the European Human Rights Convention family life is specifically equated with private life.

Prisoners' family life

Protection of prisoners' family life is often the issue in cases concerning family meetings. The Ombudsman receives each year several complaints concerning this matter.

The endeavour must be to support contacts between a prisoner and his or her family members during the term of imprisonment. It also follows from this that a married prisoner must a priori always be regarded as having a reason to be allowed to meet his or her spouse unsupervised in order to preserve family contacts (543/4/07*). The aim must be to support prisoners' contacts with their families in such a way that these contacts are preserved during incarceration (3016*, 3042* and 3044/4/07*).

The provisions of the Prison Act and of the Detention Act concerning meetings are not intended to be applied to meetings between prisoners in different sections of the same prison. Nor do these Acts contain any specific mention of prisoners' right to meet in a situation of this kind. What is involved in a meeting is the right freely to establish and maintain relations with other people. The right to family life can also be involved (4447/2/09).

Confidentiality of communications

Restriction of the confindentiality of communications manifests itself when, for example, a postal package is opened and read or a telephone call is listened and recorded. These measures must be based on an Act.

Often, the limits of the protection of the confidentiality of communications arise when authorities are conducting criminal investigations and in communications to and from persons in closed institutions.

Reading a letter

Under the terms of the Mental Health Act, a letter addressed to a patient may be read and withheld only in conjunction with limitation of contact. A letter that has been withheld must be kept separately from the patient records. Taking secrecy of communications into account, entering the contents of the letter in the patient records without the patient's consent can not be justified on the basis of the legislation concerning patient records, even if the contents are considered nec-

essary from the perspective of arranging the patient's treatment (2795/4/07).

The Deputy-Ombudsman issued a reprimand to a warder who inspected mail and had opened two letters sent by the the Office of the Parliamentary Ombudsman to the complainant. According to the law, correspondence between a prisoner and the authority that oversees the prison and its activities may not be inspected or read (2126/4/09).

Measures affecting telephones

The careless action of a prison warder was open to criticism from the perspective of protection of confidentiality of communications when he announced at the beginning of a telephone call that the call was being listened in on, although it was from a prisoner to his lawyer. However, the warder noticed his mistake immediately and did not listen to any more of the call after the beginning of it (1909/4/09).

A complainant's mobile phone had been taken into police's possession for the duration of a security check to which he was subjected. No facts had been presented in the case that would have substantiated what was stated as the reason for the measure, namely the need to prevent a warning call being made. Nor had the legal provision on the basis of which the action would have been justified been acceptably cited (1535/4/08*).

The mobile phones of brothers suspected of a crime had been confiscated and, inter alia, the text messages in them examined. Messages between the brothers had also been appended to the protocol of the criminal investigation. The Deputy-Ombudsman took the view that the prohibition on confiscating communications between close relatives applies also to a situation in which both of them are suspected of offences. Thus the text messages between the brothers should not have been appended to the protocol of the criminal investigation. Nor had adequate grounds been presented to explain why a lawyer who had initially assisted one of the suspects was denied the right to act as his legal counsel. An appropriate entry as required by the Decree had not been made to this effect in the protocol of the criminal investigation (1673/4/07*).

Protection of privacy and personal data

The Deputy-Ombudsman gave a reminder about protection of privacy in airport security checks. If the check requires unusually much examination, the security checker must ask the passenger whether he or she wishes the matter to be dealt with in a separate area. In any event, the security checker must ensure that outsiders do not see the contents of a bag being checked or overhear a conversation that falls within the sphere of protection of privacy. In addition, the passenger should be told that a personal scanner may be operated by a person of a different sex from the passenger being checked, because this may be of significance as to whether or not the passenger consents to being examined with a scanner (1242/4/07*, 1447/2/07* and 1223/2/08*).

If the value of a minor's property falls below the lower limit for being recorded in the register of legal guardianship affairs, it should be possible to remove the reference of a minor being under legal guardianship from the register, unless the demands for necessity in the Personal Data Act or the reasons mentioned in guardianship legislation do not presuppose otherwise (478/4/08*).

Privacy in health care and social welfare functions

The patient's privacy and the fact that anybody not participating in the patient's treatment and associated tasks are to be regarded as third parties must be taken into consideration in health care and social welfare measures.

In the design of a hospital's on-call premises a value choice had been made in which the quality and safety of treatment had been accorded priority and protection of the patient's privacy deemed of secondary importance. The view of the Ombudsman was that quality treatment includes also respect for and protection of the patient's privacy. On the other hand, it also had to be understood that on-duty treatment situations required the premises to be unobstructed. However, something that the Ombudsman found worrying as a development was if patient privacy and the duty of confidentiality were ignored in the planning of new premises. That, in the Ombudsman's perception, did not need to be the case. Everyone, including patients, has the constitutionally guaranteed right to confidential exchange of information in relation to their delicate matters (960/4/08).

The regulations on secrecy of the data in patient records are a means of implementing the fundamental rights that safeguard private life and other confidentiality in health care and medical treatment. The care personnel of a dementia unit belonging to an intermunicipal basic services centre should not have issued a certificate concerning a patient's state of health, even though only aged dementia patients are treated in the unit in question. The certificate contained details of the patient's diagnosis, something on which only an authorised physician is by law entitled to decide (507/4/08).

A complainant's social welfare board documents concerning child welfare had by mistake been placed on the social welfare board's public list, which had been sent to outside parties. This violated protection of the complainant's and his children's privacy (2459/4/07).

Something that the Deputy-Ombudsman considered problematic from the perspective of the privacy of a social welfare client was that a member of the staff of a hospital social welfare unit did not personally make a notification about legal guardianship to an administrative court, although the law required that he do so, but had instead even asked the patient's relatives, and distant ones at that, to make the notification. This procedure created the possibility of information that is required to be kept confidential being disclosed to parties that are not entitled to know it (406/2/08*).

The fact that the Social Insurance Institution Kela obtained information on a benefit applicant from that person's principal constituted an intervention in the applicant's privacy. For this reason, Kela's right to obtain information from those quarters should be legislated for clearly and with precisely defined limits. Kela obtained the information from the benefit applicant's principal whereas the provision on the right to obtain information applied specifically only to an employer. The Deputy-Ombudsman recommended to the Ministry of Social Affairs and Health that the regulations be explicated (980/4/09* and 3795/2/09*).

The police

Information on private life is an important category of cases in police activities that contains a duty of confidentiality. Police operations contain a considerable amount of information that absolutely must be kept secret or can be assumed to have to be kept confidential. The principle of publicity and the objective of openness can not circumvent the requirement of confidentiality that is provided for in law, nor may the police help secret information to be disseminated to outside parties (194/2/07*).

The mobile phones of brothers that were the subjects of a criminal investigation had been confiscated and, *inter alia*, the text messages in them had been read. Messages between the brothers had also been appended to the protocol of the criminal investigation. Photographs and especially text messages the contents of which had not been shown to have anything to do with the matter under investigation had been appended to the protocol of the criminal investigation. Given their confidential nature and privacy, careful consideration should have been given in individual cases as to whether or not they were of relevance in the matter (1673/4/07*).

The Deputy-Ombudsman criticised the senior command echelon of the police for having issued an instruction to keep notifications of crimes secret. Weight does not in this respect appear to have been accorded to the protection of private life or personal data that the Constitution safeguards – the reason stated was merely safeguarding the investigation or task (1058/2/07).

Demanding that a restaurateur and staff members undergo breathalyser tests in conjunction with a supervisory function conducted under the Alcohol Act by the police was not founded on an Act and infringed protection of their right to privacy (573/4/08*).

Prisons

Pursuant to the Prison Act the required monitoring of the supervision and supervised solitary confinement can be conducted using technical aids. There are no provisions elsewhere in the Prison Act that allows a camera to be used to monitor a prisoner in a cell. Although a cell occupied by a prisoner does not enjoy the protection of the privacy of the home, camera monitoring of the cell violates the prisoner's privacy. Therefore camera monitoring of a cell is possible only when it is provided for in an Act. The Deputy-Ombudsman took the view that improper procedure had been followed in a case where the complainant had been monitored by camera while in solitary confinement (1418*, 1486*, 1488* and 1489/4/09*).

The Deputy-Ombudsman adopted a negative view on the possibility of a prison using camera monitoring to supervise prisoners being undressed. Camera monitoring brings an additional violation to the situation from the perspective of protection of the prisoner's privacy and human dignity. The Deputy-Ombudsman found that filming prisoners in a dressing room was very problematic also from the perspective of the principle of normality. In his view, improper procedure had been followed in the prison when inmates had, without adequate support by the law, been surveyed with the aid of camera monitoring in a dressing room (4252/4/08* and 360/4/09*).

3.3.7 SECTION 11 FREEDOM OF RELIGION AND CONSCIENCE

Freedom of religion includes both the right to profess one's religion and to practise it in actuality. Intervening in the outward requirements of religion can in some cases mean intervening in also internal freedom to practise it.

Freedom of religion and conscience includes also a negative freedom of religion. Everyone has the right to profess and practise a religion, the right to express conviction and the right to belong or not to belong to a religious community. No one is under an obligation to participate in practising a religion that is contrary to his or her conscience.

The inmates of a prison had on Christmas Eve been given a package containing chocolate, the booklet Päivän tunnussana 2008 ("Password of the day 2008"), which contained passages from the Bible, as well as a yellow slip bearing the text "Peaceful Birth Anniversary of the Saviour to You! wishes the (prison) folk". The way in which the packages had been distributed was that the delivery persons had gone to the prisoners' cells and given them one, at the same time wishing them a happy Christmas.

The Deputy-Ombudsman took the view that prisoners should not have been put in a situation where their freedom of religion might have been violated. Even if the distribution of religious material were not to be deemed practice of religion in the meaning of the Constitution, in any event what is involved is an action that can easily lead to situations that offend conviction. That is especially the case given that it involves persons that have been deprived of their liberty. Prisoners who do not belong to a religious community or who profess a different religion should have a clear opportunity not to receive materials of this kind. The manner in which the Christmas package was distributed did not, from the perspective of negative freedom of religion, convey to the prisoners sufficiently clearly, understandably and in good time that they would have had the opportunity to refuse to receive the religious content of the package. Now the religious content came to light only after the prisoner had received and opened the closed package (12/4/08*).

The men called up for national service include growing numbers of representatives of minorities who do not share the religious cultural heritage of the majority population. The views and expectations of also these minorities must be taken into consideration. When considering the suitability of the premises used for call-ups, one of the aspects taken into account must be the ideological character of the premises and their purpose. Although the premises used for a call-up event were not a place clearly intended for the practice of religion, comparable to a church, also other places belonging to religious communities generally have characteristic features associated with the religion, which a person who does not profess this religion may find disturbing. From the perspective of equality between citizens, the aim should be that the premises used for call-up events are as neutral as possible in their ideological linkages (3403/2/08*).

Freedom of religion was one of the issues involved in a case in which a prison inmate in supervised solitary confinement was not given a Bible, because no extra property is allowed in a supervision cell. A prison is under an obligation to ensure that a prisoner in supervised solitary confinement has the opportunity to practise religion. Reading the Bible and other religious material may constitute the practice of religion in the meaning of the regulation (1308/4/09*).

3.3.8 SECTION 12 FREEDOM OF SPEECH AND PUBLICITY

Freedom of speech

Freedom of speech includes the right both to express and publish information, opinions and messages and to receive them without anyone preventing this in advance. Freedom of speech is provided for in nearly the same wording in both the Constitution and international human rights conventions. The key purpose of the freedom of speech provision is to guarantee the free formation of opinion, open public discourse, free development of mass media and plurality as well as the opportunity for public criticism of exercise of power that are prerequisites for a democratic society. The duties of the public authorities include promoting freedom of speech.

The police making an agreement with a journalist who follows police work or otherwise forbidding him to reveal information that is required to be kept secret fits poorly with the fact that freedom of speech includes the right to publish information without being prevented in advance from so doing (194/2/07*).

A police patrol forbidding the photographing of diplomatic vehicles at close range in a public place meant a limitation of the right of freedom of speech. The international protection guaranteed in diplomatic relations was a lawful ground for restriction and the prohibition on photography was acceptable in the circumstances of this case (2065/4/07*).

The Deputy-Ombudsman found the Act on Measures to Prevent Child Pornography open to interpretation because the action by the National Bureau of Investigation of entering Internet sites on a so-called barred list was of significance from the perspective of implementation of freedom of speech, although the actual prevention measures were decided independently by telecoms operators (1186/2/09*).

It would be advisable to explicate the rules of behaviour of the Finnish Broadcasting Company's Yle Radio 1 Internet discussion panel, because they contained no separate mention of how a person barred from the panel for repeated breaches of the rules could gain re-admission to the panel to contribute to it (1156/4/08*).

According to the Ombudsman, it flows from the freedom of speech that is safeguarded as a fundamental right that the use of camera phones can not be completely forbidden in health care operational units in order to ensure protection of privacy. When the director of the Satakunta hospital district imposed a blanket ban on the use of camera phones in operational units belonging to the district, the decision was in conflict with Section 12 of the Constitution (3789/4/07*).

Publicity

Closely associated with freedom of speech is the right to receive information about a document or other recording in the possession of the authorities. Publicity of recorded materials is a constitutional provision of domestic origin. The Act on the Openness of Government Activities emphasises especially promotion of access to information.

The Ombudsman has received many complaints concerning publicity of recorded material, although in most cases the complainant has still had the opportunity to avail of a statutory right to refer the matter to a competent authority for resolution. Then the Ombudsman has advised the complainant to use this legal remedy in the first instance. In many complaints concerning publicity of documents, however, the issue has been the time taken to deal with a request for information. The Act requires an authority to deal with this kind of matter "without delay" and information about a public document to be provided "as soon as possible", not later than two weeks or – subject to certain preconditions – no later than a month after the request. Closely associated with publicity of administration is also the general demand of openness of administration and service-mindedness when a client is seeking the information he or she needs.

Information on private life is an important category of cases in police activities that contains a duty of confidentiality. Police operations involve a considerable amount of information that absolutely must be kept secret or can be assumed to have to be kept confidential. The principle of publicity and the objective of openness can not circumvent the requirement of confidentiality that is provided for in law, nor may the police help secret information to be disseminated to outside parties (194/2/07*).

The view taken in the Ombudsman's oversight of legality is that it would be unsatisfactory from the perspective of implementation of the principle of publicity and the legal remedies available to the person in question if a public servant or an authority could have the final decision as to whether a document that is the subject of a request for information is not an official document in the sense of the Act on the Openness of Government Activities and on this basis refuse to provide the information. For this reason it must be possible also to refer the question of a document's nature to an administrative court for examination and resolution. Thus, complying with the principles enshrined in Section 14 of the Act on the Openness of Government Activities, the party requesting information must be given guidance and, if necessary, an appealable decision also in the event that the authority takes the view that the document is not one that falls within the scope of application of the Act. That is the procedure that must be followed at least if it is not obvious that the document requested is outside the scope of the Act. The procedure emphasises the primacy of the principle of publicity that is enshrined in Section 12 of the Constitution, safeguards the right to information that is provided for in it and promotes the protection under the law that is guaranteed in Section 21 (1007/4/07).

It was not lawful to refuse routinely – based on the practice followed in the hospital - to give a patient in a psychiatric hospital information concerning his treatment during the acute phase of the illness. Every request for information must be responded to individually under the Personal Data Act (2489/4/08*).

The Act on the Openness of Government Activities obliges the authorities to promote good data management practice, which includes appropriate access to documents. The point of departure in charging for the costs of retrieving data and in data management as a whole is implementation of the principle of publicity and good administration. A provision in a municipality's table of charges to the effect that this research work was subject to VAT was, in the view of the Deputy-Ombudsman, clearly contrary to the intention of the Act on the Openness of Government Activities and the principles concerning the levying of charges. Official documents in the meaning of the Act can in no respect be regarded as subject to tax (949/2/08).

3.3.9 SECTION 13 FREEDOM OF ASSEMBLY AND ASSOCIATION

More precise regulations than earlier were enacted in conjunction with the revision of the fundamental rights provisions of the Constitution. The right to demonstrate and join trade unions was specifically safeguarded. Mentioned as a part of freedom of association was also the right not to belong to an association, i.e. the negative right of association.

Freedom of assembly and association is generally dealt with in complaints associated with demonstrations.

What is often involved is assessing whether the police have adequately safeguarded the exercise of freedom of assembly. Complaints concerning the procedure for registering an association are likewise received. No cases relating to freedom of assembly and association were resolved during the year under review.

There was no right founded in law to restrict the practise of freedom of speech that the Constitution safeguards, and which a complainant exercised when distributing election advertisements and demonstrating in a public market square in a city, by demanding a fee for using the market square for this purpose from the person exercising this fundamental right. Thus the action had been unlawful and had violated the right to demonstrate, a core area of freedom of speech, which protects above all political and societal discourse and dissemination of information (830* and 3262/4/07*).

3.3.10 SECTION 14 ELECTORAL AND PARTICIPATORY RIGHTS

Political rights, i.e. electoral and participatory rights, have been conceived of more and more clearly as fundamental rights of the individual. In conjunction with the revision of the fundamental rights provisions of the Constitution, the desire was specifically to enact these rights on the level of the Constitution. Only persons separately mentioned in the Constitution, for example only Finnish citizens in national elections, have the right to vote. In addition to this, an obligation has been placed on the public authorities to promote the opportunity of everyone to participate, to the extent that possibilities permit, in societal activities and influence decision making that concerns him- or herself.

Complaints concerning electoral procedures are typically received in years when municipal or national elections are held.

As a result of an oversight on the part of the staff of a home for the aged because they were busy, a complainant's mother had not been able to take part in an institution ballot. The staff should have ensured that the complainant's mother was aware of her possibility of voting in a general advance ballot. If she did not become aware of this opportunity, she understandably could not make a request concerning it, either (3734/4/08*).

3.3.11 SECTION 15 PROTECTION OF PROPERTY

With respect to protection of property, a broad discretionary margin has been applied in the case law interpreting the European Convention on Human Rights, but this has not been able to weaken the corresponding protection afforded on the national level. Protection of property has traditionally been strong in domestic case law.

However, matters relating to protection of property only rarely have to be investigated by the Ombudsman. This is due at least in part to the fact that, for example, it is possible to have a seizure by the police referred to a court for examination or that, for instance, there is a statutory right of appeal to a district court against an implementation measure conducted in conjunction with distraint or a distraint officer's decision. There is also, as a general rule, a statutory right of appeal to a court in relation to planning and compulsory purchase matters.

Vehicles as objects of official measures

The Deputy-Ombudsman took the view that giving an order to move a vehicle and informing the complainant of this would have been, in the situation to which the complaint related, more justified from the perspective of protection of property than taking the complainant's car to a storage area without this kind of exhortation (93/4/08).

Preventing the use of a vehicle during an investigation into its temporary right of tax-free use in the meaning of the Vehicle Tax Act and the associated taking of it under customs supervision under the provisions of the

Customs Act meant a forceful intervention in the person's right to enjoy his property in peace. Because of the urgent nature of matters, the existence of the prerequisites for preventing the use must be weighed carefully (3539/4/08).

The police had removed a bag of seeds meant for feeding birds from a car and sent it to the environmental authorities as evidence of an act violating a prohibition imposed by them. Something that remained open to interpretation in the matter was whether the complainant's car was a closed space in the meaning of the coercive measures act, because its front door had been open already before the seizure began; in other words, the policeman did not need to open the door to find the evidence. Likewise open to interpretation was whether a house search had been conducted in the matter. In any event, the policeman followed improper procedure in that he failed to ensure that the seizure of the property was appropriately recorded. What was involved, contrary to the policeman's own conception, was a seizure, in which case the regulations concerning recording should have been complied with (1909/4/06).

3.3.12 SECTION 16 EDUCATIONAL RIGHTS

The Constitution guarantees everyone cost-free education as a subjective fundamental right. In addition, everyone must have an equal right to education and to develop themselves without lack of funds preventing it. What is involved in this respect is not a subjective right, but rather an obligation on the public authorities to create for people the prerequisites for educating and developing themselves, each according to their own abilities and needs. The freedom of science, the arts and higher education is likewise guaranteed by the Constitution. The right to basic education is guaranteed for all children in the Constitution. The equal right of all children to education is also emphasised in the UN Convention on the Rights of the Child. The public authorities must ensure implementation of this fundamental right.

In order to fully implement a child's right to basic education the pupil must a priori have the right to receive teaching according to a similar curriculum and in a similar learning environment in interaction with its peer group. Because a child's teaching arrangements had been temporarily implemented in partly a different way relative to its peer group because there had been problems in interaction between a teacher and the pupil's mother, the child's right to basic education on a basis of equality had not been fully implemented (3166/4/08*).

3.3.13 SECTION 17 THE RIGHT TO ONE'S OWN LANGUAGE AND CULTURE

Guaranteed in the Constitution are, besides the equal status of Finnish and Swedish as the national languages of the country, also the language and cultural rights of the Sámi, the Roma and other groups. The language provisions pertaining to the province of Åland are contained in the Act on the Autonomy of Åland.

Finland has also adopted the Council of Europe Charter for Regional or Minority Languages as well as the Framework Convention for the Protection of National Minorities.

Language rights have links to other fundamental rights, especially those relating to equality, freedom of speech, education, freedom to engage in economic activity as well as a fair trial and good administration. In conjunction with the revision of the fundamental rights provisions of the Constitution, an obligation to take care of the educational and societal needs of the Finnish- and Swedish-speaking segments of the country's population according to similar principles was extended to the "public authorities" as a whole, and not just to the State. As the structure of administration is changed and privatisation continues, this expansion has considerable significance.

Service in a national language

The application procedure for the Ministry of Employment and the Economy's EU structural funds subsidies discriminated against Swedish-speaking applications, because the Internet-based data system for applying for the subsidies was only in a Finnish version (212/4/08*).

A procedure followed by the Ministry of Finance was contrary to the Language Act when a request for a submission and its annex were sent in Finnish only to municipalities with a Swedish-speaking majority (1833/4/08).

The Ministry of the Interior's rescue department contravened the language Act when official bulletins about a fire at a lock factory were issued only in Finnish. In serious and urgent rescue operations also the binding regulations relating to the language in which official information is provided must be taken into consideration. Because the purpose of the authorities's announcements had been to give people information that is essential from the perspective of the individual's fundamental rights – the right to life and safety, protection of property and a healthy environment – issuing the emergency bulletins had been implemented erroneously when they were only in Finnish (361/2/09*).

Pursuant to the Language Act everyone has the right to use Finnish or Swedish in their dealings with authorities and the right to good administration irrespective of language. Thus a complainant had been entitled to use either Finnish or Swedish according to his choice in enquiries he sent to a distraint office (3198/4/08).

A complainant's right to use his own language, Finnish or Swedish, in dealings with authorities was not implemented, because he received from the Helsinki and Uusimaa Hospital District an invitation letter that was difficult to interpret and contained numerous errors and because documentation of the measure as well as of its follow-up was available only in Finnish (772/4/08*).

The right of an interested party to receive on request and under the provisions of the Language Act a cost-free official translation of the protocol of a land survey measure could not be limited on the ground that the protocol in the language in which the matter had been conducted had been supplied to the other owner of the property, who was living in the same house and who used the same language as that in which the measure had been conducted. Interpretation of the protocol of the measure could not be left to another interested party using a different language; instead, the interested party must be given an official translation of the protocol provided the prerequisites set forth in the Language Act are met (240/4/07*).

Since the Language Act gives everyone the right to use Finnish or Swedish in dealings with state authorities, a demand presented in a district court to the effect that an applicant should supply the court with a Finnish translation of an application that had been made in Swedish was not in compliance with the Language Act (2096/4/08).

Language-related fundamental rights and the obligations that they impose on the public authorities, in this case a municipality, must be taken into consideration when interpreting the duty to arrange social services. A municipality is required under the Social Welfare Act and the Children's Day Care Act to arrange in a bilingual community day-care places for Finnish- or Swedish-speaking children in their own mother tongue on the same principles and within the time limit stipulated in the Children's Day Care Decree (2525/4/07).

According to the Deputy-Ombudsman, as long as international accounting standards have not been approved within the EU and published in the EU's official languages, including Swedish, Swedish-speaking accountants are in a clearly weaker position than their Finnish-speaking counterparts when interpreting good accounting practice. The recommendations of the Finnish Institute of Authorised Public Accountants KHT, a body that operates under private law, were available only in Finnish despite the fact that they were of great importance when interpreting the concept of good accounting practice. Therefore, and because approval of the standards in question will still not necessarily elim-

inate this problem, at least entirely, the Deputy-Ombudsman recommended to the Ministry that it consider taking measures without delay to ensure that at least the biggest problems of legal security are corrected as soon as possible (2825/2/08).

Services in languages other than the national ones

An invitation for applications published by the Academy of Finland in which the applicants were asked to draft their applications in English did not state that also the use of one of the national languages would be possible in actual fact. This starting point should have been clearly mentioned in the guidelines (1240/4/07*).

A city library's information system produced loan slips in English only. The Deputy-Ombudsman considered it problematic if the service of a unilingual municipality's library is, in the form of these slips, partly in a foreign language. It was equally problematic if a client had to invoke his or her language rights in order to receive a slip in Finnish. According to a report received, the problem had come into being when the information system was being updated. The system had subsequently been updated again to enable it to give clients slips in Finnish (2847/2/08*).

3.3.14 SECTION 18 THE RIGHT TO WORK AND THE FREEDOM TO ENGAGE IN COMMERCIAL ACTIVITY

In conjunction with the revision of the fundamental rights provisions of the Constitution, everyone was guaranteed the right according to the law to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The point of departure has been the principle of freedom of enterprise and in general the individual's own activity in obtaining his or her livelihood. However, the public authorities have a duty in this respect to safeguard and promote. In addition, a duty to take responsibility for the protection of the labour force is imposed on the public authorities in the constitutional provision. The provision is of relevance in especially labour protection and related activities.

A damp- and mould-damaged rehabilitation home in a health centre had been partly repaired over the years and the staff members and patients with the worst symptoms had initially been transferred to other areas or other work spaces, but it had finally been decided that the building would be given a basic renovation and suitable alternative accommodation would be sought for the patients. More determined action by the city comprehensively to eliminate and repair the indoor air problems already in the early stage would have better met the responsibility that the Constitution imposes on the public authorities to ensure protection of labour and promote the health of the population (2788/4/07).

3.2.15 SECTION 19 THE RIGHT TO SOCIAL SECURITY

The central social fundamental rights are safeguarded in Section 19 of the Constitution. The Constitution entitles everyone to the indispensable subsistence and care necessary for a life of human dignity. In separately mentioned situations of social risk, everyone is additionally guaranteed the right to basic security of livelihood as laid down in an Act. The public authorities are also required by law to ensure adequate social welfare and health services for all. Likewise separately mentioned is the obligation on the public authorities to promote the health of the public as well as the wellbeing and personal development of children, in addition to the right of all to housing.

The right to indispensable subsistence and care

In October 2008 processing of a complainant's application for social assistance took 20 working days in a joint authority's social services centre instead of the maximum of 7 working days that is the statutory requirement. The Ombudsman issued a reprimand to the joint authority for having followed unlawful procedure in dealing with the application (3435/4/08). The Ombudsman took the view that processing of a complainant's social assistance application had been delayed in a social welfare department in October 2007 contrary to the Social Assistance Act – processing of the application took two weeks and three days (13 working days) (3520/4/07*).

A city social welfare department had since at least 2005 neglected to deal with social assistance applications without delay. This was unlawful and reproachful (149/4/08). A complainant's social assistance application was delayed in a social welfare department by five working days in November 2008. Delays occurred also more generally in processing the complainant's social assistance applications in 2008–09 (3737/4/08). The social welfare department acted unlawfully in that it had not, as required by the Social Assistance Act, processed the complainant's social assistance applications in March and April without delay (1416/4/09).

The right to security of basic subsistence

Section 19.2 of the Constitution guarantees everyone the right to basic subsistence in the event of unemployment, illness and disability and during old age as well as at the birth of a child or the loss of a provider. The benefits payable in these situations are taken care of mainly by the social insurance system.

The right to adequate social welfare and health services

The Constitution obliges the public authorities to ensure through an Act that everyone enjoys adequate social, health and medical services. They must also support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.

When a social worker responsible for children's affairs notices that a fostered child is too challenging to be brought up in a foster home and requires the use of restrictive measures other than limiting contact, he or she must ensure that the child is placed without delay in a suitable child welfare institution (236/4/08).

The right to adequate health services

The obligation in the Constitution to safeguard statutory health services must be taken into consideration when budgetary decisions are being taken and laws applied. The statutory responsibility to arrange health services presupposes that the content and scope of the necessary services be ascertained. A municipality or joint authority is required under the Rehabilitation Decree to ensure that the contents and quality of medical rehabilitation services are arranged in a manner that meets the need that exists within the area of the municipality or joint authority. The elected representatives who decide on the budget and the public servants who do the preparatory work breach these obligations, which the Constitution imposes on the public authorities, if the budgetary appropriation is deliberately made smaller than the need that is known to exist (102/4/08*).

The right of a child and its parents to adequate health services was not implemented, because psychotherapy was not arranged for the child within the maximum period that the Act on Specialised Medical Care requires (251/4/08*). Instead of the fostered child's treatment relationship in the child psychiatry unit of a central hospital being ended and left to depend on a new referral, it would have been appropriate in the child psychiatry unit towards the end of the period that the child was undergoing ward examination to draft a follow-on treatment plan in which the possibility of a family counselling centre providing the child with open care was looked into (840/4/08).

Defects in the arrangement of child psychotherapy services led to it not being possible to fulfil the obligations under the Treatment Guarantee. This jeopardises the child's right to adequate health services (1437/2/09*). A young person's right to adequate health services was not implemented, because she

was admitted for treatment in an eating disorders unit only seven months after the need for treatment had been assessed (4008/4/07*). Uniform criteria concerning medical rehabilitation for brain-damaged children could contribute to safeguarding implementation of adequate health services on a basis of equality (3888/4/07*).

A complainant's right to adequate health services was not implemented when a doctor's urgent referral concerning him was not forwarded from the hospital (279/4/09).

The waiting list for dental treatment at a health centre included persons who had not yet received treatment within the maximum period stipulated in the Primary Health Care Act and treatment for them had not been procured from other service producers in accordance with the Act on Planning of Social Welfare and Health Services and State Funding Contributions. The patients' right to adequate health services did not appear to have been implemented (271/4/08). Although the municipality had been actively trying to meet its statutory obligations under the Treatment Guarantee and the situation had improved, the availability of dental treatment had still not been realised in the way that the Primary Health Care Act requires. There were still patients who had been on the waiting list for over six months (323/4/08).

A policy line adopted by the Prison Service with regard to treatment of hepatitis C, according to which interferon treatment is not commenced during the period of imprisonment, does not in all cases safeguard the prisoner's right to health care and medical treatment in accordance with his medical needs and of high quality nor is his right to adequate health services realised (1833/4/07 and 569/4/08).

A city had not met its statutory obligation to arrange within the period stipulated in the law an assessment of the need for treatment together with the treatment that had been medically established as necessary for opiate-addicted patients who had been waiting longer than six months for treatment (3846/4/07*). An opiate-addicted patient's right to adequate social welfare and health services is not implemented if substitute treatment is arranged in an operational unit using only pharmaceutical products that contain methadone and without taking the patient's individual need for treatment into consideration (715/4/08*).

A patient's right to adequate health services was not realised in the sector of plastic surgery when treatment failed to be provided within the statutory maximum period and treatment was not procured from other service providers within that period (1317/4/08*).

A complainant had been told about damp and mould damage in a cellular dwelling in a rehabilitation home for mental health rehabilitation patients already when he moved in, but the city began repair measures only a year later, when clear symptoms of exposure to mould were in evidence. The complainant had then been given a new room after threatening to complain about the matter (904/4/07).

Defective patient records

The regulations in force with respect to drafting patient records are, in the Ombudsman's assessment, clear, unambiguous and precise. By complying with these regulations, realisation of the fundamental right to protection under the law and the adequate health services that are safeguarded as fundamental rights is ensured (1387/4/08, 1700/4/08* and 362/4/07*). Provision of adequate health services was not realised when it was impossible on the basis of entries in patient records to establish whether the complainant had symptoms, of what kind they were at the time in question, what was their degree of severity and how urgent the need for treatment was (2608/4/08*).

An entry made by a health centre doctor in a patient's records concerning removal of a meibomian gland lipogranuloma was only four words long. According to statements by medical experts, the entry was too brief for it to be possible to evaluate whether the opening of the gland had been sufficiently wide or whether the measure had otherwise been performed appropriately. For this reason it was impossible also for the Ombudsman to assess whether the patient had in this respect received good health care and medical treatment and whether the health centre doctor had acted appropriately in his professional capacity (3807/4/08*).

The right to housing

Section 19.4 of the Constitution requires the public authorities to promote the right of everyone to housing and the opportunity to arrange their own housing. The provision does not safeguard the right to housing as a subjective right nor specifically set quality standards for housing. However, it may be of relevance when interpreting other fundamental rights provisions and other legislation.

3.3.16 SECTION 20 RESPONSIBILITY FOR THE ENVIRONMENT

Keeping the environment viable is a prerequisite for implementation of nearly all other fundamental rights. The right to a healthy environment can nowadays be regarded as an international human right. When the fundamental rights provisions of the Constitution were being revised, a separate provision concerning this matter was included in the list of fundamental rights. It contains two elements: first of all, everyone bears responsibility for nature, the environment and the cultural heritage as well as secondly an obligation on the public authorities to strive to safeguard for everyone the right to a healthy environment and the possibility to influence the decisions that concern their own living environment.

Responsibility for nature, the environment and the cultural heritage is mainly a declaration in character and has rarely featured as a fundamental right in complaints. By contrast, the obligation on the public authorities to strive to safeguard for everyone the right to a healthy environment and the possibility to influence the decisions that concern their own living environment has been cited in many complaints. The possibility to influence decisions concerning the living environment often arises together with the fundamental right to protection under the law and the associated guarantees of good administration. The issue can be, for example, hearing an interested party, interaction in planning, the right to institute proceedings and the right to receive an appealable decision or the right of appeal in environmental matters.

As a foundation for drafting a city plan, an architectural competition, the rules of which specified the building rights in the area and the main planning solutions, was arranged. From the perspective of the constitutionally guaranteed fundamental right to influence decisions concerning one's living environment and citizens' opportunities to participate and exercise influence, it is problematic if an architectural competition is arranged before members of the public have been able to see the plan in question in even draft form (2173/4/09). An environment licence is one of the most central means of regulating and monitoring activities that have an impact on the environment, for which reason also an environment licence application for existing activities and the associated reminders should have been processed without undue delay (1940/4/07*). Residents should have been given an opportunity to have their views heard before an environment board, arising from a demand for rectification by a housing company, overturned a ban on a building being occupied (2549/4/07*). A building inspector had granted a permit for construction in a shoreline area without giving the neighbours an opportunity to have their views heard (1076/4/07).

Residents of the immediate area should have been given the opportunity to have an input into the decision when a State Provincial Office was processing a restaurant's application for an extension of its licensing hours. The complainant had asked the State Provincial Office in writing to make an appealable decision on the demands that he had made concerning the noise nuisance that the restaurant caused. It was acceptable for a State Provincial Office to take the view that the "complaint" made to it by the complainant did not mean the institution of an administrative matter of the kind that would have required an administrative decision to be made. However, the obligation to consult that is a part of good administration would have presupposed the complainant being given a written reply, the reasons presented in support of which would have shown why an appealable administrative decision was not given in response to the demands that he had made (2974/4/07*).

3.3.17 SECTION 21 PROTECTION UNDER THE LAW

What protection under the law means in this context is mainly processual fundamental and human rights, i.e. procedural legal security. What is involved is the authorities following procedures that are qualitatively flawless and fair. The protection under the law associated with an official procedure has traditionally been a core area of oversight of legality. Questions concerning good administration and a fair trial have been the focus of the Ombudsman's attention in various categories of cases most frequently of all.

Protection under the law is provided for in Section 21 of the Constitution. The provision applies equally to criminal or civil court proceedings, the application of administrative law and administrative procedures. In an international comparison it is relatively rare for good administration to be seen as a fundamental rights question. However, also the EU Charter of Fundamental Rights contains a provision relating to good administration.

The demand for good administration follows in the final analysis from the Constitution and provisions on the level of an Act. Article 6 of the European Convention on Human Rights applies only to courts and authorities equatable with courts and not to administrative authorities. The principles of good administration and procedural regulations enshrined in the Administrative Procedure Act implement the constitutional imperative that qualitative demands relating to good administration be confirmed on the level of an Act. Several matters belonging to the sphere of Section 21 are regulated also in the Prison Act.

When the procedures followed by courts – both general and administrative – are discussed, demands for protection under the law are largely based on, besides process-related legislation, the provisions of the Constitution and human rights norms.

In the Finnish system, the general obligations that are binding on public servants under threat of a penalty include observing principles of good administration insofar as they are expressed in the "provisions and regulations to be observed in official actions" (Chapter 40, Sections 7–10 of the Penal Code). Deviation from good administration is excluded from the scope of the threat of punishment in the event that the deed is deemed to be "when assessed on the whole, petty" in the manner defined in the Penal Code. This grey area of non-criminalised actions is especially important in the Ombudsman's oversight of legality. Besides, the oversight conducted by the Ombudsman extends also to the activities of bodies that perform public tasks, but whose employees do not bear official accountability for their actions.

Dealt with in the following are sub-areas of a fair trial and good administration that feature a lot in the Ombudsman's work. Owing to the large number of decisions, not all of those issued during the year under review that contained observations concerning fundamental and human rights have been included. Besides, the various features of an individual decision may have been dealt with in several factual contexts. The presentation is based on an examination of the fundamental and human rights demands associated with a fair trial and criteria of good administration.

Obligation to provide advice and service

Good administration includes an obligation to provide advice and service. Attention can be drawn to the way that an authority has arranged advisory services and, on the other hand, to the content of these services. In the provision of advice that good administration requires, it is not a matter of the kind of advice one would get from a lawyer, but mainly of telling citizens what rights and obligations they have and what procedure they should follow in order to institute processing of their matter and have their demands examined. An effort must also be made on the public servant's or authority's own initiative to correct any misconception that the client may have.

Property removed from baggage at Helsinki-Vantaa Airport is kept for a month under a service contract. A notification about property removed does not mention anything about storage of the property nor from where and when it can be redeemed. The Internet site and e-mail addresses mentioned in the notice could not be considered adequate advice on their own (1497/4/07*).

A person processing a passport application should notice if also children are entered in a passport. Thus when an official notices when processing a passport application that the passport issued in accordance with the earlier Passport Act covers also minor children, it would be appropriate when the applicant is collecting the passport to confirm that he or she is aware of the changes in issuing practices that have resulted from changes to the legislation in force (4223/4/08*).

The Social Insurance Institution Kela should proactively inform an applicant for rehabilitation of the means available to him or her and what the appeal process for a rehabilitation-related matter and the time it takes mean (1280/4/08* and 2891/4/07). Kela's study grant centre and two offices gave the complainant incorrect advice about the right of a person aged under 17 and living alone to receive a supplementary housing allowance that is given as a study grant (3073/4/07). The advice provided by Kela about reduction of an unemployment benefit was defective with respect to moderation (994/4/08).

An employment office did not advise a person who was making an application for an unemployment benefit. The complainant failed to receive a labour market subsidy for over four years (877/4/07*).

A student should have been given advice already during a telephone conversation to submit an application for basic subsistence to the appropriate office in addition to seeking a study loan (3355/4/07). The complainant had received wrong information about his eligibility to apply to sit a selection examination for a university community communications course (2876/4/07). It would have been appropriate for an environment centre to tell, on its own initiative, a representative of a water cooperative about resolving a matter; the representative had enquired, after the environment centre had already decided on the matter, about the need to supply additional reports (3824/4/07*).

The contents of letters written by a head physician and a head nurse in a health centre did not correspond in all respects to the clarity demands set for official communications, because it was possible on their basis to form the conception that the complainant's demands that entries made by the nurse be removed had in part been agreed to (3850/4/07).

Advice relating to institution of proceedings and possibilities of appealing

On an application sent by him to the Finnish Vehicle Administration (AKE) a complainant had asked for guidance and advice as to how he could have a vehicle that he had repaired tested for roadworthiness. AKE had explained in its reply that changes had been made to the Vehicle Tax Act and the Decree on the Ministry of Transport and Communications. By contrast, AKE had not told the complainant how it is possible to obtain a road test decision, in which the vehicle would be approved or rejected, after an inspection. The complainant would have had the right to appeal to AKE to have the decision corrected and in that way refer the question of interpretation of the legal guidelines applicable to the vehicle test to an appeal instance for examination and resolution (1471/4/08).

A complainant did not receive adequate guidance from a joint authority about applying for treatment supplies, for example to whom the application to receive the supplies had to be made and who decided on the matter (3637/4/07). As a result of incorrect advice given by a member of staff in a Kela office, the complainant lost the opportunity to refer his case concerning a labour market subsidy to an appeal instance for examination (853/4/07).

A notification of a criminal offence was not recorded in a matter that the police apparently believed to belong more to the sphere of competence of the labour protection authorities than of the police. The Deputy-Ombudsman found the police's attitude in negatively interpreting the matter open to criticism in light of the service principle that the authorities are expected to observe (621/4/09*).

Replying to written communications

Good administration presupposes that pertinent letters and enquiries from clients, including e-mails, are replied to without undue delay. The Ombudsman must continually intervene in authorities' passivity or otherwise improper procedure in these respects.

The errors in replying to written communications that came to light during the year under review involved, among other bodies, a State Provincial Office (2488/4/08), Kela (2580/4/08), a labour office (3416/4/07) and other city authorities (1905/4/07* and 884/4/08*), an educational establishment (1163/4/08), health centres (2780/4/07, 271/4/08 and 2923/4/08*), a consumer disputes board (214/4/08) and the National Bureau of Investigation (4243/4/08).

The right to have a matter dealt with and the right to effective legal remedies

Section 21 of the Constitution guarantees everyone a general right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority. When a person's rights and obligations are concerned, it must be possible for the matter to be reviewed by a court of law or other independent organ for the administration of justice. Correspondingly, Article 6 of the European Convention on Human Rights safeguards everyone's right to a trial in a legally established and independent court when his or her rights and obligations are being decided on or a criminal charge is laid.

Section 21.2 of the Constitution requires the right to appeal and other guarantees of a fair trial to be safeguarded in an Act. Articles 6 and 13 of the European Convention on Human Rights as well as Article 2 of the 7th Additional Protocol require effective and factual legal remedies.

The effectiveness of legal remedies can in certain cases presuppose recompense being made in one way or another for the harm that rights violations have caused. In trial procedures Article 13 of the European Convention on Human Rights leaves room for choice in the way recompense is effected. The Ombudsman can not intervene in courts' decisions, nor can he have an input into the way recompense is made. The immaterial damage caused by undue delays in criminal trials is in certain cases compensatable in trial procedures. The Ombudsman has in some other cases recommended to authorities that recompense be made.

What is typically involved in cases belonging to this category is obtaining an appealable decision or, more rarely, application of refusal of leave to appeal. Both factors influence whether a person can at all have a matter referred to a court or other authority to be dealt with. The Constitutional Law Committee has in its practice regarded refusals of leave to appeal that are general in character and unitemised as problematic from the perspective of Section 21.1 of the Constitution (e.g. PeVL 70/2002 vp). It is also important with the effectiveness of legal remedies in mind that an authority provides a direction of redress to facilitate an appeal or at least sufficient information for the person to be able to exercise the right of appeal. In addition, the reasons presented in support of a decision are in an essentially important position when it comes to exercising the right to appeal against it.

The issue in one case was that of drawing a line between consideration of the matters of law and consideration of expediency. A State Provincial Office had taken the view that what was involved was consideration of expediency in the meaning of Section 36 of the Act on Mentally Handicapped Persons, something that is not appealable. The State Provincial Office had acted within the parameters of its discretionary powers. However, an interpretation that would also have been justified was that what was involved was consideration of matters of law and thus an appealable decision. The right to appeal, also when it is exercised by a municipality, can promote also the fundamental and human rights of mentally handicapped persons (2810/4/07).

A guardian must have the opportunity to refer the question of arranging day care in the child's mother tongue to a body for resolution. An administrative court decides whether the body's decision can be appealed to an administrative court (3346/4/07). The municipality's social workers should have assisted, as provided for in the Child Welfare Act then in force, the child's mother in the legal proceedings dealing with the allegedly unlawful disciplinary measures exercised by the municipal school authorities (1788/4/07).

A case involving an employment-related offence had been referred to a prosecutor, who did not find the time to tackle the matter before the offence became statute-barred, although there were still four months left for consideration of charges at the time of referral. Thus the interested party did not have his case referred to a court to be dealt with. When consideration-of-charges matters are reassigned and transferred to a new prosecutor, special attention must be paid to employment-related offences because of the short time within which they become statute-barred (456/4/08). A police officer in charge of an investigation had concluded the investigation into a labour protection-related offence without referring the matter to a prosecutor for deliberation of charges. The officer's decision was based on a statement by the labour protection district in the material that had accumulated during the criminal investigation. However, a representative of a labour protection district can not assess evidence under criminal law in a manner that is binding on the officer in charge of an investigation; only a prosecutor can do that. Investigation of the labour protection-related offence had also been delayed and the officer had contacted the prosecutor only shortly before the matter became statute-barred. The demand for urgency in cases of this kind is accentuated by the fact that the investigation was split between two different authorities, the police and the labour protection district (1753/4/08*).

A municipality's technical board and the municipality's executive board had had a misconception about the involved parties' spheres in procurement matters. The result of this was that a complainant did not receive an appropriately reasoned decision on the grounds presented in support of his demand for rectification. When, in addition, an extract from the technical board's decision protocol had not been supplied to the complainant, it was not possible for him to refer the decision to an administrative court for evaluation before completion of the contract (755/4/08*).

An environment office had processed an application for an environment licence for over 6 years and 2 months. The opportunity available to the interested party who had sent a reminder and demanded compensation in the matter to have his case dealt with by a court had been correspondingly delayed (1940/4/07*). The Civil Aviation Authority had not, in accordance with an applicant's request, issued a negative appealable decision in a case concerning renewal and expansion of instrument rating already in the early stage (3342/4/08).

A debtor should be informed that a distraint matter has ended in a decision concerning certification of lack of means. Notification that certification has been carried out could help prevent erroneous credit status notices being sent to rating agencies. It would also be appropriate to append appeal instructions to a later notification (3050/2/07*).

Expeditiousness of dealing with a matter

Section 21 of the Constitution requires that a matter be dealt with by a competent authority "without undue delay". A comparable obligation is enshrined in Section 23.1 of the Administrative Procedure Act. Article 6 of the European Convention on Human Rights, in turn, requires a trial in a court "within a reasonable time".

Questions relating to the expeditiousness of handling matters continually arise in oversight of legality. The attention of authorities has often been drawn, for the purpose of guidance, to the principle of expeditiousness, also when what has been involved in a concrete case is not something that can be branded as an actual breach of official duty. The Ombudsman has tried to find out the reasons for delays and often also to recommend ways of improving the situation or at least to draw the attention of higher authorities to a lack of resources.

What can be regarded as a reasonable length of time to deal with a matter depends on the nature of the matter. The demand for expeditiousness is especially accentuated in social assistance matters. Other things that demand especially speedy processing include pro-

tection of family life and matters relating to the state of health of an involved party, employment relationships, the right to practise an occupation, holding an official post, pensions or compensation for damages. Ensuring expeditiousness is particularly important also when the personal circumstances of an involved party mean that he or she is in a weak position.

Delay in processing is often associated with inadequacy of the resources available. However, merely referring to "the general work situation" is not a sufficient excuse for exceeding reasonable processing deadlines. On the other hand, delay can result from otherwise defective or erroneous handling of the matter in question. In such cases, there can often be also other problems from the perspective of good administration.

As earlier, delay-related complaints that led to measures were most numerous in the cases of various municipal sectors.

Municipal authorities

A district court had sent a social welfare department a request for a report concerning visitation rights at the turn of January-February 2008. Preparation of the report was commenced in the department's family affairs unit in September and the report was completed in early December 2008. It took in all ten months to draft, which the Ombudsman found to be an unduly long time (4040/4/08).

A municipal social worker should, when placing the complainant's underage daughter in a mother-and-child home, have produced a written decision already at the beginning of open care. Production of the decision document and notification of it remained unfinished because a regular member of the social welfare department's staff had a heavy workload and was ill for a long period. Examination of the matter in the department was also delayed, as was the making of a decision and providing notification of it. This happened only about four months after the placement had commenced and one-and-a-half months after it had ended (3896/4/07).

Kela

An application for rehabilitation in Kela's insurance sector took 81 days to process. The delay was in part unwarranted (2687/4/08*). Kela took too long to process an application for discretionary psychotherapy insofar as the time taken was twice as long as the time the municipality had said it would be (3078/4/07*). The time taken to process a housing application, nearly four months, was too long (3841/4/07*).

Processing of a complainant's application for a housing allowance took nearly three months in one of Kela's insurance districts (73/4/09). Kela was urged to review the guidelines that it had issued concerning the impact of an ongoing appeal on processing of new applications for housing allowances and rehabilitation grants and if necessary to explicate them (3295/4/08*). Processing of housing allowance grants in Kela's Vantaa insurance district took three months (3432/4/07).

A complainant's application to belong to a residence-based social security district took nearly four years to process in Kela's overseas unit (3375/4/08). In another case, processing of a comparable matter in an insurance district took 11 months (3641/4/08).

An application to be deemed to belong to a social security district in Finland took three months to process in a Kela insurance district. The Ombudsman criticised Kela for the length of time that processing had taken and the fact that the applicant had not received instructions regarding actions for the time that the application had been undergoing processing, although he reported that he had asked for processing to be expedited to facilitate, among other things, his dealings with a health centre (3236/4/08*).

The police

The police had not conducted a criminal investigation on the basis of a complainant's notification of a crime without undue delay in a case concerning slander and breach of the Act on the Openness of Government Activities. The right to prosecute in the case itemised by two complainants expired while the matter was still being investigated by the police (312/4/08*). A criminal investigation was delayed when a decision had been taken to end a criminal investigation into some of the events, whereby all of the documents in the case were archived. A criminal investigation arising from a second notification relating to the case was delayed when the investigating officer and the officer in charge of the investigation thought they were no longer responsible for the case in question (1340/4/07). The length of a criminal investigation into a suspected case of slander, one year and two months, did not meet the no-delay demand in the provision (2597/4/07*).

It was revealed during an inspection at a police station in 2008 that the right to prosecute in several cases had expired while a criminal investigation was still in progress. What was involved in four cases was a simple traffic offence case, which could have been solved right away, and also the other cases were categorisable as simple. There had clearly been shortcomings in oversight of handling of matters (2069/2/07). Investigation of a simple case of breach of official duty had taken just under three years at the same police station and in the prosecutor's office (3361/4/08).

The overall time taken at a police station to process a demand for rectification relating to pay, at least ten months, was too long. In processing applications for training grants, the protection under the law of the interested parties requires that the applications be dealt with and the matter resolved before the training begins insofar as the precise date of commencement of the training has been stated in the application (1855/4/07).

Investigation of matters relating to traffic offences and the absence of the right to drive a vehicle was delayed. A criminal investigation into traffic offences took nearly two years. The police had sent the documents to a prosecutor as the right to prosecute was about to expire and the prosecutor had entered a *nolle prosequi* in the district court because the right to prosecute had become statute-barred with respect to six traffic offences. In the view of the complainant, the authorities' carelessness and tardiness had meant that the person who had committed the offences had escaped a penalty and being ordered to pay compensation for the costs of repairing his car, which had totalled about 13,500 up to 2006 (3958/4/07*).

Other authorities

In one case, the Deputy-Ombudsman took a stance on means of recompense for delay. He considered it problematic that the Patents Act did not make it possible to waive or reduce annual charges for patent applications during periods of undue delay in situations where this delay was clearly attributable to an authority (853/2/09*).

The Ministry of Finance should have acted more briskly than it did to examine the need to make the changes to legislation that are necessary to ensure that the protected domicile data of tax-liable persons are kept secret. Despite an initiative made to the Ministry by the Tax Administration as long ago as 2003 to the effect that the legislation relating to the publicity of tax data be amended, the matter was still under preparation in September 2009 (2945/4/08).

A court of appeal issued a decision in a criminal case only about three months and three weeks after the main hearing (1763/4/08*). The demand for expeditiousness in preparation of a civil case was not implemented in a district court when dealing with matters still in the preparatory stage, because one handling of the matters had taken over three years and the other about two and a half years (343/4/09*). The Insurance Court issued a decision in a case based on accident insurance legislation in June 2007, but the decision was sent to the complainant by post only three months after the decision was made (3908/4/07*).

It took a district court two years and eight months to deal with a criminal case involving gross sexual abuse of a child, which was already at that stage unreasonable from the point of view of the parties involved (3697/4/08). It took unduly long, over nine months, for the child psychiatry department of a central hospital to respond to a request from the police for executive assistance in investigating a suspicion of sexual abuse of a child (1700/4/08).

The length of time taken by the Social Security Appeal Board to process a complainant's rehabilitation-related matter jeopardised the timeliness with which the rehabilitation needed to be provided. The Board should have taken the time already elapsed into account

when presenting its reasons for the decision and refrained from ordering Kela to arrange rehabilitation that it was no longer possible to arrange due to the passage of time (1280/4/08* and 2891/4/07).

There were significant defects and delays in a tax office's handling of a complainant's tax proposals based on a report of a tax audit of his business operation (3550/4/08).

The times taken to process benefit applications by the Wood and Allied Workers' Unemployment Fund lengthened as the economic situation deteriorated in late 2008/early 2009. The Fund had taken appropriate measures to reduce the processing times and had succeeded in bringing them down from 7–8 to 3–4 weeks. Nevertheless, they were still somewhat longer than they had been before the onset of the economic recession in 2008. The Fund's actions were not as such blameworthy when the factors causing the lengthening of processing times and the measures taken to reduce them are taken into consideration. The Deputy-Ombudsman took the view that the Fund should nevertheless continue to endeavour to improve the situation with regard to processing times and if necessary review the adequacy of its measures to achieve this objective (485/4/09).

A comparable situation manifested itself in the case of the IAET Fund; the time taken to process first applications for unemployment benefits was, at its longest, over 16 weeks (344*, 730* and 2036/4/09*), in the same way as with the Union of Salaried Employees Unemployment Fund, where applications for pay-related per diem benefits rose to four weeks in January 2009, 9 weeks in the latter half of March, 12 weeks in June and 18 weeks in August (3999/2/09). The time taken to process applications for pay-related benefits by the Metalworkers' Unemployment Fund was 9-10 weeks in April 2009 and had stretched to 12 weeks in August (3885/2/09).

In January 2009 initial applications for benefits were being processed by the Unemployment Fund for the Building Sector in around 4-5 weeks after they were received. In June an application was processed within 8-9 weeks and in September it was only taking 2 weeks to get an application processed. In the early days of December, the Fund was processing applications almost in real time (4685/2/09).

Labour committees in several municipalities exceeded the deadline set in a Ministry of Labour Decree for making a submission on labour policy (513, 514, 2080, 2380, 2401, 2416, 3339* and 3627/4/07).

Processing of an asylum application by the Directorate of Immigration (later the Finnish Immigration Service) had already taken 23 months at the time of the complaint. This was clearly in excess of the average time for processing an asylum application. In the Deputy-Ombudsman's assessment, two years is too long a time to process an asylum application (1724/4/07*).

Publicity of proceedings

Questions relating to publicity of proceedings arise mainly in the context of the oral hearings in the courts of law. Two decisions concerning publicity of court proceedings were issued during the year under review. One of the basic situations, relating to implementation of requests for documents and information, is dealt with under the heading of Section 12 of the Constitution.

At the request of the families of the persons who had been killed, a district court dealt with a criminal case, which had prompted major public interest, entirely in camera. Also factors with which an obligation to preserve secrecy was not necessarily associated were dealt with at the main hearing. Only partial secrecy of the trial and a more detailed presentation of the reasons for the in camera hearing would have better implemented the right to a fair and public trial that is safeguarded in Section 21 of the Constitution (3876/4/07*).

The solutions that a district court adopts with regard to the publicity of individual trials must follow a policy that is acceptable from the perspective of the principle of publicity of trials. In all homicide cases that happen within couple relationships, for example, matters within the family that belong to the sphere of the spouses' private lives inevitably have to be discussed. In one case, matters of this kind were not particularly delicate, but rather typical for the category to which they belonged. Similar application of discretion in cases of homicide in other couple relationships would lead to a situation in which in practice all cases of this kind would have to be held in camera and the trial material declared secret. It was questionable whether a solution policy of this kind would be acceptable from the perspective of the principle of publicity of trials and the objectives of the Act on Publicity of Trials in General Courts (1357/4/08*).

Hearing an interested party

Hearing an interested party is one of the most central individual questions associated with procedural protection under the law that arise in oversight of legality. The principle of hearing means that the interested parties must be informed in good time of all reports and statements that may influence the outcome of their case (Supreme Court decision KKO 2004:79, Section 34 of the Administrative Procedure Act) and that they must be given an opportunity to take part in an inspection that is conducted in their case. Also the hearing procedure itself must meet the requirements enshrined in the law in that, inter alia, an interested party is given a real opportunity to present his or her view either orally or in writing, depending on the case. In cases involving interested parties there is also the key additional requirement that both parties be treated equally in that neither is accorded a more favourable position than the other.

A municipal building inspector had acted unlawfully when an application for a building permit was being processed and he failed to inform the complainant, who was the applicant's neighbour, and to give him the opportunity to have his views heard. Likewise unlawful was the fact that the building permit had been granted without an exceptional permit from the regional Environment Centre (1076/4/07).

A Senior Inspector from a State Provincial Office and a Provincial Physician acted unlawfully when they issued a reprimand to a doctor without hearing his view. Hearing emphasises the opportunity to exercise influence that is essentially associated with an individual who is in the position of an interested party. The rights of an interested party also include being aware that his or her case is being taken under reconsideration (3141/2/07). A State Provincial Office should have heard a social worker before issuing a decision on a complaint, in which she was criticised (3766/4/07*).

A labour office should have given a complainant an opportunity to give his own report in a start-up grant-related case arising from an expert opinion it had obtained (3212/4/07*). A labour protection district failed to provide an interested party with the opportunity to give his own comment concerning a statement by a labour protection representative in an occupational health and safety case (3379/4/07*).

Before a disciplinary punishment is ordered for a pupil, he or she and if necessary a guardian must be heard. In one case, the complainant's son in a comprehensive school had been given a warning without his guardian or the boy himself being heard (678/4/08). The termination of a supply teacher's fixed-term employment relationship during the probationary period had been done in part contrary to the guidelines on hearing that the educational establishment had confirmed (131/4/08).

The ULJAS distraint information system does not automatically record foreign addresses as those of a debtor. From the perspective of the protection under the law of debtors residing abroad, it is important that, in addition to the automatic examination that the system performs, address data are checked also by means of Internet enquiries if necessary (3028 and 3029/4/08).

A district court left a complainant's applications concerning a child's care and visitation rights as well as enforcement of visitation rights in abeyance without hearing the complainant in the matter. In addition, the court neglected to comment on the complainant's demands relating to trial costs and conditional fines (1472/4/08). A complainant had not been duly heard in a land court in an appeal case concerning a property definition operation. The land court should have asked the complainant to reply to the appeal and invited him to its main hearing, because approving the appeal could have affected his farm's share of a common water area (3319/4/07*).

The right to be heard would have been safeguarded better if the police had tried to obtain additional information about facts associated with the exercise of the right to speak on behalf of a person who was an interested party in a crime and who was subject to legal guardianship; this information could have been obtained, for example, from a register of guardianship affairs or by asking the person assigned to her as a legal guardian (2634/4/07).

A prisoner had been given a reprimand for inappropriate behaviour. He had been heard only orally and no protocol of the hearing had been drafted. When a prisoner is heard, a protocol of this must be drafted. This applies also to cases in which a breach of regulations results only in a reprimand being issued (2626/4/07).

Providing reasons for decisions

The right to receive a reasoned decision is safeguarded as one component of good administration and a fair trial in Section 21.2 of the Constitution. Article 6 of the European Convention on Human Rights likewise requires adequate reasoning in support of decisions. The obligation to reason decisions is defined in greater detail in, inter alia, the Code of Judicial Procedure, the Act on Criminal Trials, the Act on Exercise of Administrative Law and the Administrative Procedure Act.

It is not enough to announce the final decision; instead, the interested parties also have the right to know how and on what grounds the decision has been arrived at. The reasons given for a decision must express the main facts underlying it as well as the regulations and orders. The language in which the decision is written must also be as understandable as possible. Reasoning is important from the perspective of both implementation of the interested parties' protection under the law and general trust in the authorities as well as also of oversight of official actions. Once again, numerous complaints concerning reasoning were resolved during the year under review.

The Supreme Administrative Court had in its decision in a case concerning assistance for a school trip taken a stance on only the arguments relating to the stressing nature of the trip. Although the time of the school trip had been dealt with in the Court, no stance on this had been taken in the decision despite the complainant specifically requesting that this be done (1077/4/08).

That a district court's decision on publicity is confined to setting forth the reasons underlying the interested parties' demands can not be regarded as an appropriate way of presenting the reasons for a decision. The decision and the reasons for it must be presented specifically as the district court's own assessment of the matter (1357/4/08*). Keeping the proceedings only partially secret and more detailed reasoning of a publicity-related decision in a criminal trial would have meant better implementation of the right to a fair and public trial that Section 21 of the Constitution guarantees (3876/4/07*).

In addition to referring to legal norms and echoing their content, a prosecutor's decision to limit a criminal investigation should also state the grounds on which it has been calculated that continuing the investigation would lead to a disproportion, in the meaning of the Act, between costs and the nature of the case as well as the possible consequences (2975/4/08*). A criminal investigation decision that was defectively conducted and reasoned with respect to the territorial scope of application of Finnish criminal law did not meet the demand that a matter be dealt with appropriately and reasons for the decision presented (2597/4/07*). A Detective Inspector's decision not to conduct a criminal investigation was so scantily reasoned that it could not be known from it on what legal considerations the decision was more precisely founded (2594/4/08).

A municipal environment and planning board had in two decisions deviated from a referendary's recommendations and opted to reject applications for exceptional permits. The problems that holiday residences cause for planning had been cited as the reason for the decisions, but there was no mention of why the final decisions that the board had reached in the matters deviated from the referendary's proposals (1582/4/08*).

The Supreme Administrative Court had quashed a municipality's decision to reject an application for serviced housing as provided for in the Act on Services and Assistance for the Disabled and referred the matter back for reconsideration. The new decision by an official did not explain what new relevant information influencing the matter the report mentioned in the decision contained, and on the basis of which the view had been taken that changes that had occurred in the complainant's circumstances since the Court's decision meant that serviced housing should not be arranged. The regulations applied were likewise not stated in the decision (3886/4/07). The Ministry of Labour's Labour Committee should have presented more precise reasons for its submission so that it would have been easier for the complainant to decide on which of the grounds mentioned the Committee regarded him as an entrepreneur (361/4/07*).

A complainant was not granted social assistance to buy spectacles. The negative decision did not contain an assessment of whether the glasses represented a necessary cost item that created an entitlement for assistance nor whether it was regarded possible for the complainant to pay for the glasses out of his own income. Granting social assistance to buy glasses could not have been based only on whether the applicant had received assistance in recent months (2577/4/07*). It should be clearly set forth in the guidelines on social assistance applications which of the reports requested are essential for processing of the application. The instruction written into the complainant's social assistance decisions may in this respect have created a misconception (97/4/08*).

An official's decision concerning a severely handicapped person's own share of the costs of transport contained no mention of the time starting from which the person's share of the costs would be levied in accordance with the decision. Likewise missing in the decision were the name and contact particulars of a person who would provide additional information (2789/4/08).

Presentation of clear reasons for decisions on agricultural subsidies must be stressed in training arranged for municipal authorities. Clear reasons for decisions when a subsidy application has been partly or wholly rejected are important in view of the complexity of the legislation on the agricultural subsidies system (3691/4/07).

Decisions concerning free months in distraint were contradictory when the grounds outlined in them did not correspond to the reasons for the decisions. Nor did the decisions clearly set forth all of the regulations in light of which the free-month applications had been assessed (3280/4/07*).

A prisoner had been denied a family visit on grounds relating to security and order in the prison without spelling out the linkage between the suspected danger and the family visit applied for (277/4/08*).

An appointment-related memorandum from the Labour Administration did not explain the reasons why some applicants had been called to an interview and why half of them had been further selected to continue. Likewise missing from the memorandum was a final comparison of those who had been selected to continue. A memorandum from the Tax Administration did not contain a comparison of the two applicants selected to continue, nor had the complainant been appropriately informed of the appointment (818/4/08).

Appropriate handling of matters

The demand for appropriate handling of matters contains a general duty of care. An authority must carefully examine the matters that it is dealing with and comply with the regulations and orders that have been issued. Once again, numerous complaints belonging to this extensive category of cases were resolved. What was involved in some cases was an individual error due to carelessness, whilst in others the cause lay mainly in the procedural methods that authorities had adopted and in demarcations and assessments to do with factual power of discretion.

The exceptional procedure adopted by the Social Security Appeal Board of interpreting cases that its members had in advance deemed unanimously as having been dealt with in session although no actual session had been arranged was found to be unlawful (1490/4/07*). Kela and the State Treasury had not taken sufficient care of examining a disability pension matter when the exploration of fitness for work that a

complainant had requested was not forwarded from a Kela office to be taken into consideration in decision making (1527/4/08).

Documents concerning an assessment of personal performance of an employee were not available when needed in a hospital (2025/4/07*). Complaint documents disappeared in the maritime services department of the Finnish Transport Agency and a request made later for an explanation of the causes of the disappearance was not furnished by the deadline stipulated (4201/2/08*). A notification concerning unemployment time had disappeared in a Kela office (3643/4/07).

With the exception of registration of its receipt, a complaint had not been handled properly in the office of a university chancellor in that it had gone missing and could no longer be found, whereby it was not possible, either, to give the complainant a reply within a reasonable period. If the matter had been properly followed up on the university's own initiative, the long time that it was pending and the fact that no measures were taken in relation to it could have been noticed from the records. It would have been possible to ask the complainant for a new complaint document to replace the lost one, after which it would eventually have been possible to bring the matter to conclusion (955/4/08).

A labour protection district's lawyer had not presented an acceptable reason for the time it had taken to provide a report in a case of a suspected labour protection-related offence. The blameworthiness of the matter was exacerbated by the short time within which the right to prosecute in these matters expires and by the fact that investigation of the matter was split between two authorities. It was likewise inappropriate that an authority that had been asked on the basis of an Act to provide a statement failed, in spite of a request for expeditious handling, to supply the report before a prosecutor intervened in the matter (460/4/08*).

The deputy-head of a labour protection district had together with the district's lawyer decided that no further measures were needed in a matter under deliberation. He decided nevertheless to continue to investigate the matter, but did not record the investigation work in the records of the district nor inform the lawyer of the matter. Consequently, the latter was not aware of the investigation work being done when he replied to the complainant (1285/4/07*).

A social welfare office was closed for July. A municipality must ensure that keeping a municipal office closed does not lead to the loss of an individual person's rights or benefits being lost (2507/4/07*). A municipality had not drafted a service plan as required under the Act on Services and Assistance for the Disabled (3384/4/07*).

Obtaining a municipal rental dwelling is a very important matter from the perspective of a person's basic security. When an applicant is notified of the availability of a dwelling, it would accord with an approach amenable to fundamental rights to adopt a procedure in which, in a suitable manner on a case-by-case basis, the legal protection benefits of a written notification were combined with the efficiency of notification over the phone. In conjunction with making an offer over the phone, the applicant can, for example, be asked whether he wants the offer also in written form. Then it would be possible to try to agree on the use of some or other electronic method – such as email, fax or a text message (130/4/08*).

A police chief acted within the parameters of his discretionary power when he granted a permit to acquire a small-calibre pistol to the person who committed the Jokela school massacre. However, there would have been justification for a more thorough investigation of the applicant's pursuit of target shooting as a hobby and of his suitability to possess a firearm (3483/4/07*).

A Chief Superintendent at a police station had altered the confirmed duty roster of a guard at the station without the guard's consent and in the absence of a compelling reason in the meaning of the Working Hours Act (2374/4/07). The officer in charge of the investigation of a criminal case had not informed an interested party who had requested the investigation that it had been ended (3046/4/09).

A complainant had been asked on the basis of his name to supply his residence permit as an annex to his application for social assistance. When it is taken into account that it is not possible merely on the basis of a person's name to decide whether that person is a Finnish citizen or not and also the fact that the social welfare office would have had access to data from the population information system, the requested information should have been obtained ex officio from the system (3355/4/07).

A municipal social welfare and health department should not, without the consent of the party in question, have balanced out the allowance paid to a carer from the following month's allowance; instead, the matter should have been referred, as an administrative dispute, to an administrative court for resolution (3886/4/07). Under the Local Government Act, the party taking an initiative must announce the measures that have been carried out as a consequence of the initiative. The complainant had received no such notification (2956/4/08).

The Consumer Disputes Board had, in contravention of the Act on Electronic Transactions in Official Actions, asked a complainant to furnish his complaint to the Board with signatures in writing (813/4/07*).

A member of the coastguard personnel gave a complainant who lives in Tallinn, Estonia a groundless order to have his vehicle inspected, which caused an unnecessary trip to an inspection centre in Finland (2272/4/07*).

Decisions relating to enforcement of preventive measures and distraint did not state what the value of the property that was the object of enforcement had been assessed at. Further, a bailiff acted unlawfully in failing to carry out distraint before the deadline stated in the demand for payment (3198/4/08).

Allowing a prisoner to get outdoor exercise must not depend on the prisoner demanding it. The staff must on their own initiative, especially in situations where a prisoner has been transferred from one prisoner to another on the same day, ensure that the prisoner has been allowed to exercise outdoors in the manner laid down in the law and if this has not been done, take the measures that the situation demands (303/4/09). Recording of the fact that letters sent by a complainant had been opened had not been done in a prison, and the remand prisoner had not been informed that they had been opened (1403/4/08). A prison should have redirected a letter sent by one prisoner to another so that it would have been delivered to the recipient in the prison where that person was currently accommodated (2424/4/08).

An action on the part of a university that led to a reprimand being issued was not completely in accordance with good administration. A hearing procedure had been initiated twice without stating the exact reason. The protocol of the first event had been drafted unclearly, and the significance of its approval was likewise unclear. There was inclarity about what had been said at the hearing. The reasons presented for the reprimand were imprecise, because they contained a reference to a hearing that had never been arranged. Nor was it in all respects clear from the reasons presented why the procedure in question had been regarded as incorrect (1398/4/07*).

The eligibility conditions stipulated in the Decree were not complied with in an appointment to a post at a polytechnic (2680/4/08). The attention of a police service was drawn to the importance of appropriately drafting an appointment memorandum (3050/4/08). Three professorial appointment decisions made by the rector of a university were flawed because of the lack of an ordinary application procedure for the posts, failure to draft an actual reasoned memorandum of the appointment and the scanty reasons presented for the appointment decision (3315/4/08).

At a meeting concerning the granting of an imprimatur for a doctoral dissertation, the dean of a university faculty should have directed the handling of the matter in such a way that hearing the dissertant and the subsequent response given within a specified time would have been taken appropriately into consideration. The attention of the dean was drawn also to issues of recusability in the dissertation process, although the dean had not acted in the matter in a way that was clearly contrary to Section 28 of the Administrative Procedure Act (3471–3473/4/07).

Other prerequisites for good administration

The Finnish Immigration Service acted erroneously when it continued, after the Supreme Administrative Court had issued its decision in a citizenship matter, to investigate the citizenship of the person in question. It is an a priori requirement in a state governed under the rule of law that an administrative authority must without undue delay comply with court decisions that have acquired the force of law. Requests for additional investigation relating to a matter that an administrative authority makes after a court has issued its judgment are in conflict with the independence of courts and could even dilute the appeals process (3565/4/07).

The procedure followed by the Judicial Appointments Board and the submissions committee of a court of appeal in the appointment of a lagman (chief judge) to a district court post was contrary to the protection of trust principle that good administration presupposes. A person meeting the eligibility requirements for the post had been excluded from consideration for the appointment on a so-called waiting period ground that is unknown in the law and on the basis of which an earlier appointment to a judicial post is an impediment to appointment to a further judicial post for a period of time that is not closely defined in length (3889/4/07*).

The only ground that had been cited for a warning issued to a complainant was ethnically tinged comments, which were open to interpretation with respect to both their meaning and their intent, in email messages that he had sent to instances responsible for labour protection matters and specifically in those concerning the handling of his labour protection matter. The Deputy-Ombudsman considered the warning to be a measure that was subject to at least some extent to criticism for this reason and from the perspective of the proportionality principle (527/4/07).

A health care professional had the right to trust that a decision in which his action had been examined and found lawful would not be changed to his detriment without a compelling reason (3141/2/07). Definition of the work experience of applicants for taxi licences must be uniform so that applicants can predict their possibilities of getting a licence (2844/4/07*).

The guidelines issued by the former National Product Control Agency (STTV) concerning Internet trade in alcohol were problematic from the perspective of the principle of protection of trust in view of the fact that no significant changes had been made in the relevant legislation or case law (1462* and 317/4/07*).

A decision to issue a reprimand to a doctor by the National Authority for Medicolegal Affairs had been based on events for which a State Provincial Board had already given him an administrative instruction. Ordering an administrative sanction again on the basis of the same events and under the provisions of the same legislation does not correspond to the predictability and consistency that must be demanded in official actions. Further, in this case it was not possible for the earlier instruction to be taken into consideration as a ground for increasing the severity of the later sanction (3422/4/07*).

After receiving a request for a report from the Deputy-Ombudsman, a lagman (chief judge) in a district court had summoned the notary who had made the complaint to a talking-to in his office. The lagman's behaviour during the conversation had not been a success from the perspective of the behaviour-related obligations that the State Civil Servants Act imposes. The Deputy-Ombudsman found it somewhat astonishing and cause for concern that the Ministry of Justice and a court of appeal had in their statements criticised the notary's action in complaining to the Ombudsman (3115/4/07*).

The attention of a municipal board was drawn to the Ombudsman's right under the Constitution to receive information. The board had not submitted its report to the Ombudsman by the deadline set nor requested additional time to do so before the deadline expired. It had also failed, despite a specific request, to furnish an explanation of the causes of the delay in submitting the report (670/4/07).

Numerous complaints concerning the guidelines for handling applications for firearms licences were made to the Ombudsman. The guidelines resulted in that licences, especially for hand guns, became markedly more difficult to obtain. The ways in which uniform practice can be striven for include administrative guidelines, which as such are not binding on the individuals who decide on licence matters. The problematic feature of this partly far-reaching change was that it happened without the relevant Act being amended. It would have been more justified to take the view that questions belonging to the realm of legislation were involved and that such a significant tightening of demands would presuppose a legislative amendment (4564/2/09*).

Guarantees of protection under the law in criminal trials

The minimum rights of a person accused of a crime are separately listed in Article 6 of the European Convention on Human Rights. They are also included in Section 21 of the Constitution, although they are not specifically itemised in the same way in the domestic list of fundamental rights. The Constitution's regulation of criminal trials is more extensive than the first-mentioned document's, because the Constitution guarantees processual rights to deal with also demands for punishment that an interested party presents.

The cases highlighted here are specifically those associated with a suspect's rights. Cases involving the rights of an interested party have been dealt with in the foregoing as especially a question associated with the right to have a matter dealt with by an authority. Several questions that manifest as issues of protection under the law have been examined already in the foregoing with respect to other constitutional provisions, such as Sections 7 and 10.

A Detective Sergeant interrogated a 17-year-old who was suspected of assault without a witness, although neither a person assisting or legally representing the child nor a representative of the social welfare board was present at the interrogation. The report did not reveal that the interrogator had given the child's representative or someone from the social welfare board the opportunity to be present (3676/4/07). In a case involving attempted homicide the suspect was asked in a letter sent on Friday to provide a final statement by the following Thursday. The deadline was too short (1677/4/08*).

The officer in charge of a criminal investigation should, before commencing it and especially before the use of coercive measures, have found out whether an interested party demanded a penalty in the matter. Presenting the demand to a district court through a support person and the police being notified of it from there did not meet this demand (276/4/08). A suspicion of driving while under the influence of a drug or medicine would have required, in order to clarify the matter, the suspect being taken to a clinical test conducted by a doctor (2548/4/08).

The procedure followed by a prison may have given the impression, contrary to the presumption of innocence, that the a priori conception behind keeping a prisoner who was suspected of intoxicating himself in solitary confinement for investigative reasons was that the complainant had committed a breach of discipline, and that keeping him isolated for investigative reasons would have resulted more or less automatically (1930/4/08). When examining a prisoner's suspected abuse of medicines it is advisable to use the disciplinary procedure: inter alia, hearing and the possibility of referring any sanction to a court for examination help guarantee that the prisoner's protection under the law is implemented in cases concerning breaches of prison regulations (2561/4/08).

Impartiality and general credibility of official actions

As a provision of the European Convention on Human Rights sums it up, it is not enough for justice to be done; it must also be seen to be done. The thinking in Article 6 of the Convention is reflected on the administration of law side also on administrative procedure. In domestic law this is reflected by the fact that in Section 21 of the Constitution fair trial and good administration are combined in the same constitutional provision. What is involved in the final analysis is that in a democratic society all exercise of public power must enjoy the trust of citizens.

Reason to doubt the impartiality of an authority or public servant must not be allowed to arise owing to extraneous causes. Something that must also be taken into consideration here is whether a public servant's earlier activities or some special relationship that he or she has to the matter can, objectively evaluated, provide a reasonable ground to suspect his or her ability to act impartially. Indeed, it can be considered justified for a public servant to refrain from dealing with a matter also in a case where recusability is regarded as open to interpretation.

The Insurance Court should in its activities avoid the kind of situation, unsatisfactory from the perspective of impartiality, in which both a representative and a member of the Court are engaged full-time in the activities of the same organisation that guards the interests of its members. The Court's expert member should have drawn attention to the matter on his own initiative (1398/4/08).

A veterinary who stood in for a municipal veterinary was recusable when conducting an inspection under the Animal Welfare Act of a care home for dogs, the owner of which worked as an assistant in the veterinary's private practice (4010/4/07*).

If the procedure for hearing a public servant ends in a supervisory reprimand, attention must be drawn when issuing it to observance of the regulations concerning recusability. The fact that a superior had been associated in many ways with a matter under investigation could understandably have given the complainant the impression that his superior was recusable in the case. It is, however, typical that in situations leading to a reprimand being issued a superior is an involved party because of, for example, his role, activities and earlier stances. In the Deputy-Ombudsman's assessment, the superior was not an interested party nor for any other special reason disqualified when convening a hearing event or issuing a reprimand to the complainant (1398/4/07*).

An appointed guardian was recusable when applying to an administrative court for permission to conduct a property deal in which the guardian himself would buy his principal's dwelling. Recusability was not obviated by the fact that when the sale contract was being signed, the person under legal guardianship had been represented by the guardian's substitute, because also evaluation of the need to sell the dwelling and applying for permission would have been a matter for the guardian's substitute. The administrative court had failed in conjunction with an audit to conduct appropriate oversight of the guardian's recusability in renting the principal's dwelling (2247/4/08).

The tasks of a parking assistant with a municipal parking supervision service can be assigned only to a municipal office holder who has been given the right to oversee parking and is a member of the municipal parking supervision staff. The tasks can not be entrusted to an instance that does not belong to the municipal parking supervision staff (3082/2/07*). Looked at from the perspective of the credibility and trustworthiness of official actions, also a request to pay a parking fine should be signed in the ordinary way. The identity of the parking assistant of the parking supervisor who has ordered the request for payment of the fine must be ascertainable from the signature. In most cases, in order to ensure recognisability of the name, the signature must be supplemented with a print clarification of the name (1777/4/08).

A university professor had requested permission to take a side-position as an expert and gave an expert opinion in a dispute case concerning mould damage to a house. Although the expert opinion expressed by the professor could not be regarded as a submission by the university, the university should, to be on the safe side, clarify its procedural methods in a way that ensures interested parties can not form an incorrect conception as to who has made the submission and what that person' position is (1812/4/07).

A former deputy mayor of a city acted unlawfully when deciding on a company's tender to provide a festival office, because he was a member of the company's supervisory board and therefore recusable (1905/4/07*).

Behaviour of officials

Closely associated with the trust that the actions of a public servant must inspire is the official's behaviour both in office and outside it. The legislation on public servants requires both State and municipal officials to behave in a manner that his or her position and tasks presuppose. Public servants holding offices that demand special trust and esteem must behave in a manner commensurate with their position also outside their official working hours.

A lieutenant was informed of the Deputy-Ombudsman's opinion that conscripts must in all circumstances be treated appropriately and equally and that an improper way of speaking should be avoided. Improprieties that manifest themselves among the personnel must be intervened in immediately and with sufficient effectiveness and if necessary persons who have demonstrated their unsuitability for training conscripts must be transferred to other tasks (1182/4/08).

The executive director of a game management association replied to a letter, published in a comment column of a newspaper, in which a dog owner had criticised hunting in the vicinity of an area used for outdoor recreational purposes. The tone of the reply and some of the expressions used in it were inappropriate (676/4/07*). The demand that appropriate language be used applies also to internal correspondence between officials concerning a client's affairs (2553/4/08*).

In a telephone conversation after the issuance of a decision, an administrative court judge had used expressions that were improper and demonstrated prejudice (3368/4/08*). The behaviour of a summons server (3143/4/08), a policeman (653/4/08) and a television licence inspector (4129/4/08) also had to be intervened in.

3.4 SHORTCOMINGS AND IMPROVEMENTS IN IMPLEMENTATION OF FUNDAMENTAL AND HUMAN RIGHTS

The Ombudsman's observations and comments in conjunction with oversight of legality often give rise to proposals and expressions of opinion to authorities as to how they could in their actions promote or improve implementation of fundamental and human rights. In most cases these proposals and expressions of opinion have had an influence on official actions, but measures on the part of the Ombudsman have not always achieved the desired improvement. This chapter is devoted to observations on certain typical or long-persisting shortcomings in implementation of fundamental and human rights. Outlined as a counterweight are cases in which the Ombudsman's measures have led or are leading to improvement in official actions or the state of legislation.

Something that must be borne in mind in this context is that not all problems relating to oversight of legality or implementation of fundamental and human rights come to the Ombudsman's knowledge. Oversight of legality is founded to a large degree on complaints from citizens. Information about shortcomings in official actions or defects in legislation is obtained also through inspection visits and the media. However, receipt of information about various problems and the opportunity to intervene in them can not be completely comprehensive. Thus lists that contain both negative and positive examples can not be exhaustive presentations of where success has been achieved in official actions and where it has not.

The way in which certain shortcomings repeatedly manifest themselves shows that the public authorities' reaction to problems that are highlighted in the implementation of fundamental and human rights has not always been adequate. In principle, after all, the situation ought to be that a breach pointed out in a decision of the Ombudsman or, for example, in a judgment of the European Court of Human Rights should not re-

occur. The public authorities have a responsibility to respond to shortcomings relating to fundamental and human rights through measures of the kind that preclude comparable situations from arising in the future.

Possible defects or delays in redressing the legal situation can stem from many different factors. In general, it can be said that the Ombudsman's stances and proposals are complied with fairly well. When this does not happen, the explanation is generally a dearth of resources or defects in legislation. Delay in legislative measures also appears often to be due to there being insufficient resources for law drafting.

3.4.1 DEVELOPMENT HAS NOT ALWAYS BEEN ENOUGH

Numerous de facto coercive measures by means of which the freedom of the person being treated or cared for is restricted without there being statutory provision for them and which are not even conceived of as coercive measures occur in health care and care of the aged. The Ombudsman has repeatedly highlighted these procedures, which are problematic from the perspective of, inter alia, personal liberty and integrity. At the moment, for example, the legislation that the Constitution requires and which would justify intervention in aged persons' right of self-determination does not exist. In practical care situations, however, personnel have to resort to measures for which they have no authorisation founded in legislation.

Problems with respect to implementation of the Treatment Guarantee have repeatedly cropped up in the eating disorders unit of one hospital district despite a reprimand having been issued to it as long ago as 2007. Arrangement of psychiatric treatment for children and adolescents within the time limit required under the Treatment Guarantee had likewise not succeeded fully in that unit.

Definition on the level of an Act of the restrictions to be used in care of the mentally handicapped has been defective since the revised fundamental rights provisions of the Constitution came into force in 1995. As early as 1996, the Ombudsman informed the Government and the Ministry of Social Affairs and Health of his opinion that legislation on special care services for the mentally handicapped needed to be explicated.

Over the years, both the Ombudsman and the CPT have criticised the so-called slopping-out cells used for accommodation in Finnish prisons as a violation of human dignity. The timetable for upgrading cells has been postponed time and time again and, despite a partially positive development, there were still 338 slopping-out cells in use at the end of the year under review.

The Deputy-Ombudsman has made nearly 20 recommendations concerning revision of the prison legislation that entered into force in 2006. The Ministry of Justice's revision package has been delayed, for which reason the shortcomings and inclarities observed have not been eliminated. In some case this has led to an unlawful circumstance or practice continuing.

For example, in 2007 the Deputy-Ombudsman reminded the authorities responsible for the prison service that areas with a structural layout that means they are de facto intended for so-called specially supervised visits must not be used for supervised visits. Despite this, the areas used for normal supervised visits in some prisons still correspond to those used for specially supervised visits. Structural alterations have not been commenced because it is anticipated that the legislation will be amended.

Excessive use of police prisons to house remand prisoners is a matter that both the Ombudsman and the CPT have been drawing attention to for years, but the problem does not seem to be going away. Although the main rule according to the Detention Act is that a person on remand arising from a crime is to be kept in a prison used to accommodate remand prisoners, last year roughly one remand prisoner in five was held in a police prison. The facility in which a remand prisoner is kept is decided by a court on the representation of the police. Both bear responsibility for ensuring that keeping a remand prisoner in a police prison is viewed, in the manner that is the intent of the Act, only as an exception and that the intention of the Act that accommodation in a remand prison is the main rule be carried out in practice.

Ground for criticism is repeatedly found in the reasons given for permission-related decisions in prisons, as is also the case in the reasons presented for decisions relating to criminal investigations as well as in the reasons recorded by the police for deprivation of liberty.

House searches in private dwellings have been attracting attention for years: situations in which a search has been conducted without giving the occupant the opportunity to be present during it and invite his or her own witnesses to be there continually arise. Often, a search has been conducted, contrary to the main rule enshrined in the Act, without a written warrant.

After numerous partial reforms, the legislation concerning covert coercive measures that impinge in many ways on protection of privacy has become a fragmented totality that is difficult to manage. The reforms recommended in Ministry of Justice committee report 2009:2 are an attempt to redress this. Associated with covert coercive measures are also problems relating to internal oversight of pseudo-purchases and undercover operations; attention has been drawn to these problems for years.

Problems relating to implementation of lawyer-client confidentiality and shortcomings in closed institutions and police activities have often come to light. Despite the Ombudsman's critical comments, the problems do not appear to have been eliminated. Problems with a search conducted in a law office stem from defective regulation (improvements in which are recommended in the committee report mentioned in the foregoing). The problems that arise from the perspective of lawyer-client confidentiality in prisons and police detention facilities often stem from the structural layout of the spaces, which is contrary to the Act and planning guidelines.

Attention has repeatedly been drawn over the years to the confused nature of legislation on driving licences, the difficulty of understanding it and its openness to interpretation that facilitates non-uniform practice, but the situation has not been clarified.

Measures have not been taken to rectify all of the shortcomings that relate to language rights. For example, it was brought to the attention of the Ministry of Finance in 2008 that a Swedish-language form drafted for making registry notices and posted on the administrative courts' Internet site is defective. So far, despite the Ministry's notification, the situation has not been redressed. Another example that can be mentioned is the Ombudsman's proposal that recommendations on good accounting practice be published also in Swedish. However, the Ministry of Employment and Economy has announced that the matter does not warrant measures.

As is well known, delays in trials are a central and long-standing fundamental and human rights problem in Finland. In the year under review alone, Finland was found guilty in nearly 20 judgments by the European Court of Human Rights. Attention has been drawn in the course of the years also to delays in other official processing routines. From the perspective of access to protection under the law, the body that is perhaps in the most worrying position is the Social Security Appeal Board. Resolving the problem transcends administrative borders in that the Board is subordinate to a different ministry than the courts system. This state of affairs is not conducive to drawing attention to the individual person's perspective and to expeditious implementation of his or her rights in the appeals procedure as a totality. Challenges that transcend administrative borders are familiar also in the chain of dealing with criminal matters from the criminal investigation authorities to the prosecutor and on to the courts system.

A comprehensive solution to problems that violate the right to have matters dealt with without delay does not appear to have been found, although the matter has constantly been kept to the fore in the Ombudsman's oversight of legality. Although legislation providing for recompense for trial delays was finally put on the statute books, a comparable legal remedy is not available in cases of delay in exercise of administrative law and administration. The possibility of recompense for also other kinds of violations of fundamental and human rights should be arranged through legislation. The possibility of recompense-type compensation that the current Tort Liability Act provides for is very narrow.

3.4.2 EXAMPLES OF GOOD DEVELOPMENT

The views that the Ombudsman has expressed about including a national human rights strategy in the government platform, drafting action plans to concretise the strategy as well as ensuring adequate resources to implement these objectives were approved in committee handling of the Government report on human rights policy. A positive attitude to the matter was also adopted in the plenary session debate. This is one step in the right direction in that fundamental and human rights are conceived of as a concrete starting point that influences practical official actions. With the strategy, the public authorities would undertake a commitment to ensure the availability of the resources needed to implement policies on fundamental and human rights.

During the year under review, the Ombudsman and the Deputy-Ombudsmen issued more than 50 decisions in which an authority was asked to report what measures it had taken as a result of a stance adopted or a proposal made in a decision. These official responses are explained in the case category section of this annual report in the context of various sectors of oversight of legality. Not all responses had been received by the time this report was being drafted.

Some examples of cases of this kind in various sectors of administration are shown in digest form in the following. Presented in the digest is first the Ombudsman's or Deputy-Ombudsman's stance or proposal, and after that the authority's response. The aim with the digest is to give a general picture of the impact of the Ombudsman's work and positive development of the state of law or official actions.

Coercive measures affecting telecommunications

The Deputy-Ombudsman considers it important that reliable and up-to-date information is available concerning those decisions in which notification of the use of coercive measures affecting telecommunications has been deferred or permission has been given not to make a notification at all (2097/2/06).

The Ministry of Justice announced that a change to be made in the criminal case management system will make it possible to monitor instances of the use of coercive measures affecting telecommunications appropriately and reliably. The system was inaugurated in March 2010.

Courts and administration of justice

In the view of the then Ombudsman, it would be desirable for the development of the district courts network to be statutorily regulated. She proposed to the Government that it consider whether it should introduce legislation in which the district courts beginning their work on 1.1.2010 are mentioned on the level of an Act (428/4/09*).

The Ministry of Justice announced that it had forwarded the decision to an appointed working group for its information. It was proposed in Government Bill HE 227/2009 vp that a list of district courts be added to the District Courts Act. The Eduskunta approved the change on 10.12.2009 and the Act entered into force on 1.1.2010.

The Deputy-Ombudsman informed the Judicial Appointments Board of his view that a person who has appropriately applied for an advertised judicial position should not be excluded from consideration for appointment to the post on the ground that he or she has recently been appointed to another position as a judge (3889/4/07*).

The Judicial Appointments Board announced that it had begun examining the application system for appointments and had abandoned application of the so-called waiting period.

Prosecution service

The Deputy-Ombudsman drew the attention of the Ministry of Justice to the fact that the computer programme for district courts and prosecutors does not include a function that would enable a warning to be given when, for example, the date on which the right to bring a prosecution expires is approaching (1716/4/07* and 3233/2/09).

The Ministry of Justice announced that the case management system for district courts and prosecutors is obsolete and that its replacement with a new one is very necessary. However, developing the system is not purposeful; instead, a central influential factor is the information system modernisation project currently in progress within the police administration. The Ministry's intention is to replace the case management system at the same time. The timetable for implementation of the project will depend on the appropriations approved for it.

Police

The Deputy-Ombudsman pointed out in a decision concerning cooperation between the police and the media that because the principle of publicity and observing absolute secrecy of information belonging to the realm of private life can in some situations conflict seriously, more precise guidelines on, inter alia, creating nationally uniform practices are evidently needed (194/2/07*).

In June 2009 the Ministry of the Interior's police department issued a set of guidelines titled "Monitoring, documentation and presentation of police activities in separately agreed cases", which was replaced with a new eponymous set of guidelines on 22.12.2009.

Prison service

The Deputy-Ombudsman considered it untenable from the perspective of prisoner safety that in nearly all prisons there is no on-call health care personnel present at weekends and in the evenings (133/4/08*).

The Criminal Sanctions Agency announced that a working group tasked with studying the questions brought up in the Deputy-Ombudsman's decision was being appointed in the beginning of 2010.

The Deputy-Ombudsman pointed out that the practice pursued by the Prison Service's health care unit to the effect that referrals for non-urgent surgery are not written during (remand) imprisonment could lead to even considerable delays in receiving treatment (3402/4/07).

According to an announcement by the head physician of the Prison Service's health care unit, the unit's policy had been confirmed at a meeting of doctors as being that a prisoner has the same statutory rights in health care as other citizens.

The Deputy-Ombudsman found that the circumstances in which supervised solitary confinement had been carried out and the prisoner's treatment during it to be, assessed on the whole, a violation of the prisoner's human dignity. He asked the Criminal Sanctions Agency and the governor of the regional prison to consider how recompense could be made to the prisoner for the treatment that violated his human dignity. The Deputy-Ombudsman informed the Ministry of Justice of his view that more exact regulation of implementation of supervised solitary confinement was needed (1308/4/09*).

The regional director concluded that there was ground for recompense, although no compensatable suffering in the meaning of the Tort Liability Act had been caused in the case. The prisoner was paid, as reasonable recompense, €50 per day, i.e. a total of €350 for seven days. The criminal policy department of the Ministry of Justice acknowledged that there is a need for explication of regulation of security measures. It will

be studied in conjunction with drafting of a legislative proposal to amend the Prison Act and the Detention Act. The aim is to introduce the Government Bill in the Eduskunta in autumn 2010.

Distraint

In the view of the Deputy-Ombudsman, the Ministry of Justice should consider guidelines setting forth in which situations it would be preferable, in conjunction with determination of impediments to enforcement, to send notification to a debtor in such a way that the procedure would facilitate checking of the correctness of the notifications to be made to credit data companies (3050/2/07*).

According to the Ministry of Justice, it would be good to make respondents' protection under the law more effective as proposed by the Ombudsman in those situations where the distraint authorities are not entirely certain that a respondent has received sufficient information that a case has been initiated. In the course of 2010, the National Administrative Office for Enforcement together with the Judicial Administration Information Technology Centre will plan and implement the ULJAS information system, by means of which it will be possible to ensure that respondents are better aware than in the past that distraint cases are pending or have been concluded.

The Defence Forces and the Border Guard

As a result of a coastguard officer unlawfully ordering a vehicle inspection, a person who lives abroad in summer had to make an unnecessary trip to Finland. In view of the complainant's advanced age, the error also caused disconcerting inconvenience. The Deputy-Ombudsman proposed to the Border Guard that it consider whether recompense should be made in some way or other for the bother that the improper procedure had caused the complainant (2272/4/07*).

The general staff of the Border Guard announced on 28.9.2009 that it had been in touch with the complainant and enquired about any compensation demands in the matter. The sum mentioned by the complainant will be paid to him as recompense when he returns to Finland. The complainant later announced that he had received the recompense he wanted.

In a criminal investigation conducted by the Border Guard, mobile phones belonging to two brothers who were suspected of a crime were confiscated and the text messages in them examined. In the view of the Deputy-Ombudsman, the prohibition in the law on confiscating messages between close relatives applies also to situations in which both are suspected of a crime. The brothers' text messages should not have been appended to the protocol of the criminal investigation. Images and text messages the contents of which had nothing to do with the matter under investigation had been appended to the protocol. In view of the confidentiality and privacy of images and especially messages, it should have been possible to give careful consideration to each separately whether it was of relevance in the matter. The Deputy-Ombudsman additionally took the view that sufficient grounds had not been presented to explain why one of the complainants had not been allowed to use a certain legal representative in the criminal investigation (1673/4/07*).

The Border Guard announced that it had issued an instruction that the guidelines expressed in the Deputy-Ombudsman's decision be followed in criminal investigations conducted by its personnel.

Customs

No special eligibility requirements for posts within the Customs in which even extensive public power is exercised have been statutorily provided for with the exception of the posts of Director-General and Director (2807/4/07).

The Ministry of Finance announced that it was studying the matter on the basis of a report received from the National Board of Customs and that drafting of the necessary legislative changes would begin in early 2010.

The deadline for supplying statistical data on trade within the European Community and the principles for determining the size of fines for non-compliance should be incorporated into the Customs Act (3373/4/07*).

The Ministry of Finance stated in its reply that, inter alia, there is a need for a closer examination of explication of the Custom Act's provisions concerning fines. There is likewise a need to examine the uniformity of the provisions on principles for determining fines and conditional fines in the Customs Act and the Statistics Act.

A customs district had neglected to pay without delay the costs of legal proceedings for which it had been found liable. The Deputy-Ombudsman asked the customs district to consider how it could make recompense for the damage that its improper procedure had caused the complainant (3047/4/08).

The customs district announced that it had compensated the complainant in full for the costs that he had reported.

Shortcomings were often observed in assessment and appropriate recording of the grounds for personal checks that the Customs Act requires. These failings should be given attention in the training and guidelines that the Customs provide (2641 and 2055/3/07).

The National Board of Customs announced that the Deputy-Ombudsman's conclusions had been incorporated into a draft set of guidelines for Customs monitoring. In addition, a letter concerning the matter was sent to the customs districts urging them to pay attention to recording grounds as required by Section 15 of the Customs Act in accordance with the training received and the 2009 customs monitoring guidelines.

Matters relating to foreigners

Supervisory tasks at a detention unit belonging to a reception centre, which include, for example, preventing detainees from absconding, had been transferred to a private service provider under a security services contract. The Deputy-Ombudsman found this manner of arranging guarding unlawful, because the guards did not hold posts as public servants (1450/2/07*).

A Centre for Economic Development, Transport and the Environment (TE-keskus) announced that the functions of guards employed at the reception centre had been converted into official posts as security guards.

Social welfare

If a municipality's social welfare department is closed in summer, the arrangements substituting for normal functions must meet the requirements of the law. The municipality's statutory tasks in which public power is exercised must be performed by persons with the status of public servants (2507/4/07*).

The municipality announced that social welfare tasks would be taken care of and on-call social services arranged in the manner that the law requires while the municipal offices were closed.

Health care

Uniform national criteria for medical rehabilitation of children that have suffered brain damage could, in the view of the Ombudsman, help ensure implementation of adequate health services on a basis of equality (3888/4/07*).

The Ministry of Social Affairs and Health stated, inter alia, that uniform criteria for medical rehabilitation of brain-damaged children and in general direction of medical rehabilitation for children in accordance with nationally uniform principles would safeguard implementation of the adequate and equal services that the Constitution requires. According to the Ministry, access to treatment and rehabilitation must be in accordance with equal principles throughout the country.

The Ombudsman ruled that a guideline issued by the Helsinki and Uusimaa Hospital District (HUS) with respect to limiting treatment and care in the final stage

of life was contrary to the Constitution and the law insofar as it included the statement that "for example, severely mentally handicapped persons are not generally included in the sphere of intensive care". Handicapped persons have the same right to good health care and medical treatment as other people and a disability is not per se a ground for failing to resuscitate or provide intensive care (3624/4/07*).

The leading senior physician of HUS announced on 26.3.2009 that the text in question had been deleted from the guidelines.

The Ombudsman asked HUS and the City of Espoo to notify her of the measures by means of which the Treatment Guarantee will be implemented in the provision of child psychotherapy services (1437/2/09*).

According to the reports received from HUS and the City of Espoo, psychotherapy indications and treatment referral as well as targeting have been revised and an unclear division of labour corrected.

The Ombudsman proposed to the Ministry of Social Affairs and Health that the legislation concerning distribution of treatment requisites be explicated, because the Ministry's recommendation and municipalities' own guidelines do not adequately safeguard the equality of citizens in the matter (1860/2/07*).

The Ministry replied that it had reached the same conclusion in the matter as the Ombudsman. It has decided in conjunction with drafting of new health care legislation to recommend new obligations, which will be binding on municipalities, with respect to distribution of health care requisites.

Social insurance

A procedure followed by the Social Security Appeal Board, according to which matters that had been seen by members of a section in advance and on which they were all unanimous were deemed to have been decided at a session even though no session had actually taken place, was declared unlawful by the Ombudsman in a decision (1490/4/07*).

The Social Security Appeal Board announced on 23.2.2009 that it had abandoned the practice that was regarded as contrary to the legal provisions and that in addition it would in future date all of its decisions as the day on which a meeting had actually been held.

Labour and unemployment security

The Ombudsman received around 60 complaints about the long times taken by unemployment funds to process benefit applications. In his decisions, the Deputy-Ombudsman emphasised the importance of dealing with unemployment security matters without delay and considered it important that unemployment funds get their processing times for applications shortened to a reasonable length.

The IAET Fund announced that the time it took to process initial applications was less than three weeks at the turn of 2009–10. The Metalworkers' Unemployment Fund stated in a report it provided on 4.1.2010 that it was currently processing applications less than two weeks old. The Union of Salaried Employees Unemployment Fund reported on 14.1.2010 that the average time taken to process an initial application had been about three weeks in December 2009.

In the view of the Deputy-Ombudsman, the provision in the Unemployment Security Act concerning the right of the Social Insurance Institution Kela to obtain information from an employer should, from the perspective of protection of privacy, be interpreted narrowly. The Deputy-Ombudsman proposed to the Ministry of Social Affairs and Health that it consider whether regulation should be explicated.

The Ministry announced that it was planned to make amendments to the Unemployment Security Act in the course of 2010.

Language matters

The Ministry of the Interior breached the Language Act when it issued emergency bulletins about a major fire in a factory, because the bulletins were, contrary to a specific provision in the Act, in Finnish only. It is up to the Ministry to ensure that rescue services contact it in good time in situations of this kind so that it, in turn, can fulfil its duty (361/2/09*).

Arising from the Deputy-Ombudsman's decision, the Ministry appointed a working group in January 2010 to examine the matter of issuing official bulletins. The working group is tasked with drafting a report in which possible needs to amend the legislation and guidelines on drafting official bulletins are assessed.

Taxation

As a result of an unlawful action by the Tax Administration, employers' contributions had been collected regularly and several times a year by distraint from parties that were not liable to pay them. The Deputy-Ombudsman proposed to the Tax Administration that it consider how it could recompense the complainants for the harm and inconvenience that had been caused to them (1197/4/06).

According to information received from the Tax Administration, it had made an agreement with the harmed parties under which it paid them compensation of €2,000.

Domicile data relating to persons who are protected under a denial order issued for security reasons were revealed indirectly each year in public taxation lists. The Deputy-Ombudsman considered it important that when the taxation data for 2009 are being drafted, domicile data relating to these clients are no longer revealed (2945/4/08).

The Ministry of Finance announced that it had, together with the Tax Administration, drafted a Government Bill to amend the legislation on tax data. The intention is to introduce the Bill in the Eduskunta in April 2010.

Environmental affairs

The Deputy-Ombudsman proposed to the Ministry of the Environment that it study the principles and practices relating to marking trees in which golden eagles nest and the use of protection signs. If necessary, the Ministry should instruct the forest and park service Metsähallitus to revise its operational principles and the guidelines it gives to nest inspectors and ornithologists who report to it (838/4/07*).

The Ministry announced that it was charting the location of large raptors' nests on State-owned land and also needs to mark nests. Its intention is to study administrative procedures relating to marking nests and the need to amend the legislative provisions concerning the matter as well as to consider also drafting guidelines.

Agriculture and forestry

The Deputy-Ombudsman took the view that there should be payment points for fisheries management and lure-fishing fees so that the fees could be paid at the statutory rate without service charges or agents' commissions. There is also a need to bring the legislation concerning the use of private agents to collect the fees in question up to date so as to bring it into line with the requirements of Section 124 of the Constitution (2567/4/07*).

The Ministry of Agriculture and Forestry announced that it had begun studying, together with the National Board of Customs, how and according to what timetable statutory fisheries fees could be paid at Customs offices around the country. The totality of matters relating to the collection of statutory fisheries charges will be dealt with in conjunction with a comprehensive revision of the Fisheries Act.

Transport and communications

The Deputy-Ombudsman proposed to the Ministry of Transport and Communications that it take measures to develop the regulation under which taxi licences are granted. The criteria for evaluating and verifying applicants' work experience should be defined in a way that would safeguard legally effective and fair application of the law as well as equal treatment of applicants (2844/4/07* and 1341/2/09*).

Under an amendment (482/2009) that came into force on 1.7.2009, an authorisation provision allowing more precise regulations on the principles for assessing work experience to be issued in a Ministry of Transport and Communications Decree was added to the Taxi Transport Act. It is stated in the reasons presented for the Bill to amend the Act (HE 82/2009 vp) that the addition is based on the Deputy-Ombudsman's proposal.

Ecclesiastical matters

The Deputy-Ombudsman investigated a matter in which the issue was whether disseminating personal data on an institutional radio and with a webcam through the public Internet was appropriate (1631/2/07).

On 12.11.2009 the Ecclesiastical Board issued a circular letter concerning relaying images and sound from church events. It contained guidelines on, inter alia, filming, videoing and photographing services of worship and other church functions, relaying sound from church events and instructions for parishes in the matter.

Other matters

Guidelines issued by the National Product Control Agency for Welfare and Health (STTV) concerning Internet sales of alcohol were defective (1462* and 317/4/07*).

The National Supervisory Authority for Welfare and Health (Valvira) announced that it had on 27.5.2009 appointed a working group of civil servants who would study the legality from the perspective of the Alcohol Act of distance selling and buying done via the Internet. The working group was also charged with preparing measures to add clarity to the guidelines pertaining to online sales of alcoholic beverages. Valvira is preparing a proposal to the Ministry of Social Affairs and Health concerning explication of the Alcohol Act.

4. Coercive measures affecting telecommunications and other covert intelligence gathering

4.1 COVERT INTELLIGENCE GATHERING

Oversight of covert intelligence gathering is one of the Ombudsman's special tasks. What is meant by covert intelligence gathering in the context of the following is first of all the telecommunications interception, telecommunications monitoring and technical surveillance that are used, under the provisions of the Coercive Measures Act, in criminal investigations. In addition, the use of the comparable means of intelligence gathering that are provided for in the Police Act and the Customs Act and used to prevent and expose crimes are counted as belonging to it. The Police Act also contains provisions on undercover operations, pseudo-purchases and preventing disclosure of covert intelligence gathering. The Finnish phrase meaning covert intelligence gathering is not as such well-established and is not used in the present legislation. However, the concept covert intelligence gathering has been used in, for example, the report completed in spring 2009 by a committee that proposed a total reform of the legislation on criminal investigations and coercive measures (OMKM 2009:2).

4.2 MEASURES AFFECTING TELECOMMUNICATIONS

By *telecommunications interception* is meant covertly listening to or recording a message to or from a telephone connection, e-mail address or other telecoms address or telecoms terminal in order to ascertain the contents of the message. What is typically involved is phone tapping or ascertaining the contents of an e-mail.

Telecommunications monitoring, in turn, is acquisition of the recognition data for telecoms messages – in addition to which is can mean temporarily closing a telecoms connection. Examples of recognition data include: what numbers have been called from what number and when, as well as information on the location of a mobile phone. Thus remote surveillance does not yield information on the contents of a message.

Technical listening means secretly listening to or recording a conversation or oral message with the aid of a microphone or other technical device. In addition to technical listening, technical surveillance can also involve using technical equipment (e.g. camera) to monitor persons or to track vehicles or goods.

4.2.1 OVERSIGHT OF LEGALITY OF COERCIVE MEASURES AFFECTING TELECOMMUNICATIONS

Oversight of coercive measures affecting telecommunications has been one of the main areas of emphasis in the Ombudsman's work ever since their use began on a broader scale, i.e. from 1995 on. With respect to the police, the Ministry of the Interior gives the Ombudsman an annual report on the telecommunications interception and as well as on technical listening and technical surveillance in penal institutions. The National Board of Customs, in turn, provides its own report on

the use by the Customs of these coercive measures, as do the Ministry of Defence and the Border Guard with respect to their own activities.

The annual reports obtained from various authorities improve the Ombudsman's opportunities to follow the use of these coercive measures on a general level. Where concrete cases are concerned, special oversight by the Ombudsman can, already for reasons of resources, be at best of a very random-check nature. The scope of covert intelligence gathering that is subject to special oversight, i.e. the activities on which reports must be separately made to the Ombudsman, has namely been constantly growing. The number of permits granted for coercive measures affecting telecommunications alone is nowadays several thousand, and new means of surveillance are constantly entering the picture. The Ombudsman's oversight merely complements the authorities' own internal oversight of legality and can largely be characterised as oversight of oversight.

The Ministry of the Interior and the National Board of Customs obtain the essential part of their information from the SALPA case management system, which is centrally maintained by the National Bureau of Investigation. Local police and the national units of the police as well as customs districts give annual reports on their use of coercive measures affecting telecommunications and oversight to their superior agencies, which obtain information on activities also through their own inspections and other contacts with the officers in charge of investigations.

Very few complaints about the use of coercive measures affecting telecommunications are received, obviously due in part to their secret nature. Some of the complaints have traditionally been suspicions of a general character that the complainants are under surveillance. Only few complaints about coercive measures that have actually been used are made each year. Indeed, matters investigated on our own initiative play an important role. The Ombudsman has striven on inspection visits and also otherwise a lot on an own-initiative basis to explore problem points in legislation and practical actions. However, opportunities for this kind of own-initiative examination are very limited. The Office of the Parliamentary Ombudsman has also maintained contact with the Ministry of the Interior and the National Bureau of Investigation throughout the year to complement the picture of the use and oversight of coercive measures affecting telecommunications that the annual report provides.

4.2.2 THE SPECIAL NATURE OF COERCIVE MEASURES AFFECTING TELECOMMUNICATIONS

The use of coercive measures affecting telecommunications involves covertly intervening in the core area of several constitutionally safeguarded fundamental rights, especially privacy, confidential communications and protection of personal data. There are, of course, differences in the degree of intervention. In any case, for the measures to be effective, they must remain unknown to their targets at least in the early stage of an investigation. Thus their targets' possibilities of reacting to the use of coercive measures are clearly less than is the case with "ordinary" coercive measures, which in practice come to light immediately or very soon.

An additional feature of coercive measures affecting telecommunications is that their focus fairly regularly includes also persons who are not suspected of a crime. For example, a telephone call that is eavesdropped on always involves another party, who often has nothing to do with the crime being investigated. When a dwelling is eavesdropped on, everyone there, such as the suspect's family, is listened to in a core area of privacy.

Also due to the special nature of coercive measures affecting telecommunications, questions of protection under the law are of accentuated importance from the perspectives of both those against whom they are directed and in general the legitimacy of the entire legal system. The secrecy that is inevitably associated with their use exposes the activity to suspicions about its lawfulness, whether there is reason for this or not. Indeed, an effort has been made to ensure protection under the law by means of special arrangements both before and after coercive measures are used. The key components of protection under the law are the court warrant procedure, the authorities' internal oversight as well as the Ombudsman's oversight of legality.

4.2.3 DECIDING ON COERCIVE MEASURES

Something that has been considered important for reasons of protection under the law is that on telecommunications interception and mainly also telecommunications monitoring can be carried out only under a warrant issued by a court. Technical listening can, depending on the place where it is carried out, sometimes also be done on the basis of the police's own decision. In any case, the decision-making criteria provided for in the law leave the party making the decision even a lot of discretionary power. For example, the "reason to suspect a crime" threshold that is a basic precondition for the issue of a warrant to eavesdrop on telecommunications is fairly low. In addition, when a court is considering the prerequisites for the use of a coercive measure, it has to depend on the information it receives from the criminal investigation authorities, and the "opposing party" is not present at the hearing – except in cases where warrants to eavesdrop on dwellings are being sought, when the interests of the subject of the coercive measure are (naturally without his or her knowing) overseen by an attorney. If a court grants a warrant, it must also determine its period of validity (as a general rule, maximally one month at a time) and define the person and telecoms address that are affected by the measure.

The importance of court control of the use of coercive measures affecting telecommunications was highlighted in the Supreme Court's precedent decision KKO:2007:7. It was pointed out in the decision that the court has the task of ensuring the suspect's protection under the law. The court must ascertain the factual information on which the suspicion of a crime is alleged to be based. A mere reference by the official making the demand to information obtained in the course of the investigation or to conclusions that he or she has drawn on their basis can not be regarded as an adequate explanation that the prerequisites for the use of a coercive measure affecting telecommunications have been met. Concrete facts on the basis of which it is possible in an individual case for the court to make an assessment of whether the "reason to suspect" threshold has been crossed must be presented in support of the demand. The court must, if necessary, also demand clear reasons for why the coercive measure is especially necessary. In the case in question, the decisions to grant warrants were quashed, because in the district court decisions had not been presented any facts on the basis of which it would have been possible to establish that there was ground for the suspicion that the target persons had committed a serious drugs offence. The Supreme Court emphasised the role of a court in examining the grounds for a demand also in case KKO:2009:54, in which the warrants that a district court had issued for technical eavesdropping were quashed.

4.2.4 EVALUATION

Nothing of particular cause for concern came to light in the use of coercive measures affecting telecommunications or oversight of them in 2009. As such, a few cases were taken under examination on an own-initiative basis also during the year under review. At time of writing, however, it is too early to adopt a position on whether these matters will lead to measures.

Police telecommunications interception has remained on approximately the same level in recent years. Telecommunications monitoring was used somewhat more in the past two years than earlier, but growth has not been particularly significant. Telecommunications interception by the Customs increased in the past three years, although the number of target persons – which seems to be the key indicator – has remained on the same level. The Customs use telecommunications monitoring more year after year. The number of coercive measures affecting telecommunications used by the National Board of Customs is about 15–20% of the number used by the police.

The use of technical surveillance has been very rare in the Border Guard and the Defence Forces. These authorities' powers of action in relation to the measures in question are in general very limited, at least so

far, because they are not allowed at all to, for example, telecommunications interception or telecommunications monitoring. At time of writing, Government Bill 219/2008, which proposes to give the Border Guard the right to use these coercive measures in criminal investigation of aggravated arrangement of illegal immigration and the associated crime of human trafficking is being deliberated by the Eduskunta.

Oversight of coercive measures affecting telecommunications has been developed in recent years. The authorities say that in this way the quality of activities has improved, and there is no reason to doubt them. An especially important step of progress in internal oversight by the authorities was the inauguration of the SALPA case management system in late 2004. Since all coercive measures affecting telecommunications are recorded in SALPA, reliable data on the use of these measures are nowadays available. Through the system, it is also possible to oversee the use of coercive measures affecting telecommunications even in real time. On the whole, making functions take place centrally through the National Bureau of Investigation has brought quality and systematicness to activities and oversight of them.

However, SALPA does not in and of itself prevent all errors or abuses. With the exception of coercive measures affecting telecommunications that must be dealt with by courts or require the cooperation of telecoms operators, the Ombudsman has no possibility outside the police of checking that he even receives information on all of the covert intelligence gathering by the police about which he is supposed to be informed. In this sense, oversight is founded on trust. It is as such conceivable that covert intelligence gathering is not appropriately decided on or recorded and that it thus remains concealed from the Ombudsman and perhaps also from police superiors. For the sake of clarity, I stress that no deliberate "covering up" of this kind has been observed.

The oversight structures for the use of coercive measures affecting telecommunications are nowadays in relatively good order. The question with respect to them is more how much willingness there is to allocate to and spend resources on oversight. The tools as such exist.

Training and the oversight of and support for subordinates that is a part of supervisory persons' work play a central role. At the moment, the standard of oversight in police services varies a lot, and the same applies most evidently to the expertise of those who conduct oversight. Indeed, the Ministry of the Interior itself has said that police services' own internal oversight of legality is not yet in all respects of the standard that it ought to be. The Ministry of the Interior has for several years been carrying out annual checks of all coercive measures affecting telecommunications used by the Security Police. No significant errors have been revealed by these checks.

From the perspective of the protection under the law of those against whom coercive measures are directed, it is especially important that they are informed of the measures that have been employed. After all, they are used secretly and after-the-fact notification gives their objects at least some chance of reacting to the authorities' action. Courts should grant permission to deviate from the obligation to notify only for unavoidable reasons and only to an unavoidable extent, as Deputy-Ombudsman Ilkka Rautio pointed out in his decision in 2004. The practice has changed very markedly since then after the Ministry of the Interior and the National Board of Customs also took note of the matter and issued guidelines to the administration subordinate to them. The Ombudsman will also continue to follow the situation in this respect.

The Deputy-Ombudsman has continually drawn attention to presenting reasons for decisions in cases involving coercive measures affecting telecommunications, for example on inspection visits, in the same way as the Supreme Court in its decisions mentioned above. Solutions similar to the defectively reasoned warrant decisions that the Supreme Court overturned do not seem to be particularly exceptional. However, this does not necessarily mean that warrants would have been generally granted without the statutory preconditions. What can be involved is, for example, that in addition to the written demands, the orally presented reasons have not been recorded. This kind of procedure is very problematic, because the grounds for granting a warrant should of course be recorded in order to ensure, among other things, that decisions are checkable.

4.2.5 TO CONCLUDE

The legislation under which intervention in fundamental and human rights is possible must be clear and precise. Both the Deputy-Ombudsman and, for example, the Constitutional Law Committee have for several years in a variety of contexts been stressing the need for a comprehensive re-examination of especially the legislation on covert coercive measures. Due to the partial reforms and broadening of powers that have been effected over the years, the framework of regulation of these means has become a fragmented totality that is difficult to manage.

A committee tasked with preparing a comprehensive revision of the Criminal Investigations, Coercive Measures and Police Acts was appointed in spring 2007. One of its principal tasks was to carry out a comprehensive study of the prerequisites for using coercive measures and arrangements for protection under the law. The committee published its 1,000-page report in May 2009 (OMKM 2009:2). The project was very extensive and demanding. The objective was for the Eduskunta to have time to deal with this copious reform during the present parliamentary term.

4.3 UNDERCOVER OPERATIONS, PSEUDO-PURCHASES AND PREVENTING DISCLOSURE OF INTELLIGENCE GATHERING

Undercover operations are constant or repeated acquisition of information about a person or group of persons or their activities through infiltration. Misleading or disguised data or register entries or false documents can be used to prevent disclosure of these operations. For example, a false identity can be created for an infiltrator. The aim is that a policeman can under the protection of his cover have dealings with the target person and in that way obtain the kind of information that would not be acquired through ordinary police activities.

The police have the right to engage in undercover operations if this is necessary to prevent, uncover or solve certain serious crimes (nearly the same ones as in the case of telecommunications interception) and if there is a reasoned ground to suspect that the target person is involved in a crime of this kind. Undercover operations can be employed in, besides criminal investigations, preventing and exposing crimes. Decisions to conduct them are handled centrally: the decisions are made by the director of the National Bureau of Investigation or, when the Security Police conducts them, by its head. The centralised system has been regarded as necessary to protect undercover operations and for reasons of protection under the law. Only a small number of specially trained policemen are used for undercover operations.

A pseudo-purchase is an offer to purchase or an actual purchase made by the police with the aim of the police gaining possession of, for example, a batch of drugs or an article that has been the object of a crime. Misleading or disguised data or register entries or false documents can be used also in a pseudo-purchase when this is unavoidable to prevent disclosure of the pseudo-purchase.

The police have the right to make a pseudo-purchase if it is unavoidable to prevent, uncover or solve a crime involving receiving or concealing stolen goods or a theft or a crime for which the statutory maximum penalty is at least two years' imprisonment, or to find an object, substance or property that is illegally held or being sold as a consequence of such a crime or to recover the proceeds of such a crime. Decisions on pseudo-purchases are made by the head of the National Bureau of Investigation, the Security Police or the police service or by a member of the police command echelon designated by them. Pseudo-purchases are carried out centrally by specially trained officers belonging to the National Bureau of Investigation or the Security Police.

Prevention of disclosure of intelligence gathering means that the police can use misleading or disguised information, make and use misleading or disguised registry entries as well as produce and use false documents when this is unavoidable to protect covert intelligence gathering.

Only the police can engage in undercover operations, make a pseudo-purchase or prevent disclosure of covert intelligence gathering.

4.3.1 OVERSIGHT

A police unit that has engaged in undercover operations, made a pseudo-purchase or taken measures to prevent disclosure of covert operations drafts a report on its activities for the Ministry of the Interior, which in turn gives its own annual report to the Ombudsman.

No complaints concerning undercover operations or pseudo-purchases have been received in the time that the relevant legislation has been in force. This is probably due in large part already to the fact that the use of these means has not come to light (see, however, the court case dealt with below). Due to the secret nature of these means, undercover operations and pseudo-purchases have been made a focus of accentuated oversight of legality by the Ombudsman on his own initiative.

As in the previous year, about ten decisions to conduct undercover operations were made in 2009; they were directed at about thirty persons. Most operations were conducted to expose and solve serious drug offences, but also to solve other serious crimes. There were likewise about ten decisions to make pseudo-purchases and the targets were the same number of crime suspects. Pseudo-purchases were mainly made to expose and solve serious drug offences.

4.3.2 EVALUATION

Engagement in undercover activities and pseudo-purchases was on the same fairly established level as in earlier years. These means continue to be used fairly little. No particularly significant new problems relating to covert operations or pseudo-purchases arose in the Ombudsman's oversight of legality during the year under review. However, this does not mean that there were no problems (viz., e.g., the Ombudsman's annual report for 2005). Some cases relating to these means of investigation are currently the focus of own-initiative investigations.

From the perspective of fundamental and human rights, undercover operations are problematic for, first of all, protection of privacy. Since covert operations are possible also within the sphere of the sanctity of the home, it has effects on implementation of also this fundamental right. In addition, undercover operations and pseudo-purchases can have even major significance for implementation of the constitutionally guaranteed right to a fair trial. Especially in pseudo-purchases, the view can be taken that there is a priori the danger that police actions can get the target person to commit a crime that he or she otherwise would not. An unlawful pseudo-purchase procedure can even lead to it being impossible for the fairness of a criminal trial involving a person who has been the target of a pseudo-purchase being realised, viz., e.g., the decision of the European Court of Human Rights in the case *Teixera de Castro v. Portugal*. The Constitutional Law Committee has pointed out that a court must ensure that the use of these methods does not jeopardise a fair trial (PeVL 5/1999 vp). In practice, this control may be impossible already for the reason that neither the court nor the suspect are aware that these means have been used.

To preserve the effectiveness of these means and ensure the safety of the police officers engaged in operations, the police have paid special attention to keeping them secret. There is nothing as such to criticise in this. So far, undercover operations and pseudo-purchases have most obviously not come to the knowledge of their targets, much less been publicised (with the exception of a case that featured also in the media, about which more later). The police must very precisely consider when a fair trial or solving a crime demands revelation of the use of a means – in spite of the adverse effects that this might have on police work or otherwise. When the police themselves (secretly) decide that an undercover operation or a pseudo-purchase has not been of such significance that the parties involved should be informed of it, this posture is sensitive to suspicions of abuse of discretionary power. Keeping a covert operation or a pseudo-purchase secret must always be done on legally tenable grounds.

It must be noted that, unlike coercive measures affecting telecommunications, undercover operations and pseudo-purchases are always decided on completely independently by the police, and a court has no role at all when these means are employed. Compared with coercive measures affecting telecommunications, undercover operations and pseudo-purchases are clearly a more secret activity. Indeed, the committee that examined the legislation on criminal investigations and coercive measures recommended that regulations on notification of undercover operations and pseudo-purchases be enshrined in an Act – there are no such statutory provisions at present. This is an obvious shortcoming also taking the case law of the European Court of Human Rights into account. However, regulation of provision of information about undercover operations and pseudo-purchases to interested parties is by no means a simple matter. In addition, the committee recommended that the police should require a warrant from a court for undercover operations and pseudo-purchases, something that would, of course, represent a major change compared with the present situation.

An interested party's right of access to information in a pseudo-purchase-type situation was dealt with in the European Court of Human Rights decision *V. v. Finland* (24.4.2007), in which Finland was found guilty. The case involved was the same one that the Supreme Court had earlier dealt with. In its decision, the Supreme Court took the view that policemen had followed a forbidden procedure and thereby committed a breach of official duty when, through the mediation of a private person, they ordered drugs from the suspect. However, a prosecution against the policemen for incitement to a drug offence was rejected, because the policemen had prevented the commission of the crime by arresting the suspect when he arrived to hand over the drugs (KKO:2000:112). The European Court of Human Rights, for its part, took the view that the police had in that case, by concealing important facts, denied the accused the opportunity to prove his claims that he had committed the crime as a consequence of incitement by the police. The concealed materials had related to a question of fact that was especially relevant from the perspective of the claim of incitement. Not even the court had had sufficient information to be able to consider the importance of the concealed material for the accused's defence. The European Court of Human Rights found that the procedure had been contrary to the demand of a fair trial.

Undercover operations and pseudo-purchases can also influence general trust in official actions. After all, the powers relating to covert operations can be characterised as meaning that the police have the right to act contrary to some prohibitions under criminal law without official accountability (Constitutional Law Committee statement PeVL 5/1999 vp). Indeed, official actions of this kind are significant, inter alia from the perspective of the principle, as enshrined in the Constitution, that official actions must be regulated by law. It is also conceivable that an action of a pseudo-purchaser, an infiltrator, a police information source or a police officer who uses him or her as a helper can be construed as being that of an accessory to a crime, incitement or aiding and abetting. Particularly problematic from this perspective are drug offences, in the defining features of which the scope of criminalised behaviour has been taken very far.

The committee that examined criminal investigations and coercive measures proposed some expansion of the operational methods that police officers engaged in undercover operations are allowed to use. The point of departure would be that an officer engaged in an undercover operation would not be allowed to commit or instigate a crime. However, an undercover officer could be absolved of penal accountability even if he or she had committed a minor offence. An undercover officer participating in the activities of an organised crime gang could, under very strict conditions and to a limited extent, contribute to the gang's activities by, for example, procuring vehicles for them. A precondition would be that the activity would happen in any case and that it would not cause danger or damage, in addition to which the action would have to make a significant contribution to achieving the objective of the undercover operation.

The borderline between what the police are allowed to do and what is forbidden had to be drawn also in a court of law during the year under review, when charges laid against two officers of the National Bureau of Investigation in relation to their action in a pseudo-purchase were dealt with in the Helsinki District Court. What was involved in the case was, according to the

media, the use of an information source. The District Court rejected all of the charges in November 2009. The documents were declared secret, but according to the court's press release a person not belonging to the police force had as such acted in the pseudo-purchase in part in a manner that would have required the power of a police officer. However, the policeman who had been involved in the pseudo-purchase operation had had to act on the basis of regulations that were defective and open to interpretation. How a person who is not a member of the police force can be used in a pseudo-purchase had not been adequately expressed in the regulations in force, and the accused had had no reason to doubt the lawfulness of the National Bureau of Investigation's practices. The prosecutor has appealed against the decision. Also noteworthy is the fact that an additional issue in the case is whether the persons who were the target of the pseudo-purchase are interested parties. After all, taken generally, it is possible that the course of a pseudo-purchase operation can be of considerable significance when assessing the responsibility under criminal law of the targets of a pseudo-purchase, even to the extent that a trial to which they are subjected can no longer be fair.

It will be possible to make a better assessment of the effect of the case on the police's covert intelligence gathering and oversight of it after the final decision on the matter. In any event, the thinness of the legislation and other norms has already been highlighted in the District Court's judgement. It is a problem of a fundamental character that the regulations on undercover operations and pseudo-purchases are – partly due to the nature of these activities – fairly loose. This places those who apply the regulations in a demanding situation. An additional difficulty is a dearth of precursor documents to the Police Act, legal literature, usable court cases, experts and even public discussion that are certainly attributable to the secrecy of the methods. Questions of legal interpretation have had and have to be pondered in quite a small circle. Experience of application has also been gained over a fairly short time.

The problems that arise in oversight of the legality of undercover operations and pseudo-purchases are partly of the same kind as those in oversight of coercive measures affecting telecommunications. The secrecy that is maintained in relation to the police's technical and tactical methods limits publication of what comes to light in oversight of legality considerably more than is the case in even coercive measures affecting telecommunications. In general, too, undercover operations and pseudo-purchases are ultimately activities of a very different kind than coercive measures affecting telecommunications. It is also the police who decide on undercover operations and pseudo-purchases and the parties involved are not told about them afterwards. The nature of the activities means that the all-round competence and good judgement of the police officers involved are very important.

The oversight practised by the Ombudsman is also in the cases of these means after-the-fact and at best of a fairly general nature. The Ombudsman is remote from the actual activities and can not undertake to guide the authorities' operative actions or in any other way be a key setter of limits who would correct weaknesses in legislation. Nor are the annual reports to the Ombudsman any patent solution to problems of protection under the law.

Indeed, it is the everyday work of police supervisory personnel and the force's own internal oversight that play the main role. The Ombudsman's oversight of legality is only complementary to this in nature. However, internal oversight of covert operations and pseudo-purchases is nowhere near as developed as is the case with coercive measures affecting telecommunications. A more active role could have been expected of especially the senior command echelon of the police. Especially in the early years of these activities, oversight remained largely internal to the National Bureau of Investigation. However, something that is open to question is how credibly the National Bureau of Investigation itself can oversee actions that are ultimately decided on by its own director, who bears responsibility for them. Even the Ministry of the Interior team that monitors undercover operations and pseudo-purchases met only once in 2009, for example.

Greater efforts than hitherto should be put into guidance and oversight of covert operations and pseudo-purchases, even though not all of the problems in legislation can be solved in this way and although the situation has improved slightly in quite recent years. The police activities involved are the most secret ones of all and (at least up to now) the interested parties' own opportunities of reacting have not existed, because they have not been aware of the measures to which they have been subjected. The guidelines to be followed in activities can not be left solely to the actors themselves; instead, the highest command echelon of the police has a duty to set guidelines for activities and if necessary adopt a stance on interpretations. Secret police activities must not be allowed to be self-guiding.

Effective guidance of activities naturally presupposes knowledge of what the activities and the problems associated with them in practice are. Care must be taken to ensure that covert intelligence gathering does not become so secret that it escapes from the view of even superiors. They must know by what means results are achieved. Therefore the highest command echelon of the police must make regular checks in which the activities themselves are gone through sufficiently concretely and comprehensively. For example, an adequate picture of activities can not be formed without all-round inspection of documents. Because of the nature of the activities, a fundamental prerequisite for successful oversight is precise documentation.

ANNEX 1

CONSTITUTIONAL PROVISIONS PERTAINING TO PARLIAMENTARY OMBUDSMAN OF FINLAND

11 June 1999 (731/1999)
entry into force 1 March 2000

Section 38 – Parliamentary Ombudsman

The Parliament appoints for a term of four years a Parliamentary Ombudsman and two Deputy- Ombudsmen, who shall have outstanding knowledge of law. The provisions on the Ombudsman apply, in so far as appropriate, to the Deputy-Ombudsmen. The provisions concerning the Ombudsman shall apply *mutatis mutandis* also to a Deputy-Ombudsman and a substitute for a Deputy-Ombudsman. (24.8.2007/802)

The Parliament, after having obtained the opinion of the Constitutional Law Committee, may, for extremely weighty reasons, dismiss the Ombudsman before the end of his or her term by a decision supported by at least two thirds of the votes cast.

Section 48 – Right of attendance of Ministers, the Ombudsman and the Chancellor of Justice

The Parliamentary Ombudsman and the Chancellor of Justice of the Government may attend and participate in debates in plenary sessions of the Parliament when their reports or other matters taken up on their initiative are being considered.

Section 109 – Duties of the Parliamentary Ombudsman

The Ombudsman shall ensure that the courts of law, the other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Ombudsman monitors the implementation of basic rights and liberties and human rights.

The Ombudsman submits an annual report to the Parliament on his or her work, including observations on the state of the administration of justice and on any shortcomings in legislation.

Section 110 – The right of the Chancellor of Justice and the Ombudsman to bring charges and the division of responsibilities between them

A decision to bring charges against a judge for unlawful conduct in office is made by the Chancellor of Justice or the Ombudsman. The Chancellor of Justice and the Ombudsman may prosecute or order that charges be brought also in other matters falling within the purview of their supervision of legality.

Provisions on the division of responsibilities between the Chancellor of Justice and the Ombudsman may be laid down by an Act, without, however, restricting the competence of either of them in the supervision of legality.

Section 111 – The right of the Chancellor of Justice and Ombudsman to receive information

The Chancellor of Justice and the Ombudsman have the right to receive from public authorities or others performing public duties the information needed for their supervision of legality.

The Chancellor of Justice shall be present at meetings of the Government and when matters are presented to the President of the Republic in a presidential meeting of the Government. The Ombudsman has the right to attend these meetings and presentations.

Section 112 – Supervision of the lawfulness of the official acts of the Government and the President of the Republic

If the Chancellor of Justice becomes aware that the lawfulness of a decision or measure taken by the Government, a Minister or the President of the Republic gives rise to a comment, the Chancellor shall present the comment, with reasons, on the aforesaid decision or measure. If the comment is ignored, the Chancellor of Justice shall have the comment entered in the minutes of the Government and, where necessary, undertake other measures. The Ombudsman has the corresponding right to make a comment and to undertake measures.

If a decision made by the President is unlawful, the Government shall, after having obtained a statement from the Chancellor of Justice, notify the President that the decision cannot be implemented, and propose to the President that the decision be amended or revoked.

Section 113 – Criminal liability of the President of the Republic

If the Chancellor of Justice, the Ombudsman or the Government deem that the President of the Republic is guilty of treason or high treason, or a crime against humanity, the matter shall be communicated to the Parliament. In this event, if the Parliament, by three fourths of the votes cast, decides that charges are to be brought, the Prosecutor-General shall prosecute the President in the High Court of Impeachment and the President shall abstain from office for the duration of the proceedings. In other cases, no charges shall be brought for the official acts of the President.

Section 114 – Prosecution of Ministers

A charge against a Member of the Government for unlawful conduct in office is heard by the High Court of Impeachment, as provided in more detail by an Act.

The decision to bring a charge is made by the Parliament, after having obtained an opinion from the Constitutional Law Committee concerning the unlawfulness of the actions of the Minister. Before the Parliament decides to bring charges or not it shall allow the Minister an opportunity to give an explanation. When considering a matter of this kind the Committee shall have a quorum when all of its members are present.

A Member of the Government is prosecuted by the Prosecutor-General.

Section 115 – Initiation of a matter concerning the legal responsibility of a Minister

An inquiry into the lawfulness of the official acts of a Minister may be initiated in the Constitutional Law Committee on the basis of:

1) A notification submitted to the Constitutional Law Committee by the Chancellor of Justice or the Ombudsman;
2) A petition signed by at least ten Representatives; or
3) A request for an inquiry addressed to the Constitutional Law Committee by another Committee of the Parliament.

The Constitutional Law Committee may open an inquiry into the lawfulness of the official acts of a Minister also on its own initiative.

Section 117 – Legal responsibility of the Chancellor of Justice and the Ombudsman

The provisions in sections 114 and 115 concerning a member of the Government apply to an inquiry into the lawfulness of the official acts of the Chancellor of Justice and the Ombudsman, the bringing of charges against them for unlawful conduct in office and the procedure for the hearing of such charges.

PARLIAMENTARY OMBUDSMAN ACT

(197/2002)

CHAPTER 1
OVERSIGHT OF LEGALITY

Section 1 – Subjects of the Parliamentary Ombudsman's oversight

(1) For the purposes of this Act, subjects of oversight shall, in accordance with Section 109(1) of the Constitution of Finland, be defined as courts of law, other authorities, officials, employees of public bodies and also other parties performing public tasks.

(2) In addition, as provided for in Sections 112 and 113 of the Constitution, the Ombudsman shall oversee the legality of the decisions and actions of the Government, the Ministers and the President of the Republic. The provisions set forth below in relation to subjects apply in so far as appropriate also to the Government, the Ministers and the President of the Republic.

Section 2 – Complaint

(1) A complaint in a matter within the Ombudsman's remit may be filed by anyone who thinks a subject has acted unlawfully or neglected a duty in the performance of their task.

(2) The complaint shall be filed in writing. It shall contain the name and contact particulars of the complainant, as well as the necessary information on the matter to which the complaint relates.

Section 3 – Investigation of a complaint

(1) The Ombudsman shall investigate a complaint if the matter to which it relates falls within his or her remit and if there is reason to suspect that the subject has acted unlawfully or neglected a duty. Information shall be procured in the matter as deemed necessary by the Ombudsman.

(2) The Ombudsman shall not investigate a complaint relating to a matter more than five years old, unless there is a special reason for the complaint being investigated.

Section 4 – Own initiative

The Ombudsman may also, on his or her own initiative, take up a matter within his or her remit.

Section 5 – Inspections

(1) The Ombudsman shall carry out the on-site inspections of public offices and institutions necessary to monitor matters within his or her remit. Specifically, the Ombudsman shall carry out inspections in prisons and other closed institutions to oversee the treatment of inmates, as well as in the various units of the Defence Forces and Finnish peacekeeping contingents to monitor the treatment of conscripts, other military personnel and peacekeepers.

(2) In the context of an inspection, the Ombudsman and his or her representatives have the right of access to all premises and information systems of the public office or institution, as well as the right to have confidential discussions with the personnel of the office or institution and the inmates there.

Section 6 – Executive assistance

The Ombudsman has the right to executive assistance free of charge from the authorities as he or she deems necessary, as well as the right to obtain the required copies or printouts of the documents and files of the authorities and other subjects.

Section 7 – Right of the Ombudsman to information

The right of the Ombudsman to receive information necessary for his or her oversight of legality is regulated by Section 111(1) of the Constitution.

Section 8 – Ordering a police inquiry or a preliminary investigation

The Ombudsman may order that a police inquiry, as referred to in the Police Act (493/1995), or a preliminary investigation, as referred to in the Preliminary Investigations Act (449/1987), be carried out in order to clarify a matter under investigation by the Ombudsman.

Section 9 – Hearing a subject

If there is reason to believe that the matter may give rise to criticism as to the conduct of the subject, the Ombudsman shall reserve the subject an opportunity to be heard in the matter before it is decided.

Section 10 – Reprimand and opinion

(1) If, in a matter within his or her remit, the Ombudsman concludes that a subject has acted unlawfully or neglected a duty, but considers that a criminal charge or disciplinary proceedings are nonetheless unwarranted in this case, the Ombudsman may issue a reprimand to the subject for future guidance.

(2) If necessary, the Ombudsman may express to the subject his or her opinion concerning what constitutes proper observance of the law, or draw the attention of the subject to the requirements of good administration or to considerations of fundamental and human rights.

Section 11 – Recommendation

(1) In a matter within the Ombudsman's remit, he or she may issue a recommendation to the competent authority that an error be redressed or a shortcoming rectified.

(2) In the performance of his or her duties, the Ombudsman may draw the attention of the Government or another body responsible for legislative drafting to defects in legislation or official regulations, as well as make recommendations concerning the development of these and the elimination of the defects.

CHAPTER 2
REPORT TO THE PARLIAMENT AND DECLARATION OF INTERESTS

Section 12 – Report

(1) The Ombudsman shall submit to the Parliament an annual report on his or her activities and the state of administration of justice, public administration and the performance of public tasks, as well as on defects observed in legislation, with special attention to implementation of fundamental and human rights.

(2) The Ombudsman may also submit a special report to the Parliament on a matter he or she deems to be of importance.

(3) In connection with the submission of reports, the Ombudsman may make recommendations to the Parliament concerning the elimination of defects in legislation. If a defect relates to a matter under deliberation in the Parliament, the Ombudsman may also otherwise communicate his or her observations to the relevant body within the Parliament.

Section 13 – Declaration of interests (24.8.2007/804)

(1) A person elected to the position of Ombudsman, Deputy-Ombudsman or as a substitute for a Deputy-Ombudsman shall without delay submit to the Eduskunta a declaration of business activities and assets and duties and other interests which may be of relevance in the evaluation of his or her activity as Ombudsman, Deputy-Ombudsman or substitute for a Deputy-Ombudsman.

(2) During their term in office, the Ombudsman the Deputy-Ombudsmen and a substitute for a Deputy-Ombudsman shall without delay declare any changes to the information referred to in paragraph (1) above.

CHAPTER 3
GENERAL PROVISIONS ON THE OMBUDSMAN, THE DEPUTY-OMBUDSMEN AND A SUBSTITUTE FOR A DEPUTY-OMBUDSMAN (24.8.2007/804)

Section 14 – Competence of the Ombudsman and the Deputy-Ombudsmen

(1) The Ombudsman has sole competence to make decisions in all matters falling within his or her remit under the law. Having heard the opinions of the Deputy-Ombudsmen, the Ombudsman shall also decide on the allocation of duties among the Ombudsman and the Deputy-Ombudsmen.

(2) The Deputy-Ombudsmen have the same competence as the Ombudsman to consider and decide on those oversight-of-legality matters that the Ombudsman has allocated to them or that they have taken up on their own initiative.

(3) If a Deputy-Ombudsman deems that in a matter under his or her consideration there is reason to issue a reprimand for a decision or action of the Government, a Minister or the President of the Republic, or to bring a charge against the President or a Justice

of the Supreme Court or the Supreme Administrative Court, he or she shall refer the matter to the Ombudsman for a decision.

Section 15 – Decision-making by the Ombudsman

The Ombudsman or a Deputy-Ombudsman shall make their decisions on the basis of drafts prepared by referendary officials, unless they specifically decide otherwise in a given case.

Section 16 – Substitution (24.8.2007/804)

(1) If the Ombudsman dies in office or resigns, and the Eduskunta has not elected a successor, his or her duties shall be performed by the senior Deputy-Ombudsman.

(2) The senior Deputy-Ombudsman shall perform the duties of the Ombudsman also when the latter is recused or otherwise prevented from attending to his or her duties, as provided for in greater detail in the Rules of Procedure of the Office of the Parliamentary Ombudsman.

(3) Having received the opinion of the Constitutional Law Committee on the matter, the Parliamentary Ombudsman shall choose a substitute for a Deputy-Ombudsman for a term in office of not more than four years.

(4) When a Deputy-Ombudsman is recused or otherwise prevented from attending to his or her duties, these shall be performed by the Ombudsman or the other Deputy-Ombudsman as provided for in greater detail in the Rules of Procedure of the Office, unless the Ombudsman, as provided for in Section 19 a.1, invites a substitute to perform the Deputy-Ombudsman's tasks. When a substitute is performing the tasks of a Deputy-Ombudsman, the provisions of paragraphs (1) and (2) above concerning a Deputy-Ombudsman shall not apply to him or her.

Section 17 – Other duties and leave of absence

(1) During their term of service, the Ombudsman and the Deputy-Ombudsmen shall not hold other public offices. In addition, they shall not have public or private duties that may compromise the credibility of their impartiality as overseers of legality or otherwise hamper the appropriate performance of their duties as Ombudsman or Deputy-Ombudsman.

(2) If a person elected as Ombudsman or Deputy-Ombudsman is a state official, he or she shall be granted a leave of absence for the duration of his or her term as Ombudsman or Deputy-Ombudsman.

Section 18 – Remuneration

(1) The Ombudsman and the Deputy-Ombudsmen shall be remunerated for their service. The Ombudsman's remuneration shall be determined on the same basis as the salary of the Chancellor of Justice of the Government and that of the Deputy-Ombudsmen on the same basis as the salary of the Deputy Chancellor of Justice.

(2) If a person elected as Ombudsman or Deputy-Ombudsman is in a public or private employment relationship, he or she shall forgo the remuneration from that employment relationship for the duration of their term. For the duration of their term, they shall also forgo any other perquisites of an employment relationship or other office to which they have been elected or appointed and which could compromise the credibility of their impartiality as overseers of legality.

Section 19 – Annual vacation

The Ombudsman and the Deputy-Ombudsmen are each entitled to annual vacation time of a month and a half.

Section 19 a – Substitute for a Deputy-Ombudsman (24.8.2007/804)

(1) A substitute can perform the duties of a Deputy-Ombudsman if the latter is prevented from attending to them other than for a brief period or if a Deputy-Ombudsman's post has not been filled. The Ombudsman shall decide on inviting a substitute to perform the tasks of a Deputy-Ombudsman.

(2) The provisions of this and other Acts concerning a Deputy-Ombudsman shall apply *mutatis mutandis* also to a substitute for a Deputy-Ombudsman while he or she is performing the tasks of a Deputy-Ombudsman, unless separately otherwise regulated.

CHAPTER 4
OFFICE OF THE PARLIAMENTARY OMBUDSMAN AND DETAILED PROVISIONS

Section 20 – Office of the Parliamentary Ombudsman

There shall be an office headed by the Parliamentary Ombudsman for the preliminary processing of cases for decision and for the performance of the other duties of the Ombudsman.

Section 21 – Staff Regulations of the Parliamentary Ombudsman and the Rules of Procedure of the Office

(1) The positions in the Office of the Parliamentary Ombudsman and the special qualifications for those positions are set forth in the Staff Regulations of the Parliamentary Ombudsman.

(2) The Rules of Procedure of the Office of the Parliamentary Ombudsman contain further provisions on the allocation of duties and substitution among the Ombudsman and the Deputy-Ombudsmen, on the duties of the office staff and on codetermination.

(3) The Ombudsman, having heard the opinions of the Deputy-Ombudsmen, approves the Rules of Procedure.

CHAPTER 5
ENTRY INTO FORCE AND TRANSITIONAL PROVISION

Section 22 – Entry into force

This Act enters into force on 1 April 2002.

Section 23 – Transitional provision

The persons performing the duties of Ombudsman and Deputy-Ombudsman shall declare their interests, as referred to in Section 13, within one month of the entry into force of this Act.

ANNEX 2

DIVISION OF LABOUR BETWEEN THE OMBUDSMAN AND THE DEPUTY-OMBUDSMEN

Ombudsman Riitta-Leena Paunio decides on cases that concern:

- matters mentioned in Section 14.3 of the Parliamentary Ombudsman Act
- the highest organs of state
- questions that are important in principle
- social welfare
- social insurance
- health care as well as
- children's rights.

Deputy-Ombudsman Petri Jääskeläinen decides on cases that concern:

- courts and administration of justice
- the prison service, execution of sentences and the probation service
- extradition of criminal offenders
- distraint, bankruptcy and insolvency
- legal aid
- legal registers and administration of other registers
- protection of interests
- regional and local government
- environmental administration
- agriculture and forestry
- taxation as well as
- customs.

Deputy-Ombudsman Jukka Lindstedt (til 30.9.) *and Jussi Pajuoja (from 1.10.) decides on cases that concern:*

- the police
- the public prosecution service
- the Defence Forces, the Border Guard and civilian (i.e. alternative non-military) service
- transport and communications
- trade and industry
- data protection, data management and telecommunications
- education, science and culture
- fire and rescue culture
- Sámi affairs
- foreigners
- labour administration
- unemployment security
- the church
- electoral matters
- language legislation
- the autonomy of Åland as well as
- administration of State finances.

ANNEX 3

SUBMISSIONS AND ATTENDANCES AT HEARINGS

Submissions

To the Ministry of Justice

– on the draft Government Bill proposing an Act on the National Administrative Office for Enforcement and to amend the Enforcement Code (229/5/09*)

– on committee report 2009:1 "Proposed Act on electoral funding. Interim report of the Electoral and Party Funding Committee" (323/5/09*)

– on committee report 2009:1 "Treatment of sex offenders" (997/5/09*)

– on committee report 2009:3 "Notification in court proceedings" (1248/5/09)

– on committee report 2009:4 "Furnishing of evidence between EU Member States in criminal cases" (1387/5/09)

– on the report of a committee that examined revision of the regulations on compensation for loss of liberty 2009:7 "Applying for compensation payable for loss of liberty" (1569/5/09*)

– on working group report 2008:12 "Regulations on administration of the prosecution service" (1625/5/09*)

– on committee report 2009:2 "Comprehensive revision of the Criminal Investigations Act, the Coercive Measures Act and the Police Act. Report of the Criminal Investigations and Coercive Measures Committee" (1933/5/09)

– on working group report 2009:6 "Confirmation of Eurojust" (2606/5/09)

– on the draft Government Bill proposing the legislation required under the new Council Framework Decision on taking sentences imposed in Member States of the EU into consideration in criminal trials (2751/5/09)

– on the memorandum "Electronic voting pilot project in the 2008 municipal elections: Experiences and things learned" (3761/5/09)

– on working group report 2009:10 "Development of the activities of the Insurance Court" (3993/5/09)

– on the draft Government Bill proposing an Act to amend Chapter 2 c of the Penal Code (4048/5/09)

– on working group report 2008:5 "Expeditiousness of handling of matters in administration and legal remedies when handling is delayed" (3719/5/08*)

– on committee report 2008:4 "Development of the system for demanding rectification as a means of protection under the law. Report of the Demands for Rectification Committee" (4171/5/08*)

To the Ministry of the Interior

– the legal effects of the age determination that is included in ascertaining the identity of asylum-seekers (1209/5/09*)

– rapporteur's report 2009:21 "Perspectives on asylum policy – Proposals for development and a Nordic comparison" (2545/5/09*)

– on the draft Government Bill proposing an Act to amend the Aliens Act (3089/5/09*)

– on the draft Government Bill proposing an Act to amend the Citizenship Act (4113/5/09)

– on the draft Government Bill proposing legislation to transfer certain tasks to the Finnish Immigration service (4195/5/08*)

To the Ministry of Social Affairs and Health

– on the draft Government Bill proposing Acts to amend the Act on the position and rights of social welfare clients and Section 2 a of the Act on the position and rights of patients (302/5/09)

– on report 2009:17 "Need for regulation of alternative therapy. Report of a working group that studied the need for legislation on alternative therapies" (3140/5/09)

– on the draft Government Bill to amend and temporarily amend the Child Welfare Act and to amend certain associated Acts (3546/5/09)

– on the draft Government Bill to amend the Medical Research Act and the Act on the position and rights of patients (3979/5/09)

To the Ministry of Defence

– on the implementation and effectiveness of the new Conscription Act and the Decrees issued under its provisions (3582/5/08*)

– on the draft Government Bill to amend the Conscription Act as well as Sections 2 and 4 of the Act on Voluntary Military Service by Women (1139/5/09*)

– on the report of a working group that studied military discipline and police actions "The draft Government Bill proposing an Act on military discipline and certain associated Acts" (2174/5/09)

To the Ministry of Employment and the Economy

– on the draft Government Bill proposing an Act on the energy efficiency of public bodies (1103/5/09)

To the Ministry of Finance

– on the draft set of guidelines "Telephone policy in State administration" and draft background memorandum (3924/5/09)

To the Ministry for Foreign Affairs

– on signing the Optional Protocol to the UN International Covenant on Economic, Social and Cultural Rights (210/5/09*)

– on drafting of a Council of Europe recommendation opposing discrimination against sexual minorities (876/5/09*)

– on the draft proposal for a Government report on human rights policy (1570/5/09*)

– on the stance taken by Finland on an initiative to draft an optional protocol based on an individual right of appeal to the UN Convention on the Rights of the Child (1601/5/09)

– on an enquiry to Finland by the UN Committee against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, CAT concerting Finland's accession to the new reporting procedure and on a list of advance questions for Finland's 2010 periodic report (2032/5/09)

– for drafting of Finland's sixth periodic report concerning the UN International Covenant on Civil and Political Rights (2050/5/09)

To the Länsi-Suomi State Provincial Office

– Concerning interpretation of Section 8 of the Local Government Act (3949/5/09)

Hearings by Eduskunta Committees

At the Constitutional Law Committee

Ombudsman *Paunio* and Deputy-Ombudsman *Lindstedt* on 24.9.2009 concerning the Ombudsman's annual report for 2008

At the Foreign Affairs Committee

Ombudsman *Paunio* on 26.11.2009 concerning report VNS 7/2009 vp on Finland's human rights policy

At the Social Affairs and Health Committee

Senior Legal Adviser *Aila Linnakangas* on 18.3.2009 concerning Government Bill HE/2009 vp proposing an Act on service vouchers for social welfare and health care as well as to amend Section 12 of the Act on client fees for social welfare and health care

Ombudsman *Paunio* on 3.12.2009 concerning report VNS 7/2009 vp on Finland's human rights policy

Other hearings

At the Ministry of Justice

Deputy-Ombudsman *Jääskeläinen* on 25.5.2009 concerning revisions and policy outlines of the general procedural rules for application of administrative law

At the Ministry of Defence

Deputy-Ombudsman *Lindstedt* on 26.2.2009 at a meeting of a working group studying military discipline and police activities

At the Ministry of the Interior

Senior Legal Adviser *Juha Haapamäki* on 21.4.2009 at a meeting of a Ministry of the Interior and Office of the Prosecutor General joint working group studying arrangements for investigating police crimes

ANNEX 4

STATISTICAL DATA ON THE OMBUDSMAN'S WORK IN 2009

Matters under consideration

Oversight-of-legality cases under consideration		*6,931*
Cases in initiated in 2009		4,816
– complaints to the Ombudsman	4,346	
– complaints transferred from the Chancellor of Justice	27	
– taken up on the Ombudsman's own initiative	72	
– submissions and attendances at hearings	49	
– other written communications	322	
Cases held over from 2008		1,571
Cases held over from 2007		538
Cases held over from 2006		6
Cases resolved		*4,903*
Complaints		4,458
Taken up on the Ombudsman's own initiative		80
Submissions and attendances at hearings		47
Other written communications		318
Cases held over to the following year		*2,028*
From 2009		1,639
From 2008		389
Other matters under consideration		*126*
Inspections [1]		57
Administrative matters in the Office		53
International matters		16

[1] Number of inspection days 52

Cases resolved by public authorities

Complaint cases		*4 458*
Social security		800
– social welfare	469	
– social insurance	331	
Health care		775
Police		712
Prisons		391
Courts		253
– civil and criminal	225	
– special	–	
– administrative	28	
Labour		221
Municipal affairs		175
Education		147
Environment		126
Transport and communications		94
Enforcement		92
Taxation		90
Asylum and immigration		71
Prosecutors		63
Agriculture and forestry		62
Highest organs of state		60
Defence		56
Guardianship		43
Customs		36
Church		23
Municipal councils		7
Other subjects of oversight		150
Private parties not subject to oversight		11

Cases resolved by public authorities

Taken up on the Ombudsman's own initiative		*80*
Police		11
Health care		10
Prisons		9
Transport and communications		6
Social security		6
– social welfare	5	
– social insurance	1	
Defence		6
Labour		6
Education		3
Asylum and immigration		3
Municipal affairs		2
Customs		2
Courts		2
– civil and criminal	2	
Guardianship		1
Church		1
Prosecutors		1
Enforcement		1
Environment		1
Other subjects of oversight		9
Total number of decisions		*4 538*

Measures taken by the Ombudsman

Complaints	*4,458*
Decisions leading to measures on the part of the Ombudsman	*733*
– reprimands	33
– opinions	647
– recommendations	20
– matters redressed in the course of investigation	33
No action taken, because	*2,326*
– no incorrect procedure found to have been followed	598
– no grounds to suspect incorrect procedure	1,728
Complaint not investigated, because	*1,399*
– matter not within Ombudsman's remit	88
– still pending before a competent authority or possibility of appeal still open	910
– unspecified	171
– transferred to Chancellor of Justice	31
– transferred to Prosecutor-General	14
– transferred to other authority	20
– older than five years	54
– inadmissible on other grounds	111
Taken up on the Ombudsman's own initiative	*80*
– prosecution	–
– reprimand	2
– opinion	33
– recommendation	17
– matters redressed in the course of investigation	6
– no illegal or incorrect procedure established	5
– no grounds to suspect incorrect procedure	14
– lapsed on other ground	2
– still pending before a competent authority or possibility of appeal still open	1

Incoming cases by authority

Ten biggest categories of cases

Social security		813
– social welfare	511	
– social insurance	302	
Health care		772
Police		648
Prisons		354
Courts		259
– civil and criminal	233	
– special	–	
– administrative	26	
Labour		236
Municipal affairs		164
Education		143
Environment		132
Enforcement		98

ANNEX 5

INSPECTIONS

Courts
- Helsinki Administrative Court
- Helsinki District Court (coercive measures affecting telecommunications)

Prosecution service
- Länsi-Uusimaa prosecution unit

Police administration
- Etelä-Karjala Police Service, Lappeenranta police prison
- Helsinki Police Service, Pasila police prison
- Helsinki Police Service, Töölö custody facility, (unnanounced)
- Itä-Uusimaa Police Service, Vantaa main police station police prison and custody facility for intoxicated persons (unannounced)
- Länsi-Uusimaa Police Service
- Ministry of the Interior Police Department
- Ministry of the Interior Police Department (police matters information system)
- National Bureau of Investigation

Prison service
- Helsinki Prison
- Jokela Prison (unannounced)
- Kuopio Prison (unannounced)
- Länsi-Suomi Regional Prison
- Länsi-Suomi Regional Prison placement unit
- Psychiatric Prison Hospital Turku unit
- Psychiatric Prison Hospital Vantaa unit
- Riihimäki Prison
- Sukeva prison (unannounced)
- Turku Prison
- Turku Prison, polyclinic
- Vantaa Prison (unannounced)
- Vantaa Prison, polyclinic

Distraint
- Länsi-Uusimaa distraint office

Defence Forces
- Air Force Academy
- Armoured Brigade
- Border and Coast Guard Academy
- East Finland Military Province headquarters
- East Finland Supply Regiment headquarters
- Finnish Crisis-Management Contingent in Kosovo
- Ground Forces Academy
- Karelia Brigade
- Reserve Officers Academy
- South-East Finland Border Guard
- Uti Jaeger Regiment

Customs
- Port of Helsinki Vuosaari port centre
- Southern Customs District Meritulli, Vuosaari port

Aliens administration
- City of Helsinki reception centre, Kaarlenkatu
- Joutseno reception centre

Social welfare
- Finnish CP Association's Laajasalo serviced dwellings (unannounced)
- Loikala Manor (private special child welfare unit)
- Pohjois-Karjala Medical Care and Social Services Joint Authority, Honkalampi Centre
- Sippola Residential Special School

Health care

City of Helsinki Health Centre's
Malmi Hospital on-call polyclinic
City of Helsinki's Haartman Hospital
on-call polyclinic
Helsinki and Uusimaa Hospital District,
Kellokoski Hospital
Kanta-Häme Central Hospital's on-call polyclinic
Pirkanmaa Hospital District, Pitkäniemi Hospital

Protection of interests

Helsinki Legal Aid Office,
general protection of interests

Social insurance

Kela's Pitäjänmäki office (rehabilitation matters)
Social Insurance Institution Kela's head office
(international affairs and rehabilitation matters)

Other inspections

Ecclesiastical Board
Espoo Group of Parishes
National Land Survey of Finland,
central administration
Office of the Data Ombudsman
(patient record entries)
Uusimaa land survey office

ANNEX 6

STAFF VAI PERSONNEL???

Secretary General

Pajuoja, Jussi, LL.D. (till 30.9.2009)
Lindstedt, Jukka, LL.D., LL.M. with court training
(1.10.–31.12.)

Principal Legal Advisers

Kuopus, Jorma, LL.D., LL.M. with court training
Kallio, Eero, OTK, LL.M. with court training
Marttunen, Raino, OTK, LL.M. with court training
Haapkylä, Lea, OTK, LL.M. with court training
Länsisyrjä, Riitta, OTK, LL.M. with court training

Senior Legal Advisers

Åström, Henrik, OTK, LL.M. with court training
(part-time)
Ojala, Harri, OTK, LL.M. with court training
Hännikäinen, Erkki, OTK
Tamminen, Mirja, OTK, LL.M. with court training
Tanttinen-Laakkonen, Kaija, OTK
Haapamäki, Juha, OTK, LL.M. with court training
Linnakangas, Aila, OTK, M.Pol.Sc.???
Aantaa, Tuula, OTK, LL.M. with court training
Kurki-Suonio, Kirsti, LL.D.
Stoor, Håkan, LL.Lic., LL.M. with court training

Legal Advisers

Muukkonen, Kari, OTK, LL.M. with court training
Lindström, Ulla-Maija, OTK
Toivola, Jouni, OTK
Pölönen, Pasi, LL.D., LL.M. with court training
Verronen, Minna, OTK, LL.M. with court training
Pirjola, Jari, LL.Lic., M.A.
Rita, Anu, OTK, LL.M. with court training
(on leave till 31.5.2009)
Niemelä, Juha, OTK, LL.M. with court training
Eteläpää, Mikko, OTK, LL.M. with court training
Suhonen, Iisa, OTK, LL.M. with court training
(on leave 1.1.–31.7.2009)
Sarja, Mikko, LL.Lic., LL.M. with court training
Arjola-Sarja, Terhi, OTK, LL.M. with court training
Äijälä-Roudasmaa, Pirkko, OTK, LL.M. with
court training
Holman, Kristian, HTM
Geisor-Goman, Astrid, OTK
Vitie, Leena-Maija, OTK, LL.M. with court training
(1.1.–31.7.2009)
Kemppi, Päivi, OTK (10.8.–31.12.2009)
Vartia, Matti, OTK, LL.M. with court training
(1.2.–31.12.2009)

On-duty lawyers

Wirta, Pia, OTK, LL.M. with court training
Ruuskanen, Minna, LL.D. (till 30.6.2009)
Romakkaniemi, Jaana, OTK, LL.M. with
court training (since15.6.2009)

Information Officers

Helkama, Ilta, M.A.
Tuomisto, Kaija, YTK

Investigating Officers

Huttunen, Kari
Laakso, Reima

Notaries

Kerrman, Raili, VN
Rahko, Helena, HN
Koskiniemi, Taru, HN
Tuominen, Eeva-Maria, HTM, VN
(on leave 2.9.–4.12.2009)
Suutarinen, Pirkko, VN

Records Clerc
Pärssinen, Marja-Liisa, VN

Filing Clercs
Kataja, Helena (on leave 25.4.2009)
Karhu, Päivi (till 25.4.2009)

Deputy-Filing Clercs???
Karhu, Päivi (on leave till 25.4.2009)
Forsell, Anu (till 25.4.2009)

Department Secretaries
Ahola, Päivi
Stern, Mervi
(on leave 28.4.–31.8.2009)
Forsell, Anu (on leave till 25.4.2009)
Keinänen, Kristiina (till 25.4.2009)

Office Secretaries
Helin, Leena
Raahenmaa, Arja
Salminen, Virpi
Keinänen, Kristiina
(on leave till 25.4.2009)
Salminen, Sirpa
(on leave 12.1.–15.5.)
Kaukolinna, Mikko
Hokkanen, Pirjo