Parliamentary

Ombudsman

of Finland

Summary

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TO THE EDUSKUNTA

The undersigned Licentiate of Laws *Riitta-Leena Paunio* served as the Parliamentary Ombudsman in 2006. The Deputy-Ombudsmen were Mr. *Petri Jääskeläinen*, Doctor of Laws, LL.M., and Mr. *Jukka Lindstedt*, Doctor of Laws, LL.M.

On 1.12.2005 the Eduskunta re-elected me to this position for the four-year term 1.1.2006–31.12.2009. Deputy-Ombudsman Jääskeläisen was re-elected by the Eduskunta for the four-year term 1.4.2006–31.3.2010 on 28.2.2006. Dr. Jukka Lindstedt was elected by the Eduskunta as the second Deputy-Ombudman for the four-year term 1.10.2005–30.9.2009 on 22.9.2005.

For the duration of my incumbency of this task I am on leave of absence from my position as Secretary General of the Office of the Parliamentary Ombudsman. Dr. Jääskeläinen is on leave of absence from his position as a State Prosecutor with the Office of the Prosecutor General and Dr. Lindstedt from his fixed-term position as a Senior Advisor on Legislative Affairs at the Ministry of Justice.

As required by Section 109.2 of the Constitution, the Ombudsman submits an annual report to the Eduskunta on activities in the previous year as well on the state of the administration of justice and on any shortcomings in legislation that have been observed. Attention must also be drawn in the report to the manner in which administration and public tasks are being performed and, in the manner provided for in Section 12.1 of the Parliamentary Ombudsman Act, observance of fundamental and human rights.

In accordance with Section 109.2 of the Constitution, I respectfully submit to the Eduskunta my annual report on the work of the Office of the Parliamentary Ombudsman in 2006.

Helsinki 21.3.2007

Ombudsman *Riitta-Leena Paunio*

Secretary General *Jussi Pajuoja*

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1. General comments

RIITTA-LEENA PAUNIO

A NATIONAL STRATEGY FOR SAFEGUARDING HUMAN RIGHTS

Efforts to protect and strengthen human rights have been made in many ways around the world in recent decades. International human rights conventions with their monitoring systems are one way of achieving this. The most important of them in Europe is the Convention for the Protection of Human Rights and Fundamental Freedoms. Its implementation is monitored by the European Court of Human Rights, to which individuals who believe their country has violated the rights that are guaranteed to them under the Convention can appeal. The Court has significantly strengthened implementation of human rights in Europe. The Charter of Human Rights that the European Union's Constitutional Treaty contains is likely to further strengthen human rights in the member states. The EU Fundamental Rights Agency, which has just commenced its work, was established to promote the same aim. Implementation of several conventions is internationally monitored and assessed on the basis of periodic reports submitted by individual countries.

Nevertheless, the difficulty of safeguarding citizens' human rights through measures taken by international monitoring bodies is clearly evident. This is due partly to the weakness of monitoring systems for conventions and partly also to the fact that even the best of the international monitoring bodies can deal with only a limited number of matters. For example, the European Court of Human Rights is not able to deal effectively with all of the great number of matters that are referred to it from Council of Europe member states.

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 ombudsman institution likewise spread vigorously around the world in the latter half of the last century and it, too, is regarded as an important building material in efforts to anchor the rule of law and safeguard human rights. Ombudsman institutions have been seen as a means of strengthening national protection of human rights in particular. However, the tasks that ombudsmen perform and the powers available to them vary very considerably indeed. Looked at from a Finnish perspective, the powers of ombudsmen in se-veral countries are quite limited. Here in Finland, the Parliamentary Ombudsman has extensive power to examine the actions of all who perform public tasks

and also extensive power to prosecute. In some countries, monitoring of human rights is not an emphasis in ombudsmen's tasks. The key task of ombudsmen everywhere is to investigate complaints made by citizens. Thus ombudsmen do not constitute the kind of uniform group that, assessed from an international perspective, would be sufficient as a model in strengthening national protection of human rights.

However, national protection of human rights must be strengthened. That is a conclusion that has been arrived at in international forums. It has been done in UN circles and within the EU. The Court of Human Rights has required it in its judgements. The same conclusion has likewise been reached by the Council of Europe's Group of Wise Persons, whose task it has been to find means of responding to the challenges of safeguarding the work of the Court of Human Rights.

It has been considered important in UN circles that national institutions be established to promote and monitor human rights within individual countries. The UN has endorsed the demands, called the Paris Principles, that these national human rights institutions must meet. They must be, among other things, independent and autonomous and they should have the widest possible powers to promote human rights and provide information about them. In addition, they should guide and advise citizens as well as monitor and oversee the implementation of human rights. In their composition they should represent all of the bodies participating in human rights work. The number of institutions meeting the Paris Principles in Europe is currently calculated to be 19. Finland does not have a national human rights institution in accordance with the Paris Principles.

In Finland, international conventions and especially the establishment of the Fundamental Rights Agency, which had been in the pipeline since 2003 and has now come into being, are creating additional pressures for the creation of a national human rights institution. The creation of the Fundamental Rights Agency presupposes in Finland, among other things, consideration of how representation on the Agency's Governing Council will be arranged. The establishment of the Fundamental Rights Agency will probably also presuppose an intensification of cooperation between various human rights actors, in addition to which consideration will have to be given to how the research into and monitoring of the human rights situation in Finland, as required by the Agency, will be arranged.

On the initiative of the Ministry for Foreign Affairs and the Advisory Committee for International Human Rights Affairs that works under its aegis, the need to establish an international human rights institution and ways of doing so in Finland have been studied. The Human Rights Institute at Åbo Akademi University has completed a basic report on the matter for the Ministry and the Finnish League for Human Rights has, at the Ministry's request, reported on the views of various bodies.

The matter has also been discussed in public. For example, President of the Republic Tarja Halonen adopted a stance in favour of the institution's establishment when she addressed a seminar commemorating the 85th anniversary of the Parliamentary Ombudsman in Finland. The Government has issued a report (VNS 2/2004 vp) in which it recommends studying the need for the institution.

As a summary of the points of view presented, it can be observed that the field of human rights actors in Finland has been regarded as fragmented and uncoordinated, for which reason, besides international aspirations, the establishment of an institution has been regarded as justified. In the light of these views, the Ombudsman's monitoring of fundamental and human rights is widely respected and there has been a desire to ensure that the Ombudsman's prerequisites for effective work are safeguarded in the event of a national human rights institution being set up. The alternative ways of bringing a national human rights institution into being that have been proposed are either the designation of the Ombudsman or some or other research and expert institute as an institution of this kind or else the creation of an advisory-board-type organisation with a secretariat working under the aegis of the Office of the Parliamentary Ombudsman.

In November 2006 the Advisory Committee for International Human Rights Affairs expressed its view that an institution of this kind should be established in Finland under the aegis of the Parliamentary Ombudsman to complement the existing national structures. This

would involve an advisory-board-type organisation and a unit a few persons strong working within the Office of the Parliamentary Ombudsman.

It is interesting to note for purposes of comparison that in Denmark and Norway this kind of research institute concentrating on human rights is the national human rights institution. In Sweden, in turn, four separate ombudsmen – with responsibility for children, discrimination, the handicapped and equality, respectively – collectively constitute the national human rights institution.

Now that a committee has just been appointed in Finland to draft new equality legislation, it is interesting to note that the committee has been asked to answer the question of whether, in conjunction with overhauling the advisory and oversight system for equality legislation, it would be necessary to revise the totality of monitoring fundamental and human rights in Finland. In my view, the remit and composition of the committee do not lend themselves to appraising this question.

As to the ongoing international development, I'd like in this context to mention the Council of Europe's cooperation network and efforts to develop it. As I have already said, the Group of Wise Persons, which has included the former Finnish and European Ombudsman Jacob Söderman, has made proposals aimed at safeguarding the operation of the European Court of Human Rights. A key aim with also these proposals has been to strengthen national implementation of human rights.

The measures proposed in the report of the Group of Wise Persons have the aim of ensuring that the role and activities of the Council of Europe's Commissioner for Human Rights will develop in a way that prevents more effectively than at present the occurrence of human rights violations in the member states. Cooperation between the Commissioner for Human Rights and national actors, such as ombudsmen and national human rights institutions, and intensification of this cooperation would be one means of this kind.

The Commissioner for Human Rights has in fact begun measures to create a cooperation network linking these actors. The intention is to outline this cooperation in greater detail at meetings between ombudsmen, national human rights institutions and the Commissioner for Human Rights.

The contents of the cooperation have been envisaged as above all mutual exchange of information according to a pattern in which the Commissioner for Human Rights would inform national authorities of issues that the Council of Europe considered problematic and the national actors, for their part, would provide information about the human rights situation in their countries. The aim with this exchange of information is to resolve in advance the kinds of problems that might cause numerous complaints, thus reducing the workload of the Court of Human Rights.

Under Additional Protocol 14 of the European Convention on Human Rights, the Commissioner for Human Rights will be given the right to take part in proceedings at the European Court of Human Rights. He hopes that in this role he will be able to help the Court identify systemic and structural problems in various countries. He also hopes to be able to promote the efforts of national authorities in searching for means of resolution. Through cooperation, national actors, in turn, could make their own contributions to handling individual human rights complaints and to identifying any problems of a more general and their resolution in international forums. A further goal of cooperation is to ensure that citizens in each country are more actively provided with information about the limitations of human rights complaints.

The cooperation that I have outlined in the foregoing is important and exchange of information can be carried out where the Parliamentary Ombudsman is concerned, naturally within the constraints of legislation on publicity. The question from the Ombudsman's perspective is above all how the available resources can justifiably be allocated. When this is being weighed up, the Ombudsman's function in the investigation of complaints must be taken into consideration. This has proved to be a demanding task, since the number of complaints is growing strongly year after year.

By contrast, the proposals made by the Group of Wise Persons to the effect that the Ombudsman should arbitrate and, either in association with arbitration or sep-

arately from it, recommend or order damages or recompense can not, in my view, be implemented without legislative changes. Current legislation does not give the Ombudsman the right to take measures of this kind. The prerequisites for them and their compatibility with other oversight of legality should, I believe, be given careful consideration.

International and national systems of legal remedies presuppose corrective measures after violations of human rights have occurred. National recompense for fundamental rights violations is also an important means in national protection of human rights. A year ago, I pointed to a need to develop national systems of this kind, by means of which the possibility of providing recompense for the damaging effects of fundamental and human rights violations could be ensured.

In fact, there has been progress in this respect. Means of preventing and providing recompense for delays in the administration of justice have been proposed in a report (OMTRM 2006:21) by a Ministry of Justice working group. Means of this kind would be a complaint about delay, a recompense board and mitigation of administrative consequences. The procedure to be followed when requiring actions relating to administration has likewise been outlined in a Ministry of Justice publication (OM 2006:4).

As I see it, needs for a national human rights institution stem primarily from international development. One of the ways in which this shows itself is that the matter has been prepared and taken forward first and foremost by the Ministry for Foreign Affairs. But also from the national perspective there is certainly reason to assess how human rights could be safeguarded in our country better than at present. Another feature that has been highlighted in recent assessments of human rights structures is the fragmented nature and amorphism of the Finnish structures looked at from the perspective of citizens. These in themselves are reasons that, in my view, create a need for broad and comprehensive deliberation of means of overseeing and promoting human rights.

There are other reasons as well. A Government report on safeguarding human rights in Finland's case has proved to be a demanding task and requires development. That is also the case with regard to the periodic reporting that international conventions require. The Foreign Affairs Committee has rightly drawn attention to this matter in its submission on the report.

The possible establishment of a national human rights institution could lull us into thinking along the lines that such a step would be sufficient to strengthen human rights in our country. If it took care of all tasks, from the provision of information to monitoring and reporting, the responsibility of other bodies could be weakened.

I believe it would be important for prevention of fundamental and human rights violations to be made a Government objective and for a strategy encompassing various sectors of administration to be drafted for its implementation. The central and significant structural problems that prevent the implementation of fundamental and human rights in our country are quite well known in administrative sectors. Delays in the administration of justice as well as in general administration are one example of this. More about them can be found in the section of this report dealing with fundamental and human rights as well as in other sources such as the Government's report on the implementation of human rights in Finland.

Instead of after-the-fact monitoring, oversight and recompense for human rights violations, the emphasis should be on preventing them. The point of departure in a national strategy to safeguard human rights must be that violations of fundamental and human rights are prevented. Naturally, assessment of national human rights structures is associated with this.

PETRI JÄÄSKELÄINEN

PRISONERS' FUNDAMENTAL RIGHTS PROBLEMS

A comprehensive overhaul of the correctional system came into effect during the year under review. This included a new Prison Act and a new Detention Act. These reforms contribute to implementing a constitutional requirement, according to which the rights of persons who have lost their liberty must be guaranteed by law.

The nature of the correctional system makes it an especially sensitive operating environment with regard to fundamental rights. When the fundamental rights provisions of the Constitution were revised some years ago, the view that the fundamental rights of a particular group of people could be directly curtailed on the ground that they were in a special relationship subject to power or under the power of an institution was finally abandoned. Thus, for example, restrictions on the fundamental rights of prisoners for the time that they are deprived on liberty must be regulated by law and it must be possible to justify the restrictions separately in each case and with respect to each fundamental right.

This prohibition on restrictions based on so-called institutional power is expressly stated in the Prison Act. According to it, the content of imprisonment is loss or limitation of liberty. The implementation of imprisonment must not cause any restrictions on the prisoner's rights and circumstances other than those that are provided for in law or which are an inevitable consequence of the penalty itself.

The prisoners' fundamental rights problems that were revealed in the process of dealing with complaints are explained more broadly in the section of this report dealing with the prison service. In this connection I pay special attention to the prison conditions that are prerequisites for treatment worthy of human dignity and the requirements of good administration that legal security presupposes.

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

Prison conditions

The so-called normality principle enshrined in the Prison Act requires that prison conditions be arranged in such a way that they correspond as far as possible to the prevailing living conditions in society. The 500 so-called slopping out cells in Finnish prisons that still have neither running water nor a WC are far from this goal. Since overcrowding has necessitated some of these cells being shared by two prisoners, conditions are not acceptable from the perspective of treatment worthy of human dignity. In the case law of the European Court of Human Rights it has been considered degrading for a prisoner to have to use a pot in the presence of another prisoner. It has been deemed possible to allow circumstances of this kind only in special situations where a visit to a WC could cause a concrete and grave security risk.

The established position in the Ombudsman's oversight of legality is that a prisoner accommodated in a slopping out cell should always be allowed to visit

the WC facility on request. However, because of low staffing levels and for security reasons this is not always possible in practice. Another problem that arises here is the inadequacy of opportunities to take care of hand hygiene, which has been considered important in, among other things, the prevention of hepatitis A infections. On my own initiative, I have decided to investigate how opportunities for prisoners in slopping out cells to take care of their hand hygiene has been arranged in each prison and whether these arrangements are adequate to prevent possible health risks.

An effort has been made to phase out slopping out cells in conjunction with basic renovations of prisons and building new ones. In its report concerning the Prison Act, the Constitutional Law Committee drew the Government's attention to the recommendations that the UN Committee against Torture has made to Finland to the effect that it consider means of speeding up basic renovations of prisons and, in order to improve hygiene, examine alternative temporary arrangements instead of using chamber pots. Unfortunately, lack of resources has meant that, on the contrary, basic renovations of some prisons have been postponed until later than the dates originally envisaged.

Aside from the age of the prison buildings, overcrowding is also worsening the conditions in which prisoners live. Living in congested spaces increases tensions between prisoners and can cause safety risks, which endanger prisoners' fundamental right to safety and personal integrity. Due to overcrowding, non-smoking prisoners have sometimes had to be temporarily kept in the same cell as a prisoner who smokes. Also in the case of prisoners it must be possible in all circumstances to guarantee their fundamental right to a healthy environment and the right that is theirs under smoking legislation not to be exposed to tobacco smoke.

Because staffing levels in prisons have not been increased commensurately with the number of prisoners, the staff's work input is devoted to essential tasks. This has made it more difficult to arrange a variety of activities that are important to prisoners, such as those that support their ability to function and manage their lives. The result of this, in turn, is that the objectives of the new legislation will be more difficult to achieve.

Legal security

As a fundamental right, good administration is something to which also prisoners are entitled. Since the powers provided for in the new Acts give the prison authorities comparatively extensive scope for discretion, the Constitutional Law Committee has underscored the importance of taking general principles of administrative law into consideration when applying the powers-related regulations in individual cases. In addition, the Committee has emphasised, from the perspective of guarantees of good administration, that the Administrative Procedure Act applies also to the actions of the prison authorities, unless the Prison Act or other legislation contains provisions stating otherwise.

Good administration is of very great importance from the point of view of prisoners. This is because in a prison environment all functions are regulated and many things that matter a lot to prisoners are either subject to permission or at least presuppose on the part of the prison authorities a variety of actions or solutions that *de facto* constitute administrative measures. For these reasons, an enormous number of not only actual administrative decisions, but also *de facto* administrative measures are taken in prisons. These administrative activities involve the legal security of prisoners.

Oversight of the legality of actions within the correctional system continually reveals procedures that are contrary to good administration.

Problems relating to dealing with matters without delay that are common in official actions are not rare in prisons, either. For example, prisoners' opportunity to receive books, goods or other personal property presupposes inspections and other measures on the part of the prison authorities, and these actions may take too long from the perspective of good administration. Correspondingly, things like unsupervised meetings with prisoners and temporary release presuppose applications for permission and in some cases decisions on these applications have been delayed even beyond the date applied for.

The privacy protected by the Constitution includes the individual's right to establish and maintain relations

with other people. From the point of view of prisoners' opportunities to keep in contact, it would be important for correspondence to be able to take place expeditiously. During the year under review, the new provisions concerning inspection of correspondence that the Prison Act and the Detention Act contain made the inspection procedure even slower than it had been and in the worst cases it has taken as much as a couple of weeks for incoming letters to be delivered to prisoners.

The slowness with which prisoners' mail moves is problematic also because prisoners' opportunities to handle contacts with outside the prison by telephone are limited with respect to both the times when calls can be made and the length of calls. In addition, calling from a prison can be several times more expensive than normal telephone call rates. A speeding up of the inspection procedure for letters can be expected when a legislative amendment that the Eduskunta has already approved comes into force. As for the high call rates that prisoners have to pay, I have taken this matter under investigation on my own initiative.

The provision of advice that belongs to good administration is of great importance in a prison environment, where all functions are regulated. Although all prisons have induction guidebooks, in which prisoners' rights and obligations as well as the procedural methods associated with their implementation are explained, a lack of guidance is continually criticised in complaints from prisoners and in interviews arranged with prisoners in conjunction with visits to prisons. A lack of guidance can be especially problematic for foreign prisoners who do not speak Finnish or Swedish. I have taken prisoners' opportunities to receive guidance in a language they understand under investigation on my own initiative.

Something that is also important from the perspective of receiving information is that appropriate answers are given without delay to prisoners' enquiries and questions. Attention has had to be drawn to this in several complaint cases. In practice, prisoners' enquiries and applications are made on a special form, which in some prisons is headed "rutinalappu" [a literal translation of which would be *"slip for querulous complaints"*]. Although this designation has long been established in prison culture, it does not meet the requirement of good language usage in accordance with the Administrative Procedure Act. I have regarded "rutinalappu" as a disparaging expression, which brands a reasonable communication by a prisoner as unnecessarily complaining.

The requirement that the reasons for administrative decisions be presented belongs to good administration and is explicated in the Administrative Procedure Act, but the principle has not yet been embraced in prisons. In practice it is common for no facts whatsoever to be presented as grounds for decisions. A typical argument presented would be, for example, "compliance with the conditions of the permit is not sufficiently probable", but the reasons for arriving at this assessment would not be outlined at all in the decision. Presentation of reasons is a key guarantee of legal remedies against arbitrary exercise of power – it is precisely with the aid of the reasons presented in support of decisions that oversight can be exercised to determine whether discretionary powers have been used in accordance with legal and acceptable criteria.

According to the Administrative Procedure Act, the examination that is necessary from the perspective of deciding on an administrative matter would be the responsibility of the authority in question. This is important specifically in prison conditions, where prisoners could have difficulty obtaining the necessary reports themselves. In practice, however, it is common for prison authorities to fail to meet their obligations with respect to examination; instead, a lack of examination leads to applications being rejected.

The Prison Act provides for an expanded right of appeal by prisoners against administrative decisions. In practice, this right can not be implemented if a prisoner is not given a written decision and guidance as to how to make an appeal. I have had to draw attention to this shortcoming in several decisions that I have issued in relation to complaints made since the Prison Act came into force.

Different decisions being made in similar matters in different prisons is one problem that violates the right of prisoners to equitable treatment. This problem often manifests itself also through the same prisoner receiv-

ing different treatment in different prisons when he or she is transferred from one facility to another. For example, temporary release or unsupervised family visits may be refused in the new prison even though they were granted regularly in the earlier one. Similarly, property that a prisoner has been allowed to keep in one prison may be denied in another.

Causes of problems

What is involved in procedures that are contrary to good administration is sometimes ignorance. Procedural guarantees of legal security and their importance are not always known or recognised. A contributory factor here is the almost complete absence of lawyers in prisons. The lack of a legal perspective or knowledge underscores a need for personnel training and guidance, in relation to which also the positions adopted by the Ombudsman have their own significance.

Good administration can also be a question of culture or attitude. In the course of a long period of time, distinct cultures of their own have evolved in various prisons and can guide activities more powerfully than the principles enshrined in new legislation or a way of thinking that is positively disposed to fundamental rights. It may be difficult for the prison authorities to conceive of prisoners as clients of administration, whose rights the authorities should, in accordance with the service principle, take care of. For example, the designation "rutinalappu" that I have mentioned in the foregoing reflects a climate of attitude that is not well suited to running a prison in accordance with good administration. Special responsibility for changing the culture of administration and attitudes resides with the senior officials in each prison.

Good administration also demands personnel resources. When a compromise has to be made somewhere, good administration can end up on the list of economies. From the perspective of the Prison Service's staff, which is below strength relative to the number of prisoners and overworked, this is understandable. From the perspective of fundamental rights, however, it is unacceptable.

Where slopping out cells are concerned, what is at issue is solely the appropriation of funds for basic renovation of old prisons and building new one. The Constitution requires the public authorities to safeguard the implementation of fundamental and human rights. This means materially safeguarding fundamental rights, something that must be taken into consideration in *inter alia* the allocation of financial resources. The public authorities must provide the prison service with sufficient resources to ensure that the conditions essential for treatment worthy of human dignity and the legal safeguards that good administration presupposes can be guaranteed also to prisoners.

JUKKA LINDSTEDT

SAFEGUARDING LANGUAGE RIGHTS

Section 17 of the Constitution states that the national languages of Finland are Finnish and Swedish. The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities is guaranteed by law. The public authorities are required to provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

Language rights have linkages to other fundamental rights, such as equality, freedom of speech, cultural rights as well as the fundamental rights relating to a fair trial and good administration. The equality provision in the Constitution includes a prohibition on discrimination, according to which unequal treatment on a ground such as language is forbidden. The Non-Discrimination Act likewise prohibits discrimination on the basis of language.

Language rights involve actual and not just formal equality between different language groups. These rights are set forth more precisely in the Language Act that came into force at the beginning of 2004. According to this, the objective is that an individual's language rights will be implemented without their having to be separately invoked.

An active role on the part of the authorities is emphasised in the Language Act in other respects as well: in their activities the authorities must on their own initiative ensure that the language rights of an individual person are implemented in practice. Both in its services and in its other actions, an authority must also demonstrate to the public that it uses both languages. An authority must, for example, ensure that signs, forms and brochures are conspicuously presented in both languages.

When dealing with State authorities or the authorities in bilingual municipalities everyone has the right under the Language Act to use Finnish or Swedish. In an administrative matter, the language in which processing is done by a bilingual authority is the language of the party concerned. The Language Act also contains other detailed provisions concerning the language in which a matter is to be dealt with in, e.g. civil and criminal cases.

Jukka Lindstedt's duties include attending to cases concerning the police, public prosecutors, Defence Forces, transport, immigration, and language legislation.

Thus the obligation to provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis applies to the public authorities in their entirety. The provisions of the Language Act apply not only to authorities, but also to private parties who perform public administrative tasks. This broadening of their scope may have a lot of significance in the future if privatisation of administration continues.

The Language Act is the general legislation that determines the minimum standard of service relating to language. Special provisions concerning language are also to be found in, inter alia, legislation regulating the

educational, health and social services sectors as well as in legislation concerning criminal investigations and court proceedings. In addition, there is separate legislation stipulating the standard of language proficiency required of employees of public communities.

The Constitution guarantees the Sámi, as an indigenous people, as well as the Roma and other groups, the right to maintain and develop their own language and culture. Provisions on the right of the Sámi to use the Sámi language before the authorities are laid down in separate legislation. The Administrative Procedure Act contains provisions on the rights of Roma and persons using sign language as well as on interpreting and translating foreign languages.

Language matters in the Ombudsman's work

Cases relating to language rights are an important category in the Ombudsman's work. Oversight of observance of these rights is well suited to the Ombudsman's task as a promoter of implementation of fundamental and human rights. In my view, this task includes taking special care to monitor how the rights of various minorities are implemented.

In the Ombudsman's work, the cases categorised as language cases are those in which the matter at issue is the constitutionally guaranteed right to use one's own language, the obligation on the public authorities to provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis as well as also more generally safeguarding language rights.

Oversight of legality in language matters is based mainly on investigation of individual complaints. A complaint is investigated as a language matter when language rights are the principal issue involved. The question of the language used in official activities can also be associated with a complaint relating to a broader totality, whereby the language question is dealt with and categorised as a part of the main case.

We also take up some language matters on our own initiative. For reasons of resources, the number of matters looked into on our own initiative each year is not particularly large. At the moment, however, a number of cases involving language rights are being investigated on our own initiative.

A few dozen cases that are categorised as language complaints are initiated each year. The entry into force of the Language Act in 2004 temporarily increased the number of language-related complaints somewhat, but it has again declined since then.

Another matter is that complaints arriving for the Ombudsman to deal with are written in several languages. In 2006, 88 complaints in Swedish and 39 in English were received. The recommendation on the Ombudsman's web site, for example, is that a complaint should preferably be made in one or other of the national languages or if necessary in English. In practice, complaints occasionally arrive in other languages as well, in which case they are translated by the Office of the Parliamentary Ombudsman. Information on the Ombudsman's activities and how to make complaints is available in several languages.

As a general rule, the issue in language-related complaints is the status of the Swedish language. Complaints concern the status of Finnish markedly less often. On the other hand, it was decided in one recent case that a bilingual municipality had followed incorrect procedure because the agenda for and the minutes of a meeting of the municipal council had been drafted only in Swedish.

Even rarer are complaints concerning the status of the Sámi language, only a few of which have to be dealt with each year. One complaint dealt with last year was in the category "police", but also touched on the right to use the Roma language. There have also been occasional complaints concerning the use of foreign languages, such as the opportunity to transact business with the authorities in English or the right to receive basic education in one's own mother tongue (French and Russian). On the other hand, a complaint was recently made about the obligation to use English in applications submitted to the Academy of Finland.

The biggest category of language-related complaints by a substantial margin has related to, on the one hand, shortcomings in Swedish-language client service and, on the other, the use of Swedish when a matter is being dealt with by an authority. Complaints in the former sub-category concern replies to enquiries, forms and other provision of information, such as notices, brochures, guidelines and Internet pages. Those in the latter relate to, for example, criminal investigations, serving of summonses, trials, traffic supervision and the language used in correspondence between authorities.

Complaints that have been quite common and will probably continue to feature are those relating to the language skills required of students and language-based quotas. Complaints concerning the Finnish Broadcasting Company's programming may continue to be received in the future. A decision issued by Deputy-Ombudsman Rautio a few years ago related to digitalisation and the stage at which it then was, when it was possible to watch considerably fewer digital transmissions than analogue ones. The Swedish-language coverage of the results of the European Parliament elections as they came in was transmitted on the digital network only. Deputy-Ombudsman Rautio found that although this was not clearly unlawful, it did not safeguard language-related fundamental rights in the best-possible way.

On inspection visits by the Ombudsman and Deputy-Ombudsman, attention is regularly drawn to, in addition to the other matters to be examined, the right to use and receive service in one's own language. This applies especially to inspections of psychiatric care and social welfare institutions and authorities as well as to prisons.

A special question that arose during an inspection visit to a military unit last year concerned the situation of conscripts there who spoke neither Finnish nor Swedish well. Many conscripts of this kind came during the inspection to report their experiences of practical problems. One example was that there was not enough training material in English available. Nevertheless, the unit in question had as such been making an effort to improve the situation of these conscripts. The size of this group will probably decline in the future if the Military Service Act is revised.

Certain problematic points

The number of complaints in which decisions are issued on the basis of the current Language Act is not large enough to enable far-reaching conclusions about the effectiveness of the Act or its impacts to be drawn on this basis alone. After the Act had entered into force, the critical sentiments that Finns harbour towards the subject were reflected in a slight increase in the number of complaints, but this tendency has not subsequently continued to any appreciable extent. The issues brought up in complaints have also been largely similar to those before the entry into force of the Language Act. The proportion of complaints leading to measures by the Ombudsman has likewise remained the same. In any event, the language-related complaints made to the Ombudsman probably reflect a fairly representative cross-section of actual shortcomings.

More extensive sources of information on the implementation of language rights include especially a Government report concerning the application of language legislation. The first report of this kind was issued in the spring of last year. Especially with the Language Act in mind, the follow-up section in the first report was still brief, but already now the report contained a significant amount of information on both language conditions in Finland in general and implementation of language-related rights.

According to the Government report, there are shortcomings in implementation of language rights where the national languages, especially Swedish, are concerned. In practice, the opportunity to receive service in Swedish when transacting business orally with bilateral authorities has not always been implemented. In the Ombudsman's work this has shown itself in, for example, complaints concerning the ability of police officers to speak Swedish. The complaints on which decisions were issued last year also included several relating to an amendment of the decree specifying the linguistic abilities that police officers must meet.

Unfamiliarity with the relevant legislation can be behind shortcomings in the service provided in Swedish. However, that is likely to be less common in the future as the Language Act and other regulations concerning language rights gradually become increasingly familiar. The argument, which has continued to be heard even in recent years, that service in Swedish is not essential, because those for whom it would be intended have a sufficiently good command of Finnish, must be considered partly attitudinal in nature. In a decision last year concerning correspondence between the Army's Swedish-speaking Uusimaa (Nyland) Brigade and the Defence Staff, Deputy-Ombudsman Jääskeläinen found an argument of this kind to be legally untenable.

The question of resources must be considered challenging. This applies very clearly to the courts. From the point of view of the legal security of Swedish-speaking persons and also trust with respect to this, it would be especially important to have their cases dealt with in their mother tongue.

In a decision that I issued last year I drew attention to the implementation of linguistic equality in the Vaasa Court of Appeal, where it had taken clearly longer to deal with cases through the medium of Swedish than those in which the language used was Finnish. Factors which the Court itself could not influence, such as judges' remuneration and the attractiveness of judicial employment, played a big role in the background. The situation subsequently seems to have been improving, but still needs to be monitored. Correspondingly, I decided on my own initiative to examine the times taken to deal with cases through the medium of Swedish in the Turku and Helsinki courts of appeal. The shortage of judges with an adequate command of Swedish has been the focus of attention in other connections and also earlier.

In connection with a case concerning the Vaasa Court of Appeal, for instance, the issue of language ability being taken into consideration in remuneration and language training as a practical means of safeguarding language rights were brought up. The language bonuses that some cities have provided have featured in the public discourse in recent times. I have taken these supplementary remuneration items under investigation on my own initiative, but my investigation is only in a very early stage at time of writing.

Although receiving service in one's own language is always important, there are certain sectors in which it absolutely must be safeguarded. One such sector is social welfare and health care: a sick or old person, for example, is dependent on others and has a great need to be able to use his or her own mother tongue and understand the language used by the treating personnel.

It is essential, even in order to safeguard life, that the services of an emergency response centre be available in both national languages 24/7. It emerged in the course of an inspection that I conducted at the Emergency Response Centre Administration last year that there had been problems with the availability of Swedish-speaking duty officers. Although this had not, according to the information I received, led to widespread problems with regard to services in Swedish, there had been regional problems. All in all, there will continue to be a need for the Ombudsman to monitor the availability of services in Swedish at emergency response centres.

Likewise of key importance with safety in mind is the provision in the Language Act to the effect that information of relevance from the perspectives of the individual's life, health and safety as well as of property and the environment must be provided throughout the country in both Finnish and Swedish. An effort must be made to provide this information in both languages at the same time. This matter was touched on this year in a decision on a case that related to an interruption of services became of industrial action taken by employees of the Finnish Broadcasting Company in a labour dispute.

The Constitution requires that in the organisation of administration, the objective shall be suitable territorial divisions, so that the Finnish-speaking and Swedish-speaking populations have an opportunity to receive services in their own language on equal terms. Indeed, implementation of language rights must be the focus of attention in, for example, the restructuring of municipal boundaries and local-government services now in

the pipeline in Finland. Another topical project is one in which it is planned to reduce the number of police districts to a third of what it is today. However, an assurance has been given that the reform will not lead to a weakening of police services through the medium of Swedish.

Safeguarding language rights is not confined to the national languages. Finland's is becoming increasingly multilingual and resources and efforts must be put into helping immigrants to learn our languages and also interpretation services. The preservation of traditional languages of our country like Sámi and Roma, which because of the small numbers who use them require the special support of the public authorities, is a special question in its own right.

Safeguarding language rights is important for the preservation of linguistic and cultural diversity. For example, the Swedish language and culture expressed through the medium of that language are very important in Finnish society in general as well as from the perspective of international cooperation. The implementation of language rights is also a prerequisite for the implementation of other fundamental rights.

2. The Ombudsman institution in 2006

2.1 TASKS AND DIVISION OF LABOUR

The Ombudsman is the highest overseer of legality elected by the Eduskunta. He or she exercises oversight to ensure that those entrusted with public tasks observe the law, perform their duties and implement fundamental and human rights in their actions. The Ombudsman's power of oversight encompasses courts of law, authorities and officials as well as other persons and bodies that perform public tasks. By contrast, the Ombudsman has no power to examine the Eduskunta's legislative work nor the actions of Representatives, nor the official actions of the Chancellor of Justice of the Council of State (Government).

The Ombudsman is independent and acts outside of the traditional separation of public power into three branches – legislative, executive and judicial. He or she is entitled to receive from authorities and others entrusted with a public task all of the information necessary for oversight of legality. The purpose is *inter alia* to ensure that various administrative sectors' own systems of legal remedies and internal oversight mechanisms function appropriately. The annual report that the Ombudsman gives the Eduskunta contains an assessment, based on observations, of the state of administration of the law and describes any shortcomings that have been identified in legislation.

In general, the powers of the Ombudsman are the same as those of the Chancellor of Justice. For example, only the Ombudsman or the Chancellor of Justice can decide to lay a charge against a judge for acting illegally in office. In the division of labour between the Ombudsman and the Chancellor of Justice, however, the former is primarily responsible for matters concerning prisons and other closed institutions where persons are involuntarily confined as well as for cases involving deprivation of freedom as provided for in the Coercive Measures Act. The same applies to the Defence Forces, the Frontier Guard, peacekeeping personnel and courts martial.

The election, powers and tasks of the Ombudsman are regulated by the Constitution. The Eduskunta elects two Deputy-Ombudsmen in addition to the Ombudsman. All serve for a four-year term. The Ombudsman decides the division of labour between the three. The Deputy-Ombudsmen deal with the cases assigned to them independently and with the same powers as the Ombudsman.

Under the present division of labour, Ombudsman Paunio deals with matters that concern questions of principle, the Government and the other highest organs of state. The scope of her oversight also includes inter alia social welfare, health care and social security more generally as well as children's rights. The matters with which Deputy-Ombudsman Jääskeläinen deals include those relating to courts, the prison service, distraint, environmental administration and local government as well as taxation. Deputy-Ombudsman Lindstedt, in turn, is responsible for a range of matters relating to the police, the public prosecution service, the Defence Forces and education as well as foreigners and language matters.

The work of the Ombudsman is regulated in greater detail in the Parliamentary Ombudsman Act. The provisions concerning the Ombudsman are shown in Annex 1 of this report.

2.2 FORMS OF WORK

The work of the Parliamentary Ombudsman of Finland began in the early days of February 87 years ago. Oversight of legality has changed in many ways since then. It has undergone a shift in emphasis towards guiding good administrative procedure and setting demands with respect to this. The Ombudsman's role as an apportioner of blame has receded to the background, whilst the role of guider and developer of official actions has been accentuated.

When the fundamental rights provisions of the Constitution were revised in 1995, the Ombudsman was given the task of overseeing implementation of fundamental and human rights. This changed the perspective from the duties of authorities to implementation of people's rights. Since the provisions were revised, fundamental and human rights have been highlighted in almost all of the cases with which the Ombudsman has dealt. Evaluation of implementation of fundamental rights means weighing the relative merits of principles that run counter to each other and paying attention to aspects that promote implementation of fundamental rights. The importance of legal interpretations that are amenable to fundamental rights is underscored in all of the Ombudsman's evaluations.

Investigation of complaints is the Ombudsman's principal task and form of work. The Ombudsman has a duty to investigate all complaints on the basis of which there is ground to suspect that an unlawful action has been taken or a duty neglected, irrespective of how minor the matter. It must be noted that also assessing whether or not there are grounds to suspect unlawful action or neglect of duty sometimes requires a great deal of investigative work.

This broad obligation to examine means that the Ombudsman does not have a sufficient opportunity to emphasise oversight of legality from the perspective of fundamental and human rights in the way that she considers to be warranted. The Ombudsman's power of discretion in this respect is greater in many countries. In addition to those matters arising from complaints, the Ombudsman can also decide on her own initiative to investigate shortcomings that have come to light.

The Ombudsman is required by law to conduct on-site inspections in public offices and institutions. She has a special duty to oversee the treatment of persons confined in prisons and other closed institutions as well as the treatment of conscripts in Defence Forces units. Inspection visits are also made to other institutions, especially those providing social welfare and health care services.

Fundamental and human rights come up in oversight of legality both when individual cases are being decided on and inter alia in conjunction with inspections and when deciding the focuses of own-initiative investigations. This report contains a separate section showing what kinds of issues relating to fundamental and human rights came up in 2006 and what positions were adopted in relation to them (see p. 30).

The Ombudsman is additionally required to oversee the use of so-called coercive measures affecting telecommunications – monitoring telecommunications, telesurveillance and technical eavesdropping. The use of these coercive measures usually requires a court order, and they can be used primarily in criminal investigations of serious crimes. Their use involves interference with several of the basic rights and liberties that the Constitution guarantees, such as protection of privacy, confidential communications and domestic peace. The Ministry of the Interior, the Customs and the Defence Forces are statutorily required to give the Ombudsman annual reports on the use of coercive measures affecting telecommunications.

Under the law, the police additionally have the right, subject to certain preconditions, to engage in undercover activities to combat serious and organised crime. In the course of undercover operations, the police obtain information on criminal activities by, for example, infiltrating a gang. The Ministry of the Interior must give the Ombudsman an annual report on also undercover operations. Oversight of coercive measures affecting telecommunications and undercover operations is dealt with in the police section (see p. 36).

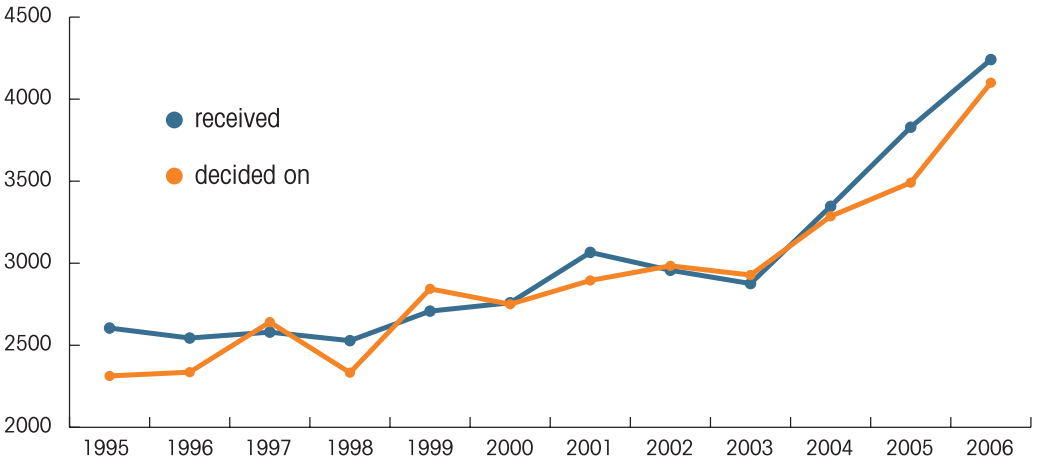
The emphasis on fundamental rights is reflected in also other ways in the orientation of the Ombudsman's activities. The Ombudsman is regarded as being responsible both for oversight of fundamental and human rights and also for actively promoting them. In association with this, the Ombudsman has discussions with, among other bodies, the main NGOs. During inspection visits and in connection with own-initiative investigations, she takes up issues that are sensitive from the perspective of fundamental rights and of more general significance than an individual case.

In accordance with a request made by the Eduskunta, the Ombudsman places a special emphasis on oversight of implementation of the rights of children. On 7 February 2006 the Ombudsman gave the Eduskunta her special report on this theme: "Children, domestic violence and the responsibilities of the authorities"; it is Annex 3 to the annual report of the year 2005. The report is dealt with in the section dealing with the rights of children, p. 42.

The special themes in oversight of fundamental and human rights in 2006 were advisory services and equality. These were emphasised during inspection visits and in launching own-initiative investigations. The contents of the themes in question are outlined in the section on fundamental and human rights. Advisory services and equality are again areas of emphasis in 2007.

2.3 THE WORK SITUATION AND ITS CHALLENGES

The number of complaints and other oversight-of-legality matters has increased strongly in recent years. It grew by about 47% in 2003–06 (from 2,876 to 4,241). In addition to complaints, own initiatives, submissions and attendances at events such as hearings by various Eduskunta committees as well as other written communications are counted as oversight-of-legality matters. The latter are in the nature of enquiries or other clearly unfounded complaints, matters that do not fall within the scope of the Ombudsman's oversight or other non-specific communications from citizens. These are not registered as complaints; instead, the lawyers at the Office of the Ombudsman who are tasked with advising members of the public reply to these communications immediately and give guidance and advice.

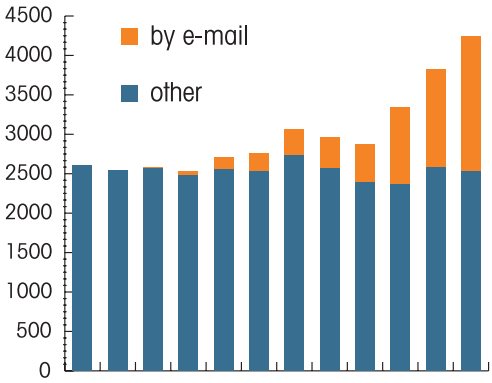


Oversight-of-legality matters received and decided on 1995–2006

Growth in the numbers of complaints and other oversight-of-legality matters as well as the demands arising for the revision of the fundamental rights provisions in the Constitution led in the years after the 1990s to a lengthening of the time required to deal with complaints. These challenges were responded to by recruiting new referendaries and other personnel, developing work and operational methods as well as through substantial inputs into training. The aim was to reduce the long processing times without however compromising on the quality of work and the demands of oversight of fundamental and human rights.

Growth in the volume of electronic transactions has increased the number of complaint cases in recent years. The number of matters that arrived by traditional routes – by letter, delivered in person or faxed – remained virtually unchanged in the period 1995–2006. By contrast, the number of oversight-of-legality matters arriving by e-mail grew strongly. In 2006 some 40% of all matters arrived through electronic channels. Electronic transactions have already influenced work methods at our office and will continue to do so.

The future may bring experiences similar to those in Sweden, where the Ombudsman has received as many as 3,000 complaints about the same matter. Similarly, we received over 50 electronic complaints relating to events associated with the Smash Asem demonstration (9.9.2006).



Matters received by e-mail and otherwise 1995–2006

However, the response to growth in the number of oversight-of-legality matters has no longer been to increase personnel and financial appropriations. No new posts were created in the Office of the Ombudsman in 2006 and the appropriation for the salaries of temporary personnel was likewise reduced in the 2007 budget. Instead, processing of complaints was made more efficient through changes in working methods.

Work efficiency can be further improved by developing electronic means of transaction. The implementation of an electronic desk was set as a key objective of the Eduskunta's information management strategy for 2005–07. Preparations for it began in early 2006. From the perspective of the Office of the Ombudsman, one of the things that the electronic desk will mean is that in future it will be possible for initiation, preliminary investigation (obtaining reports and statements), resolution and publication of cases to be done entirely by using one single electronic information management system.

However, if the number of complaints continues to grow, consideration will have to be given also to other alternatives, such as amending the legislation on the Ombudsman. Amending legislation could mean, for example, that the Ombudsman's discretionary power in the investigation of complaints could be increased as has been done in Sweden. A similar reform was recently implemented at the European Court of Human rights, which in 2006 was given procedural means and scope for flexibility to help it reduce its backlog of cases.

Another factor associated with the Ombudsman's work situation was the adoption by the Eduskunta, on 14.10.2005, of amendments to the Constitution and the Parliamentary Ombudsman Act. This allows the Ombudsman to choose a substitute for a Deputy-Ombudsman for a term of up to four years, having first received an opinion on the matter from the Constitutional Law Committee. That would ensure continuity in the work of formulating decisions in various situations. The amendment of the Constitution is conditional on its being approved by the new Eduskunta that emerged from the general election in March 2007.

Besides growth in the number of complaints and other oversight-of-legality matters, closer international co-operation is increasing the workload of the Office of the Ombudsman. At the moment, the activities of more than a dozen bodies that oversee compliance with international human rights conventions are followed by the Office and some of them are supplied with information or statements and submissions are made to them.

The establishment of the oversight system that the Optional Protocol to the UN Convention Against Torture presupposes is currently being prepared at the Ministry for Foreign Affairs. The purpose of the oversight system is to inspect institutions and other places where people who have been deprived of their liberty are confined. The Optional Protocol requires the establishment of a national oversight body to issue recommendations to the competent authorities and act as a liaison body for the international oversight system. One possible alternative is to entrust the task to the Ombudsman.

In addition, the Advisory Committee for International Human Rights Affairs proposed in autumn 2006 that an independent and pluralistic national human rights institution in accordance with the Paris principles be created in Finland. The Advisory Committee recommended that the institution be established under the aegis of the Ombudsman.

Cases received and decided on

A total of 4,241 oversight-of-legality matters to be dealt with by the Ombudsman were received in 2006. That represented an increase of about 11% on the previous year.

Decisions in a total of 4,100 oversight-of-legality cases were announced during the year. That was about 17% more than in 2005. Thus the number of cases in which decisions were reached grew more that the number of incoming cases.

▮ received ▮ decided on	2005	2006
Complaints	3 326 3 008	3 620 3 529
Transferred from Chancellor of Justice	26	42
Own initiative	49 52	49 52
Requests for reports, statements and to hearings	43 48	47 45
Other written communications	385 383	483 474
Total	3 829 3 491	4 241 4 100

The average time taken to reach a decision in an oversight-of-legality case was 6.1 months at the end of the year, the same as it had been in 2005.

Categories of cases and measures taken

During the year under review, the social security sector accounted for the greatest number of cases arising from complaints or own-initiative investigations in which decisions were announced. Other large categories of cases related to the police, health care, courts and the prison service. As in the previous year, there was growth in all large categories of matters (see table on next page). Detailed data on decisions by category of case as well as other statistical data are presented in Annex 2.

The most important matters in the Ombudsman's work are decisions that lead to measures being taken. The measures available to the Ombudsman are a prosecution for misfeasance or malfeasance in the discharge of a public duty, a reprimand, the issuing of an opinion for guidance or a proposal. In some cases, rectification occurs already in the course of investigation of a matter.

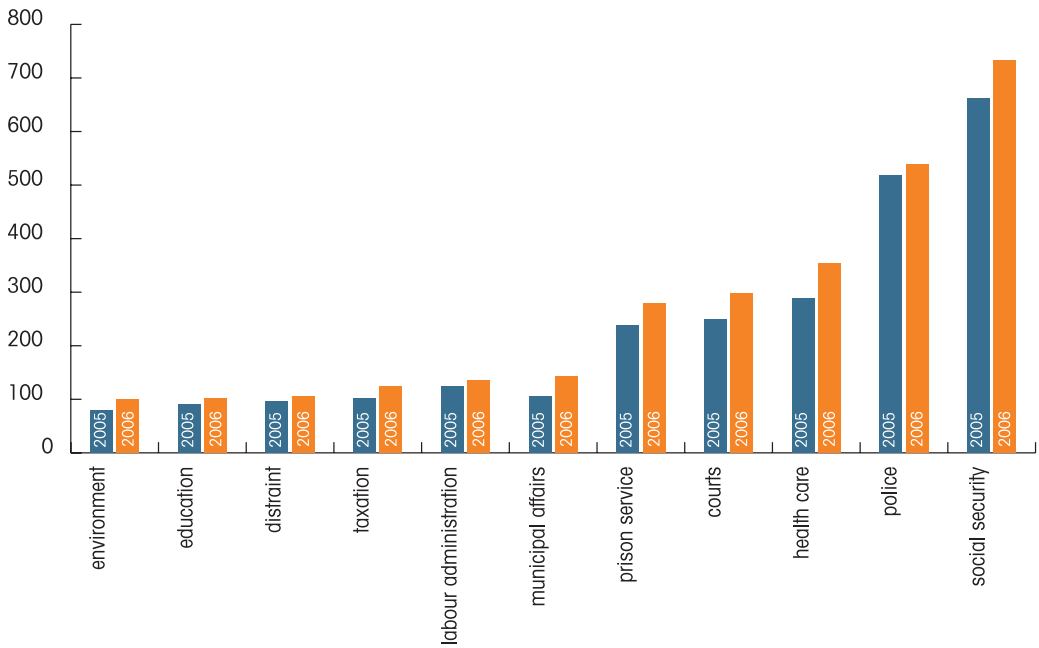
A prosecution is the most severe means of reaction. The Ombudsman may decide not to prosecute even if the subject of oversight has acted unlawfully or neglected a duty if she takes the view that a reprimand will suffice. The Ombudsman can also express an opinion as to what procedure would have been lawful, or draw the attention of the subject of oversight to the requirements of good administrative practice or to aspects that promote the implementation of fundamental and human rights. An opinion expressed can have the character of a rebuke or be intended for future guidance.

In addition, the Ombudsman can recommend the rectification of an error that has been made or that a shortcoming be redressed or draw the attention of the Government or other body responsible for legislative drafting to deficiencies that have been observed in legal provisions or regulations. An authority can sometimes rectify an error on its own initiative as soon as the Ombudsman has intervened with a request for a report.

A total of 571 decisions led to measures in 2006. This represented about 15% of all decisions (and about 20% of complaints investigated). No prosecutions were ordered. 37 reprimands were issued and 452 opinions expressed. Rectifications were made in 57 cases that were being investigated. The decisions categorised as proposals totalled 25, although expressions of opinion relating to development of administration and which can be regarded as constituting proposals were included in other decisions as well. One decision can involve several measures.

2.4 INSPECTIONS

Inspection visits were made to 70 places during the year under review (76 the previous year). The visits are described in more detail in the sections dealing with various sectors of administration.



Persons confined in closed institutions and conscripts are always given the opportunity for a confidential conversation with the Ombudsman or her 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.

2.5 SERVICE TO THE PUBLIC

Since promoting and defending the fundamental and human rights of citizens is a basic task of the Ombudsman, we have attached special importance to making it as easy as possible for people to turn to the Ombudsman. A printed brochure intended for complainants is available in Finnish, Swedish, Sámi, English, German, French, Estonian and Russian. The brochure is also posted on the web site in these languages as well as in Finnish and Swedish sign language versions. A complaint can be sent in by post or fax, or by filling in and e-mailing the electronic form on the Internet.

Two lawyers at the Office of the Ombudsman are tasked with advising members of the public on how to make a complaint and responding to communications that are not registered as complaints. This category contains enquiries and a variety of communications expressing non-specific grievances. About 2,700 telephone calls were received from members of the public last year and about 150 persons visited the office in person. 474 replies were recorded.

The Registry at the Office of the Ombudsman receives complaints and replies to enquiries about them, in addition to responding to requests for documents. Last year, the Registry received about 3,500 telephone calls. Personal calls by clients and requests for documents totalled about 700. The records clerk mainly provides researchers with services.

2.6 COMMUNICATIONS

The Ombudsman gives the Eduskunta an annual report on her activities and observations concerning the state of administration of justice and any deficiencies she had identified in legislation. The Ombudsman gave her annual report for 2005 to the Speaker of the Eduskunta on 18.5.2006.

The media are informed of those decisions by the Ombudsman that are of special general interest. About 30 bulletins outlining decisions made by the Ombudsman or a Deputy-Ombudsman were issued in 2006. Decisions of considerable legal significance are also posted on the Internet. About 270 decisions, which is nearly half of the total number of decisions involving measures, were posted online. Publications, such as annual reports and brochures, are likewise posted on our web site.

The Ombudsman's web pages in English are at the address: 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 in addition to an Information Officer.

2.7 THE OFFICE

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

The staff totalled 58 at the end of 2006. The regular employees were, in addition to the Ombudsman and the Deputy-Ombudsmen, the Secretary General, five legal advisers and twenty-four legal officers, two lawyers with advisory functions as well as an information officer, two investigating officers, four notaries, a records clerk, two filing clerks and nine office secretaries.

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

The Northern Ireland Ombudsman Tom Frawley (left), the Austrian Ombudsman Peter Kostelka and his assistant Michael Mauerer (back), the Catalonian Ombudsman Rafael Ribó, Ombudsman Riitta-Leena Paunio and the Swedish Ombudsman Mats Melin at a meeting of the European region board of the International Ombudsman Institute IOI in Barcelona on 4–7.10.2006. A meeting of the IOI full board was also held in Barcelona.

at meetings of the management group are matters relating to personnel policy and the development of the Office. The Management Group met 14 times during the year under review.

On job rotation in 2006 were Senior Secretary Juha Haapamäki at the Ministry of the Interior and Senior Secretary Kirsti Kurki-Suonio at the Ministry of Justice. In addition, Notary Helena Rahko was on international job rotation at the Office of the Ombudsman for New South Wales in Sydney, Australia.

2.8 INTERNATIONAL COOPERATION

Ombudsman Paunio is a member of the board of the International Ombudsman Institute (IOI). She attended a meeting of the IOI European region board in Jerusalem on 21–23.3 and of the full board in Barcelona on 3–6.10.2006.

Ombudsman Paunio and Deputy-Ombudsmen Jääskeläinen and Lindstedt attended a meeting of European Ombudsmen in Vienna on 12–14.6. Ombudsman Paunio and Deputy-Ombudsman Lindstedt attended a meeting of Nordic Ombudsmen in Reykjavik, Iceland on 30.8–1.9.2006.

A joint working seminar was arranged in Tallinn on 24–25.8.2006 together with the Legal Chancellor of Estonia. In addition to Deputy-Ombudsmen Jääskeläinen and Lindstedt, several members of the staff of the Office took part. In addition, the Ombudsman, the Deputy-Ombudsmen and several other persons from the Office attended a variety of other international meetings and seminars.

The Russian Commissioner for Human Rights Vladimir Lukin and the Moroccan Ombudsman Moulay M'hamed Iraki visited the Office. Visiting lawmakers included a delegation led by the Deputy-Speaker of the parliament of Mali, the Legal Affairs Committee of the European Parliament as well as a Vietnamese, Iranian and Kenyan parliamentary delegation. In addi-

A Jubilee Session marking the centenary of the Eduskunta took place on 1 June 2006. Ombudsman Riitta-Leena Paunio and Deputy-Ombudsmen Petri Jääskeläinen and Jukka Lindstedt watched the proceedings from the front row of the Officials' Gallery.

tion, the Ombudsman gave a presentation outlining her oversight-of-legality in the Eduskunta to a visiting delegation from the Court of Justice of the European Communities.

2.9 COOPERATION IN FINLAND

The Eduskunta celebrated its centenary during the year under review. The Office of the Ombudsman took part in the open doors event arranged by the Eduskunta on 18.8–19.8.2006. The Eduskunta's Constitutional Law Committee makes annual visits to the Office. The meeting during the year under review took place on 3.5.2006.

The anniversary of the Office is 7.2. To celebrate it during the year under review, former Ombudsmen, Deputy-Ombudsman and retired staffers visited the Office on 8.2.2006.

The Ombudsman, the Deputy-Ombudsmen and other persons from the Office attended dozens of events and meetings in Finland. In addition, training events were arranged at the Office or members of the personnel attended events elsewhere. Training relating to the Act on Openness of Government Activities, EU law, the autonomy and legislation of Åland, fundamental rights, studying the historical roots of laws as well as language lessons were provided at joint courses arranged by the Office. Visitors to the Office included representatives of the Northern Institute for Environmental and Minority Law and the Refugee Advice Centre.

Ombudsman Paunio gave the presentation *The Role of the Constitution on the Exclusion or Inclusion of Women – an Overview* at an International Association of Constitutional Law (IACL) seminar in the Eduskunta. She gave another presentation at the Miina Sillanpää Foundation's *People's Rights and Responsibilities* seminar. In addition, she made a keynote speech on the theme *Children, Domestic Violence and the Respon-*

sibility of the Authorities at a seminar arranged by the Advisory Board for the Police. At a municipal seminar in Lapland she gave a presentation on the theme *Are Basic Services Still Fundamental Rights Everywhere in Finland?*

At the XXXVII Lawyers' Days Deputy-Ombudsman Jääskeläinen gave a presentation on the theme *Can we afford a fair trial?* At a seminar on financial and debt counselling he made a keynote speech on the theme *Financial and Debt Counselling as an Implementer of Fundamental Rights*. In addition, lawyers from the Office gave presentations on such themes as safeguarding interests, police functions and social affairs and health care.

2.10 WHAT IMPACT DOES THE OMBUDSMAN'S WORK HAVE?

There has been hardly any research in Finland concerning the degree to which the Ombudsman institution has an impact. Therefore it was decided in autumn 2006 to conduct an effectiveness study. The intention is, among other things, to ascertain how the Ombudsman's representations and recommendations have been taken into consideration in law drafting, how ministries and government agencies have reacted to the Ombudsman's proposals concerning improvement of regulations and what kinds of measures authorities have otherwise taken on the basis of the Ombudsman's decisions and reports.

The study will also explore the Ombudsman institution's media visibility. The persons in charge will be Professor of Law and Economics Kalle Määttä and Lecturer in Law and Economics Anssi Keinänen from the University of Joensuu. The study will be completed before the end of 2007.

3. The Ombudsman's special tasks

3.1 OVERSIGHT OF FUNDAMENTAL AND HUMAN RIGHTS

From the perspective of fundamental and human rights, 2006 was, like earlier years, eventful both in Finland and internationally. The establishment of the EU Fundamental Rights Agency was one of the most outstanding achievements of the Finnish Presidency of the Union. Other important steps were ratification of the 14th additional protocol to the European Human Rights Convention as well as several monitoring procedures or development projects in the pipeline at the UN or the Council of Europe. The establishment of the UN Human Rights Council was an internationally important development.

In the Ombudsman's oversight of legality during the year under review, more decisions drawing attention to fundamental and human rights aspects were issued than in earlier years. However, the categories of cases and formulations of questions were largely the same as they had been in earlier years. Especially issues relating to procedural legal security – such as the demands set with respect to decision making, dealing with matters without delay, the principle of consultation, the requirement to explain decisions and care in dealing with matters – featured in several cases.

Especially in the light of investigated complaints and also in the context of inspection visits, certain errors involved in individual cases or systemic shortcomings were revealed in relation to the special theme chosen for oversight of legality in 2006, namely the advisory and service task. On the other hand, advisory and service functions appear to be implemented without problems in several cases. A positive feature was that several authorities changed the fees they charged for the advisory services they provided by phone after decisions made last year by the Deputy-Ombudsman in relation to cost-free provision of advice. Issues relating to the provision of advice and follow-up of implementation of equality continue to be special themes in oversight of legality in 2007.

An issue that received special attention in 2006 was delay in dealing with matters. Once again, the European Court of Human Rights found several new violations of fundamental rights as a result of unreasonably long processing times. There was a lively public debate on the impact that the public administration sector's productivity programme was having on the opportunities available to various authorities to deal with matters without undue delay. Within the sphere of administration of the Ministry of Justice, this matter was concentrated on in the form of several study and legislative projects.

The Ombudsman also examined, on her own initiative, the times taken by the Western Finland State Provincial Office to deal with complaints concerning social welfare and health services. The initiative did not lead to measures, because action to increase the efficiency of the complaints system had already begun to be taken within the administration.

A point emphasised in oversight of legality with respect to language rights is that what is involved is actual rather than just formal equality between different language groups. What was at issue in several decisions was that handling of matters by authorities had been delayed or otherwise been difficult because the client had used Swedish. When that happens, language rights are not implemented in full.

With respect to freedom to pursue a livelihood, attention was paid during the year under review to the kinds of official procedures that indirectly affect implementation of constitutionally guaranteed rights. Thus, for ex-

ample, when the permits and licences necessary for pursuing a livelihood are being granted, the influence that the procedure has on the person's right to earn a livelihood in the way that he or she chooses must be taken into consideration.

As in earlier years, expeditious processing of applications was emphasised in decisions concerning social fundamental rights. In addition, attention was drawn to legal interpretation that is amenable to fundamental rights and to the obligation that the authorities have to be active in safeguarding the rights of children that have been taken into care.

Matters associated with family life and children's rights are a core area of fundamental rights. In the special report "Children, domestic violence and the responsibilities of the authorities" that she submitted during the year under review, the Ombudsman recommended certain adjustments to regulations with a bearing on children's rights. These related to inter alia the procedure for notifications between authorities and the right of children to receive timely care in domestic violence situations. In its submission on the special report, the Eduskunta's Constitutional Law Committee noted that there are acceptable and quite weighty constitutionally founded arguments for the proposed measures. In the new Child Welfare Act adopted by the Eduskunta on 14.2.2007 the duty of the authorities to make notifications is explicated in the way proposed in the special report.

The European Court of Human Rights issued three judgements relating to the rights of the family and children and concerning Finland during the year under review (R. v. Finland, H.K. v. Finland and C. v. Finland). Among the points made by the court was that parents and a child being together is an essential part of family life. Measures in Finland that prevent this togetherness are an intervention in a right safeguarded by the Human Rights Convention. Taking a child into care must be a temporary measure, which has to be ended as soon as circumstances allow. The authorities have a positive obligation to take measures with a view to reuniting the family as soon as this is reasonably achievable. The obligation gradually becomes more compelling as the period in care continues. However, the child's interest must always be considered. If a child has been in care for a considerably long period, the child's interest based on preservation of the actual situation may override the parent's interest based on reunification. Even if the authorities had a broad margin for discretion when considering the necessity of taking a child into care, there must be a stricter approach to additional restrictions, such as those relating to visitation rights. The authorities must strike a fair balance between the interests of the parents and of the child and when weighing them must pay special attention to the child's interest, which may override the parents' interest depending on its character and significance.

The rights of persons who have been deprived of their liberty are safeguarded in the way mentioned in the last sentence of Section 7.3 of the Constitution. This provision has been characterised as a constitutional imperative, as a result of which the rights of persons who have been deprived of their liberty must be safeguarded by law in the way that inter alia international human rights conventions indicate. Only up-to-date and sufficiently detailed legislation is enough to meet the obligations that the above-mentioned imperative imposes. At the same time, regulation is of significance also from the perspective of several other of the fundamental rights enshrined in the Constitution.

Because deprivation of liberty does not as such constitute a ground for restricting a person's other fundamental rights, any restrictions of other fundamental rights while a person is deprived of liberty must be based on statutory law. In this respect, it is significant that during the year under review three new laws (the Prison Act, the Detention Act and the Act on the Treatment of Persons in Police Custody) entered into force. These laws regulate the rights of persons who have been deprived of their liberty more precisely than in the past and the demands that the system of fundamental rights imposes on the State were taken comprehensively into account when they were being drafted.

4. Central sectors of oversight of legality

4.1 COURTS OF LAW AND JUDICIAL ADMINISTRATION

The Ombudsman's duties include exercising oversight to ensure that courts and judges observe the law and fulfil their duties. This includes especially monitoring that the right to a fair trial, which is guaranteed everyone as a fundamental and human right, is implemented also in practice.

4.1.1 DECISIONS

Time spent in pre-trial custody was not deducted from prison sentence

Deputy-Ombudsman Petri Jääskeläinen issued a reprimand to the members of the Turku Court of Appeal because they forgot to deduct from the five-year prison sentence that they had imposed the one year and one day that the convicted person had already spent in custody after he had been sentenced by a district court. The members of the Court of Appeal thereby acted unlawfully. However, they quickly realised their error and already two weeks later applied to the Supreme Court to have the sentence quashed. The Supreme Court rectified the Court of Appeal's sentence about six months later.

In the assessment of the Deputy-Ombudsman, the error on the part of the members of the Court of Appeal was serious, because it impacted on a core area of the administration of justice by courts: drafting a sentence and determining the penalty in a criminal case. An error of this kind is likely to violate the sentenced person's rights and trust in the administration of law. Special care must be taken when applying provisions that affect the constitutionally guaranteed right to personal liberty.

The undeducted time for which the person had been deprived of liberty was of considerable length and the matter undoubtedly meant a lot to the complainant. An error of this kind can influence inter alia transfer to an open prison and prospects of being granted temporary release. According to a report received, however, the error had in this case had no negative effect on the complainant's possibility of being allowed to serve his sentence in an open prison. By contrast, it did affect his chance of being granted temporary release.

Case number 3182/4/04

District Court judge behaved inappropriately

Deputy-Ombudsman Jääskeläinen issued a reprimand to Helsinki District Court judge for having behaved contrary to the State Civil Servants' Act and the requirements of a fair trial. The judge had said in an angry tone of voice that it might be necessary for the jurist defending the accused to consider a change of career. The judge had made this comment in an exchange of words after he had prevented the defence counsel from asking his client things about which the public prosecutor had already questioned the defendant.

The Deputy-Ombudsman stresses that the office of a judge demands accentuatedly correct behaviour also in situations that may cause irritation or stress. A judge must try to ensure that the parties involved find the person presiding over the proceedings fair and impartial. The implementation of the fair trial that is guaranteed by the Constitution has in this way an effect on the content of the behaviour that is expected of a judge under the State Civil Servants' Act. A prerequisite for a fair trial being implemented is appropriate behaviour on the judge's part also towards the involved parties' legal counsel during a court hearing.

The judge's behaviour looked quite inappropriate when examined from the outside and his choice of words could be considered insulting. In addition, the defendant could feel that the judge's attitude was also directed against him and his case. It would have been possible for him to express, as the person presiding, his view of the necessity of the cross-examination conducted by the complainant, in a manner that would not have been insulting nor endangered the perception that the proceedings were being conducted fairly.

The Deputy-Ombudsman did not find criticise the substantive content of the judge's conduct of the case. By contrast, what he did find open to criticism was the view expressed by the judge that a witness could have interpreted the defence counsel's questions as an attempt to make the witness alter his testimony when again answering questions that had already been put to him by the prosecutor. The Deputy-Ombudsman emphasised that in the Code of Judicial Procedure the principles concerning the hearing of witnesses include one permitting a person to be questioned in different ways in the main hearing and in cross-examination.

One of the key purposes of cross-examination is to test the degree to what a witness has testified in the main examination corresponds to the course of events in reality. To this purpose, the cross-examiner can use so-called leading questions or otherwise the kinds of questions that are intended to undermine or call into question the credibility of what has been stated in the main examination. Thus a cross-examiner can have the specific and a priori acceptable aim of getting the witness to alter the testimony given in the main examination.

Case number 388/4/06

Transfer to another judge of a case that had already been assigned to a District Court judge

A District Court judge criticised a decision of a Chief Judge to transfer handling of civil cases that had already been assigned to him to another judge. The complaint was made on the ground that this action was contrary to the Constitution and recommendation R (94) 12, concerning the independence, efficiency and role of judges, of the Council of Europe's Committee of Ministers.

Deputy-Ombudsman Jääskeläinen noted that the transfer of cases from a District Court Judge is not provided for on the level of primary legislation in either the Magistrates' Courts Act or any other Act. The legal foundation for the matter is to be found in the Magistrates' Courts Decree. The Deputy-Ombudsman did not find the Chief Judge's decision to apply the Decree to be in conflict with either the Constitution or the Act, nor did he see the decision as being in conflict with the recommendations of the Council of Europe's Committee of Ministers.

However, the Deputy-Ombudsman assessed the transfer as well as, more generally from the perspective of the demands of the Constitution, regulation of the grounds on which cases are assigned at a district court. He considered it important that factors affecting a judge's independence be statutorily defined in precise terms from the perspectives of both the general structures of administration of justice and safeguarding the rights of the parties to individual cases.

Under Section 80.1 of the Constitution, the principles governing the rights and obligations of private individuals as well as other matters that under the Constitution are of a legislative nature must be governed by Acts. The independence of judicial power is separately provided for in Section 3.3 of the Constitution. According to Section 21.2 of the Constitution, guarantees of a fair trial shall be laid down by an Act. One guarantee of a fair trial is the independence of courts and judges.

For those reasons, all powers and matters that may affect the independence of courts or judges must, in the Deputy Ombudsman's view, be regulated specifically by an Act of the Eduskunta. Transferring cases from one judge to another is a matter that can have an influence on the independence of a court or judge. Therefore the transfer of cases away from a District Court judge and their reassignment to another judge should be regulated by the Magistrates' Courts Act rather than the Magistrates' Courts Decree.

In addition, the wording of the current Magistrates' Courts Decree is quite loosely formulated. A provision makes it possible to transfer cases "for a reasoned compelling reason". In the view of the Deputy-Ombudsman, the preconditions for transferring cases ought to be stipulated more precisely. In addition, it might be advisable to consider whether within the courts system the possibility of subjecting the existence of factual prerequisites for transfers to re-examination should be arranged.

In the same conjunction, it could be appropriate to consider enshrining the principles underpinning the assignment of cases in an Act rather than the Magistrates' Courts Decree as at present as well as to define them more precisely.

The Deputy-Ombudsman recommends that the Ministry of Justice take under consideration the need to regulate the preconditions for transferring a case that has been assigned to a District Court judge, as well as possibly also the principles for assignment of cases by a court, on the level of an Act and more precisely than in the present Magistrates' Courts Decree. He asked the Ministry to inform him, by 28.2.2007, what measures his recommendation may have led to.

Case number 854/4/06

The Ministry of Justice announced on 22.2.2007 that it concurred with stances adopted in the Deputy-Ombudsman's decision and took the view that the Magistrates' Courts Act and Decree need to be amended in order to clarify the legal situation. The Ministry noted that at the same time it appears appropriate to examine the regulations relating to the assignment and transfer of cases also in other courts.

4.2 THE PROSECUTION SERVICE

Prosecution-related matters are a category of oversight of legality with public prosecutors as the focus. Some complaints relating to courts and the police have also included a request for an investigation of the procedures that a prosecutor has followed.

During the year under review, the prosecution service comprised the Office of the Prosecutor General and 64 local prosecution units. In accordance with a decision of the Council of State (i.e. Government), the number of local prosecution units has subsequently been reduced and was 15 as from 1.4.2007.

The tasks of the Prosecutor General include general direction and development of the work done by public prosecutors and oversight of their actions. He also has the right to issue general instructions and guidelines for prosecutors.

Decisions on 54 complaints concerning prosecutors were made during the year under review. Most complaints concerning prosecutors related to consideration of charges, and especially its outcome, but there have also been complaints about procedures followed, attitudes to requests for additional investigations, delay in reaching decisions and the reasoning presented in support of them.

The Ombudsman and the Prosecutor General have tried to avoid overlapping oversight of prosecutors and investigating the same matters. The practice of transferring to the Prosecutor General those so-called appeal-type complaints concerning consideration of charges that have been made to the Ombudsman but relate to cases in which the Ombudsman does not have the right to bring a prosecution was continued during the year under review. The Prosecutor General can then, within the constraints of his powers, conduct a new consideration of charges, something that the Ombudsman has no possibility of doing. All the Ombudsman can do in a case of this nature is appraise the legality of the public prosecutor's action. The view has been taken that transferring these consideration-of-charges-related complaints accords with the com-

plainant's overall interests. During the year under review four complaints were transferred to the Prosecutor General.

4.3 POLICE

Complaints concerning the police are one of the biggest categories. During the year under review 532 complaints relating to police actions were resolved. This was more than ever in the past (504 the previous year).

About 13% of the decisions made during the year under review led to measures being taken. In six cases the measure was a reprimand.

One reason for the number of complaints and the higher percentage leading to measures may be the nature of police functions. The police have to interfere with people's fundamental rights, often forcibly, and in many of these situations there is little time for deliberation. Nor does the opportunity exist to appeal against anything like all police measures.

The overwhelming majority of complaints against the police concern criminal investigations and the use of coercive measures. Typical complaints against the police expressed the opinion that errors had been made in the conduct of a criminal investigation or either that an official decision not to conduct an investigation had been wrong or the length of time taken to complete it had been too long. Most complaints concerning the use of coercive measures related to home searches or various forms of loss of liberty. Nor is it rare for complainants to criticise the police's behaviour or their having followed a procedure perceived as partisan.

It seems that in general claims of serious misconduct against the police, for example downright assault, largely lead directly to a normal criminal investigation, because cases of this nature appear quite rarely in complaints. It is conceivable that in cases which citizens consider glaring they file an official report of a crime directly, after which the matter is referred to a public prosecutor for a decision as to whether or not to conduct a criminal investigation. As such, this is justified from the Ombudsman's perspective.

4.3.1 OWN INITIATIVES AND INSPECTIONS

In addition to dealing with complaints, the Ombudsman each year takes up a number of police-related cases for investigation on her own initiative. Also on-site inspections are an important part of oversight of legality.

During the year under review, Deputy-Ombudsman Lindstedt inspected the Ministry of the Interior's Police Department and three police stations. In addition, he inspected the Security Police, which is a national unit tasked with combatting crimes that threaten the security of the State. In conjunction with this inspection he conducted a random examination of documents dealing with coercive measures affecting telecommunications. In addition, the activities of the Security Police's anti-terrorism unit and counter-espionage unit were explained to him.

The Deputy-Ombudsman also inspected the police departments of two Provincial State Offices, with special attention to their oversight of legality, as well as several other police units.

Inspections are not of a surprise nature, but are instead prepared for in advance by obtaining documentary material from the police stations. On the basis of this material, cases are if necessary examined in greater detail during inspection visits. Observations made in the course of inspections can lead, for example, to a case being taken up for examination on the Deputy-Ombudsman's own initiative. Inspections and investigation of complaints support each other: inspections can be planned on the basis of complaints and also provide information on police activities which proves useful in deciding on complaints as well as more generally from the perspective of oversight of legality.

The aim in inspecting police activities has been to exercise area-of-emphasis thinking. Special attention has been paid to measures which have been deemed im-

portant from the perspective of implementation of fundamental rights or for some other reason. A further aim has been to concentrate on areas in which other oversight and guarantees of legal security are for one reason or another insufficiently comprehensive (for example, the absence of a right of appeal). Naturally, familiarisation with the conditions under which persons who have been deprived of their liberty are being kept, mainly in police prisons, is a part of the inspections programme.

4.3.2 COVERT MEANS OF INTELLIGENCE GATHERING

One of the Ombudsman's special tasks is to exercise oversight of covert means of intelligence gathering. These are the various kinds of coercive measures to be used in the investigation of crimes as well as the means of intelligence gathering which, under the Police Act and the Customs Act, can be used to detect and combat crimes.

Each year, the Ministry of the Interior gives the Ombudsman a report on the use of surveillance and monitoring of telecommunications and technical eavesdropping as well as on the use of technical surveillance methods in penal institutions. In addition to this, she receives reports on the Customs' use of coercive measures affecting telecommunications, the technical eavesdropping conducted by the Defence Forces and the technical surveillance measures performed by the Frontier Guard.

The reports received by the Ombudsman from various authorities complement normal oversight of legality and improve possibilities of monitoring the use of coercive measures affecting telecommunications. The Ombudsman's oversight of coercive measures affecting telecommunications could be largely characterised as oversight of oversight.

The Ombudsman has also striven, both on inspection visits and otherwise on her own initiative, to explore problematic points in legislation on the use of coercive measures affecting telecommunications and in practical activities. Owing to the nature of the matter, there are few complaints concerning the use of coercive measures affecting telecommunications. The Office of the Ombudsman has maintained also unofficial contacts with the highest command echelon of the police and the National Bureau of Investigation in order to complement the picture that the annual reports provide of the use of coercive measures affecting telecommunications and oversight of the use of these measures.

The Ombudsman also receives an annual report on undercover operations and fictitious purchases conducted by police units.

4.4 THE PRISON SERVICE

Oversight of the correctional system has traditionally been one of the main areas of emphasis in the Ombudsman's work. Deputy-Ombudsman Jääskeläinen deals with topical themes relating to the prison system in his contribution on page 11.

4.5 MILITARY MATTERS AND THE DEFENCE ADMINISTRATION

The Parliamentary Ombudsman Act requires the Ombudsman to monitor the treatment of especially conscripts and other persons serving in the Defence Forces as well as of peacekeeping personnel and to conduct inspections of various units belonging to the Defence Forces. Under legislation establishing the division of labour between the Chancellor of Justice and the Ombudsman, matters relating to the Defence Forces, the Frontier Guard and peacekeeping personnel are specifically within the Ombudsman's remit. In practice, the Ombudsman is the only instance outside the Defence Forces that oversees the rights of conscripts and other military personnel. Even in an international comparison defence forces and military organisations that are subject to independent external oversight are rare.

Complaints concerning matters in the military affairs category have been made to the Ombudsman by both regular personnel of the Defence Forces and Frontier Guard and conscripts, and sometimes by conscripts' parents. The threshold for making a complaint remains fairly high for conscripts and others doing military service. They often consider it advisable to wait until they are nearing the end of their time in the military or have already ended it before turning to the Ombudsman. However, complaints by conscripts have proved to be well-founded more often than with complaints on average. Their complaints generally relate to the treatment accorded them or to disciplinary measures to which they have been subjected. A considerable proportion of complaints by conscripts concern medical care and especially the way sick conscripts are treated.

From time to time there have also been complaints of bullying in various forms. Traditions of bullying and mobbing mainly make their influence felt within conscripts' own circles, but the Ombudsman has underscored the responsibility for oversight that resides with regular personnel.

55 complaints concerning military matters were resolved during the year under review. About a third of them led to measures. For example, Deputy-Ombudsman Jääskeläinen issued a reprimand to a first lieutenant for having followed an unlawful interrogation procedure and Deputy-Ombudsman Lindstedt found it inappropriate that a conscript's superiors tried to influence the decisions of military medical doctor.

4.5.1 INSPECTIONS

On-site inspections of military units are a central part of oversight of legality with soldiers as its focus. The aim in recent years has been to make these inspections more effective and frequent. Material ordered in advance from sites scheduled for inspection contains inter alia an explanation of the numbers of regular personnel and conscripts in the unit, decisions concerning disciplinary matters and damage as well as reports on duty arrangements and medical care for conscripts.

In conjunction with inspections it has been important that specifically conscripts are offered the opportunity to have a confidential discussion with the Deputy-Ombudsman. The same opportunity has been arranged for regular personnel as well. Discussions with conscripts have both a symbolic and a preventive significance.

Conversations with conscripts often touch on matters which the Ombudsman takes up with superiors belonging to the regular personnel in the final discussion together with the unit commander. Many problems of a fairly minor character can thus be taken care of. If matters of principle or serious shortcomings are involved, the Ombudsman launches a separate study or criminal investigation following the inspection.

A total of nine staff facilities, units and a military training centre belonging to the Defence Forces and the Frontier Guard were inspected during the year under review.

4.6 FOREIGNERS

The complaints included in the statistics as foreigners' affairs by the Office of the Parliamentary Ombudsman are mainly those relating to the Aliens Act and the Citizenship Act.

The subjects of complaints are in most cases the authorities responsible for issuing permits and submissions, especially the Ministry of the Interior, the Directorate of Immigration, the police, the Ministry for Foreign Affairs or Finnish diplomatic missions abroad as well as the Frontier Guard.

By contrast, not all matters that involve persons other than Finnish citizens are classed as foreigners' affairs. The borderline between a foreigners' matter and other matters can be blurred, for example when the issue involved is discrimination directed against a foreigner.

Decisions in 65 cases involving foreigners' affairs were issued during the year under review. Many complaints related to the length of time taken to deal with an ap-

plication for a permit or dissatisfaction with an authority's decision not to grant a residence permit or visa.

A typical foreigners' complaint that cannot usually lead to measures on the part of the Ombudsman concerns such matters as a negative visa decision. The overseer of legality has also had hardly any possibility of intervening in asylum- and residence-permit-related decisions that have acquired the force of law. Cases like this largely involve discretionary decisions. However, the Ombudsman has intervened in some aspects associated with handling of applications for both visas and residence permits and in some cases investigated the grounds on which visa applications have been denied.

4.6.1 INSPECTIONS

The closed detention unit at the Metsälä reception centre was inspected during the year under review. Deputy Ombudsman Lindstedt found no reason for criticism with regard to the unit's operational principles or its operations on a general level. He did, however, draw attention to some legal issues relating to the unit's activities.

In addition, another reception centre as well as one police station were inspected, with the foreigners-related matters that their tasks include the focus of special attention.

4.6.2 DECISION

Refusal of entry to group of Georgians

Ombudsman Paunio examined whether the authorities had acted appropriately when in early spring 2005 they refused entry at the frontier to a group of women from Georgia. The Ombudsman did not adopt a stance on the legality of the grounds on which entry was refused, because this matter was still pending before the Kouvola Administrative Court.

The Ombudsman decided to investigate the appropriateness of the procedure that the authorities had followed as a result of a complaint by the Finnish-Georgian Society, a request by the Frontier Guard that the matter be examined and assertions made in the mass media. It was alleged in the complaint that the Finnish authorities had behaved in a degrading manner towards the group and that the provision of information by the authorities had been inappropriate and brought shame on the women. The Frontier Guard asked the Ombudsman to examine whether the officials who had participated in the process leading to the decision to expel the group had been guilty of the inappropriate behaviour alleged in the media.

When the matter was under investigation, a report was obtained from the Ministry of the Interior and the South-East Finland District organisation of the Frontier Guard. In addition, an inspector from the Office of the Ombudsman spoke to members of the staff of the reception centre and interpreters there. No evidence that the authorities or officials who had dealt with the Georgian group had treated the group or its members inhumanely, degradingly or in a manner unworthy of human dignity emerged. By contrast, what did emerge was the women's disappointment at their trip having been interrupted.

The interrogation of a diabetic woman that had been claimed in the media to have gone on for nine hours had, according to the minutes of the interrogation, actually been three hours long. The interpreter reported that the atmosphere during the questioning had been good and the interrogator had behaved properly. When it became known that the woman had diabetes, she was offered food and drink.

It had also been reported in the media that Frontier Guard personnel had physically assaulted the women and pulled one of them by the hair. According to the report received by the Ombudsman, one woman who had behaved hysterically during questioning had had to be held by the wrists and restrained until she calmed down. A hair clip about 15 cm long was then removed from her so that she could not injure herself or others. The Ombudsman found that also in this respect no reason to suspect that an incorrect or unlawful procedure had been followed has come to light. A

member of the Frontier Guard has the right, when conducting official duties, to use the coercive measures that can be regarded as necessary and justifiable.

On the basis of the reports given to the Ombudsman, the bulletins she had seen, press articles and other information material, no evidence had been revealed that would support claims that the South-East District of the Frontier Guard had followed inappropriate procedure in its provision of information. Bulletins issued by this body had mentioned illegal entry into the country and the women were regarded as possible victims of human trafficking. A suspicion that prostitution was involved had not been mentioned in the bulletins. It is, however, obvious that, in light of the defining features of human trafficking, the suspicion that the women had become victims of human trafficking could have given rise to the perception that what might be involved was the women being forced into prostitution.

The Ombudsman noted on a general level that appropriate provision of information by the authorities should also include commenting, to the extent that possibilities allow, on clearly incorrect information that has been presented in public. She also emphasised that special caution and tact should be observed in the provision of information on events that are likely to involve a danger of misconceptions and stigmatisation.

Case number 1020/4/05

4.7 SOCIAL WELFARE

The Constitution requires the public authorities to guarantee for everyone, as provided in more detail by an Act, adequate social services. Everyone likewise has the right to receive the indispensable subsistence and care necessary for a life of dignity. The issue in complaints concerning social welfare is the implementation of these rights in municipally arranged social welfare services and income support.

As in earlier years, the biggest category of complaints concerning social welfare related to income support, child welfare and services for the handicapped. There were only a few each in the categories of complaints relating to other social welfare, such as day care for children and housing services and home help services for the aged.

Income support is the last-resort financial assistance to which a person is entitled when he or she has no other income or funds. Income support-related complaints concerned especially the long times taken to process applications. The Income Support Act requires that these applications be processed without delay in a municipality. The Ombudsman has taken the view, that at most one week from the time an application is accepted for processing can be regarded as the a priori criterion of processing without delay, because income support is a central monetary benefit safeguarding the right to indispensable subsistence and care that the Constitution guarantees. It was noted in several decisions that processing of applications for income support had taken too long.

A few complaints concerned income support for students. A student has the same entitlement to income support as everyone else unless he or she is obtaining the necessary livelihood in another way stipulated in the Income Support Act. Under the Act, parents are not obliged to support their children after they come of age. On the other hand, the assumption in the Child Maintenance Act is that parents are responsible for the study costs of their children of age if this is reasonable. The Ombudsman has taken the view that the social welfare authorities have the right to ask students applying for income support whether their parents are helping them financially and, if necessary, to demand that students present bank statements covering a sufficiently long period in order to clarify this. However, students are not obliged to furnish details of their parents' wealth together with their own application for income support. If it can be clearly concluded from a student's circumstances that, for example, parents are providing him or her with a livelihood, the application can be rejected on this ground.

As in earlier years, complaints concerning services for the handicapped often related to a handicapped person's opportunities for mobility. According to the law, a municipality is obliged to arrange reasonable transport services together with their associated escort serv-

ices for a severely handicapped person. Under the regulations, transport services must be arranged in such a way that a person has the opportunity to make, in addition to essential trips connected with work and study, at least eighteen one-way trips for purposes of shopping and transacting business, recreation and other aspects of everyday life per month. Dissatisfaction was expressed in several complaints that a municipality had arranged transport services as group transports or routed them through hubs.

There are no statutory provisions concerning the arrangement of services for the aged; instead, they are arranged through the general system of social welfare and health care services. However, a municipal authority must when arranging services ensure that everyone is guaranteed the right, which is enshrined in the Constitution, to indispensable care. There were very few complaints concerning the arrangement of care for the aged during the year under review despite the fact that care services for the aged and the shortcomings of these services have featured prominently in the media. A few complaints concerned the care and treatment that a resident of a serviced dwelling house as well as the procedure that a Provincial State Office had followed in its oversight of private social services.

An area of special emphasis in inspections of social welfare services in the two previous years was the actions being taken by the authorities to investigate, deal with and prevent violence against children within families. The Ombudsman gave the Eduskunta a separate report on this matter during the year under review. Since this, the special emphasis has been on care of the aged.

Four inspections were conducted at operational units providing care services for the aged during the year under review. Special attention was paid during the inspections to the dimensioning and adequacy of staff as well as to possible problems that restricted residents' right of self-determination.

The Ombudsman also inspected two service centres which provide special care for mentally handicapped persons. A special focus of oversight on inspection visits to institutions for the mentally handicapped is the legality of protective measures to which persons are subjected. Examples of these measures are isolation in one's own room or a security room as well as physical restraint. Other matters looked into on inspection visits are the conditions of residents of serviced centers and the treatment of inmates in institutions.

4.8 HEALTH CARE

The focus of the Ombudsman's oversight of legality is public-sector health care, not professional health care personnel who independently provide health services on a commercial basis. Oversight also includes monitoring the conditions and treatment of persons in closed institutions. For this reason, involuntary hospitalisation for psychiatric treatment is an important area of oversight of legality. This means above all inspecting the operational units that provide care of this kind.

The primary matter at issue in oversight of legality with respect to health care is implementation of the adequate health services that are guaranteed as fundamental rights in the Constitution.

When the health care sector is the object of oversight of legality, treatment must be evaluated also on medical grounds. In these situations, medical experts, generally from the National Authority for Medicolegal Affairs, are consulted before a decision is reached in a case.

Municipal dental care has repeatedly been brought up in complaints in recent years. Municipalities have not met the requirements of the law with respect to their expanded obligation to arrange dental care. These problems recurred also during the year under review. The Ombudsman has emphasised in her decisions on complaints that municipalities have been required since 1.12.2002 to arrange dental care for their residents. Care must be provided for all, taking need, urgency and the effectiveness of care into consideration, and it is no longer permitted to prioritise persons belonging to certain groups. The provisions of the Constitution require that the statutorily expanded obligations with respect to dental care be met, if necessary by increasing the resources allocated. A munic-

ipality must earmark funding for both urgent and non-urgent dental care in its budget.

An obligation to provide medical rehabilitation aids has likewise come up in several complaints in recent years. The Ombudsman conducted extensive investigations of the provision of these aids and appliances in 2003. Arising from a complaint by the Finnish Federation of the Visually Impaired, she found that a city health centre had acted unlawfully when it adopted the standard practice of excluding audio recorders from the scope of the medical rehabilitation aids that could be provided, without taking the specific needs of the individual seeking this service into consideration.

The patient's right to good care and treatment is enshrined in the Patient Act. The question of whether the care given has met the obligations of the Act often features in complaints. The Ombudsman has underscored in her decisions that patients have a right to good treatment, which includes good treatment of pain. Good treatment includes ensuring that after care is provided following the patient's discharge from hospital and that access to care does not depend on the activity of his or her relatives.

An in earlier years, questions that were accentuatedly to the fore during the year under review were those relating to the patient's right, which is enshrined in the Patient Act, to receive an explanation of factors associated with his or her treatment and that treatment be decided on in agreement with him or her.

Questions relating to entries in patient records and the disclosure of patient data again came up very often. It was found in several cases that there were shortcomings in entries in patient records. Inadequate entries delayed investigation of complaints and made them more difficult to conduct. It was pointed out in decisions that adequate, appropriate and error-free patient records would add clarity to and strengthen the legal security of both patient and treating personnel, in addition to being conducive to creating a trusting treatment relationship. The importance of complying with the Ministry of Social Affairs and Health Decree concerning the compilation and preservation of patient records was stressed in decisions.

A further point emphasised by the Ombudsman in her decisions was that it is especially important in social welfare and health care to strive to safeguard the right of clients and patients to receive service in their mother tongue.

In her decision on a complaint concerning medical research that had involved babies in a maternity hospital, the Ombudsman took the view that, in light of deficiencies identified in the consent form, the parents participating in the research programme had not been able to give their informed consent to the conduct of the research in the manner required by law. The Ombudsman referred to the Constitution and pointed out that everyone has the right to personal liberty, integrity and security and that no one may be treated in a manner violating human dignity. In her view, there is a linkage between medical research and specifically this fundamental right. Compliance with the procedural provisions of the Medical Research Act is conducive to safeguarding implementation of this right.

On her inspection visits to psychiatric hospitals the Ombudsman underscored the importance of meeting the obligations of the Treatment Guarantee and emphasised that if a hospital can not itself arrange examination and treatment within the statutory deadline, it must procure treatment from some other service provider in the manner required by the legislation regulating the planning of social welfare and health care as well as State contributions to funding.

The Ombudsman drew attention also to the fact that State Provincial Offices have a central and important task in overseeing restrictions on the fundamental rights of patients involuntarily receiving treatment in a psychiatric hospital. She emphasised that a psychiatric hospital must have written and adequately detailed guidelines concerning the way in which the right of self-determination is restricted as provided for in the Mental Health Act and that regulations for specific sections of a psychiatric hospital must be in accordance with law. She drew the attention of the hospitals also to the fact that the statutory provisions concerning isolation are different from those concerning physical restraint.

4.9 CHILDREN'S RIGHTS

Children are entitled a priori to the same fundamental and human rights as adults. There are, however, some exceptions, such as political rights and especially the right to vote. In addition, the Constitution contains a provision concerning specifically equal treatment of children.

International human rights conventions likewise safeguard the rights of children. The one that has become the most important in practice is the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (or the European Human Rights Convention for short). The European Court of Human Rights has in several cases in recent years adopted a stance on children in Finland having been taken into care against their will, and in some cases the Court has found that when taking children into care Finland has violated the right to respect for private and family life that is safeguarded by Article 8 of the Convention (See K. and T. v. Finland case, 12.7.2001, R. v. Finland case, 30.5.2006 and H.K. v. Finland case, 26.9.2006).

The United Nations has also adopted its Convention on the Rights of the Child, but this document does not provide for individuals to make complaints in the way that the European Human Rights Convention does. Its most important form of monitoring is the periodic reports on implementation of the Convention that states must give to the UN Children's Rights Committee. The last occasion on which the Committee issued recommendations relating to Finland was on 20.10.2005, when it drew attention to, inter alia, the long times taken to deal with child custody disputes in this country and the large number of children taken into care. In addition, the Committee considered it important that contacts between parents and a child be preserved in spite of the child having been taken into care. The Committee also drew attention to the devastating consequences of domestic violence from the point of view of children.

In the Ombudsman's practical work, the European Human Rights Convention and the UN Convention on the rights of the Child are the most important human rights agreements with a bearing on cases concerning children.

A partial revision of the Child Welfare Act entered into force in Finland at the beginning of November 2006. In it, regulation of the restrictions to be used in foster care in order to improve the child's legal security is explicated and complemented. At the same time, the power of directors of child welfare institutions to impose restrictions and the opportunity to use the restrictions specified in the Act in all child welfare institutions were clarified. The reform also meant that the restrictions-related provisions of the Child Welfare Decree were upgraded to the status of primary legislation. Positions adopted by the Ombudsman were a contributory factor in the background to this.

The Eduskunta passed the new Child Welfare Act in February 2007 and it will enter into force on 1.1.2008. The purpose of the Act is to ensure that the rights and interests of children are taken into consideration when child welfare measures are implemented, to safeguard the support measures and services that the child and its family need as well as to improve the legal security of the child and its parents or guardians in, especially, decision making in relation to child welfare. The biggest changes are in decision making concerning child welfare: when the Act enters into force, decisions concerning children being involuntarily taken into care will be made in the first instance by an administrative court on the application of a senior municipal official responsible for social welfare.

Several studies have revealed that domestic violence against women, children and the aged is a serious social problem in Finland. In 2003 the Ombudsman began on her own initiative to study the actions taken by the authorities in the prevention of domestic violence against children, providing care for children and investigating cases. This work encompassed several separate studies as well as inspection visits to municipal social welfare departments, especially their child welfare units. The Ombudsman informed the Eduskunta of her observations in a separate report dated 31.1.2006 (Children, domestic violence and the responsibilities of the authorities, K1/2006 vp; See: Summary of the Annual Report 2005, Annex 3).

Most of the children-related complaints that led to measures on the part of the Ombudsman concerned child welfare, often restrictions on contacts between children that had been taken into care and their parents. Another matter that frequently crops up in the Ombudsman's oversight of legality is problems associated with child visitations: what can the authorities do to promote implementation of the right to visits when the child's parents are unable to arrange them safely between themselves.

A rarer situation was involved in the following case. The Helsinki Court of Appeal had to deal with a case concerning the return of a child in which the 1980 Hague Convention on the Civil Aspects of International Child Abduction was applied. In the view of the Ombudsman, the approximately six months taken to process the matter endangered implementation of the fundamental and human rights relating to the primacy of the child's interest and protection of family life (Section 10 of the Constitution of Finland, Articles 3 and 9 of the UN Convention on the Rights of the Child and Article 8 of the European Human Rights Convention). The time taken to deal with the case likewise failed to meet the requirements of the Hague Convention with respect to expeditiousness.

The Ombudsman informed the Court of Appeal of her opinion that the time taken to deal with the case had been too long from the perspective of the fundamental and human rights of the children that were the subjects of demands for their return.

4.10 SOCIAL INSURANCE

The Constitution of Finland 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. Social insurance is a part of the system of security of basic subsistence and by it is meant statutorily arranged compulsory insurance for the event that any of the above-mentioned situations arises.

As in earlier years, the issues brought up in complaints during the year under review largely had to do with disability pensions, housing subsidies, compensation payments under the Sickness Insurance Act, rehabilitation as well as other benefits provided for in the Employment Accidents Act and the National Pensions Act. The number of complaints relating to determination of social security for persons resident abroad as well as for those moving to Finland was greater than in earlier years. The student grant was also the subject of complaints during the year under review. Some complaints relating to compensation under the Military Injuries Act were likewise received.

In some cases, the point of the complaint was that decision makers had, in the complainant's view, acted erroneously or illegally in rejecting an application for a benefit or a complaint. Sometimes complaints reflected dissatisfaction with the fact that the physician treating a pension applicant had assessed him or her as incapable of working, but an expert physician in the pension institution or appeal instance had taken the view in an evaluation that the applicant was not yet entitled to a pension.

The Ombudsman can not generally intervene in the content of a decision concerning a benefit. For this reason she often had to point out in her reply that the authority had reached its decision in the matter on the basis of its discretionary powers and then advised complainants to use the means of appeal available to them. In her decisions she drew the attention of applicants for disability pensions to the fact that evaluation of disability is influenced not only by physicians' reports, but also by other factors mentioned in definitions of incapacity for work.

In one case, however, the Ombudsman did adopt a position on the substantive content of a decision and issued a reprimand to the members of and a referendary at the Insurance Court on the ground that the complainant's appeal concerning the pensioners' care allowance had been decided on following unlawful procedure. When making its decision, the Insurance Court had failed to take account of Regulation (EEC) No 1408/71 and the relevant case law of the Court of Justice of the European Communities.

Advice is a key component of good administration. In several decisions, however, shortcomings were identified in the advice and guidance that authorities had provided. A further requirement that administration and the exercise of law must meet in order to be categorised as good is that cases are dealt with within a time frame that is reasonable in the light of the nature of the matter involved and other circumstances affecting it, and without undue delay. As in earlier years, long processing times featured a lot in complaints during the year under review. Indeed, the Ombudsman drew attention in the positions she adopted to the importance of expeditious processing. Especially in the Insurance Court, the times taken to process matters are still so long that the state of affairs must be regarded as one of the biggest problems affecting legal safeguards in the sector of social insurance.

Appropriate and adequate explanation of the reasons for decisions is important from the perspective of the applicant's legal security. The Ombudsman drew attention in her positions to the consideration that especially in decisions to refuse a disability pension the reasons for refusal should be itemised better. The applicant should be given a better answer to the question of why he or she is not, despite a deteriorating state of health, entitled to a disability pension. Explanations of reasons also guide a person appealing against a decision in a way that encourages him or her to focus on relevant factors when formulating the appeal.

On-site inspections by the Ombudsman during the year under review focused on first-level employment pension institutions: the Local Government Pensions Institution, the Farmers' Social Insurance Institution Mela, the Etera Mutual Pension Insurance Company and the Maarianhamina/Mariehamn office of the Social Insurance Institution KELA. The focus of special attention during the inspections was on how advisory and guidance services for clients have been arranged in employment pension institutions.

The Ombudsman found that in all of the pension institutions inspected resources and efforts had been put into advisory services and especially the development of online services. A calculator on a web site provides information on, for example, old age pensions in such a way that the client can input various alternative retirement dates and be told the amount of the future pension. Insured persons can receive information on their employment relationships and accumulated pension entitlement not only via the Internet, but also by phone, through the post or by visiting a client service point in person. The times taken to process applications by pension institutions were found to be relatively short and the presentation of reasons for decisions appropriate and adequate in most cases. A further aspect to which attention was paid during inspections was how the institutions promote the implementation of equality. Their equality plans were found to be scanty in content.

4.11 OTHER MATTERS

4.11.1 DECISIONS

Payment of diesel tax rebates unlawfully discontinued

Deputy-Ombudsman Petri Jääskeläinen criticised the Ministry of Finance and the Finnish Vehicle Administration for having followed an unlawful procedure. In March 2002 the Ministry of Finance acted contrary to the law in force when it asked the Vehicle Administration to suspend repayment of diesel tax (an actual vehicle tax) rebates to Finnish transport sector businesses operating in Europe. The Ministry later asked that these repayments be discontinued altogether. However, it did not have the power, on the basis of either national or Community law, to take this action. Nor did either national or Community law give the Vehicle Administration the power to cease processing tax rebate applications merely because the Ministry had requested it.

Under the provisions of motor vehicle tax legislation that entered into force at the beginning of 1996, a rebate amounting to 80 per cent of the charges paid for the use by a heavy goods vehicle of motorways in Member States of the European Communities during the previous fiscal year was, upon request, repaid out of the vehicle tax paid with respect to the HGV. Un-

der the decree associated with the provision, charges for the use of roads in the Netherlands, Belgium, Luxembourg, Sweden, Denmark and Germany qualified for the rebate. For example in 2001, rebates totalling 8,554,276 markkas or 1,438,725 were paid with respect to 3,110 HGVs in all.

In the background to the provision was an EC Council Directive aimed at eliminating barriers to competition between transport companies in the Member States by harmonising road haulage taxes. Because the level of vehicle tax in some countries had become lower than in Finland due partly to the changeover to the road charge, the preservation of the competitiveness of Finnish vehicles in the transport sector required arrangements to even out the competitive inequalities caused by taxation. This led in Finland to the tax rebate system.

In 2002, officials from the European Commission turned their attention to the Finnish tax rebate practice. They suspected that the system was in conflict with the Community's state subsidies system. On the basis of the Commission officials' unofficial views, the Ministry of Finance and the Vehicle Administration suspended payment of the rebates and thereby ignored current national law.

In the view of the Deputy-Ombudsman, the question of whether the diesel tax rebate could be regarded as a state subsidy contrary to Community law remained subject to interpretation. He is of the opinion that Finnish companies that were using their HGVs to perform their transport task in the European countries mentioned had good cause for confidence in the permanence of the rebate system, based as it was on legislation enacted by the Eduskunta in 1996, and no reason to suspect that the authorities could retroactively intervene in a statutory system safeguarding their interest. For reasons relating to the background to the enactment of the legislation, protecting the confidence of transport entrepreneurs and the protection of property that the Constitution guarantees, suspension and termination of these legal tax rebates would, in the opinion of the Deputy-Ombudsman, have required either a decision of the Eduskunta to amend the legislation or a legally binding decision by a competent EU institution, in the final instance the Court of Justice.

It was not until a Government bill concerning vehicle tax was introduced in the Eduskunta on 24.10.2003 that the Commission officials' unofficial suspicions that the rebate constituted a state subsidy were confirmed and on this basis the Government proposed repealing, retroactively to 1.1.2002, the provision in the act that had made the diesel tax rebate possible. The Eduskunta passed the legislation and it entered into force on 1.1.2004. Under its provisions, the Vehicle Administration rejected the 2002 and 2003 applications, processing of which it had earlier suspended, and the transport entrepreneurs did not receive their rebates. In the view of the Deputy-Ombudsman, retroactive repeal of the provision had not been of decisive significance from the perspective of appraising the procedure that the Ministry of Finance and the Vehicle Administration had followed.

Case number 754/4/04

Freedom of movement of uninvolved parties must be ensured during a rally competition

A complainant criticised the organisers of a rally for charging admission and thereby restricting freedom of movement and so-called everyman's right (the system of customary and statutory law under which citizens are guaranteed access to the natural environment) by excluding them from areas outside the actual venue for the rally.

According to the Deputy-Ombudsman Petri Jääskeläinen, the starting and finishing points, service areas, grandstands and comparable places are areas in special use where the everyman's right does not apply. Within these areas, the organiser of a rally event has discretionary power to charge for admission and require that this charge be paid as a precondition for entry. Roads and potentially dangerous roadside areas, in turn, are closed under road closure orders and members of the public ought not to have access to them even by paying an admission charge.

On the basis of reports received by the Deputy-Ombudsman, it appears that State Provincial Offices and

district police organisations have not, through decisions made under the provisions of the Road Traffic Decree and the Assembly Act, granted permission for admission charges to be levied with respect to areas outside the venue where an event is taking place nor approved consequent restrictions on freedom of movement nor limitation of the everyman's right as set forth in the complaint. The levying of admission charges has not been ordered nor a position adopted on it in decisions, nor have restrictions on freedom of movement been ordered other than insofar as safety aspects associated with the arrangement of rallies have required that this be done.

What constituted a problem was, however, that the area in which a rally was being organised was not always clearly demarcated in the terrain. This applied especially to the "forest stretches" of special stages that the area where the rally was taking place contained, because it was difficult to conceive of these, with the exception of closed parts of roads, as areas that had been reserved for special use. In the view of the Deputy-Ombudsman, a prerequisite for an area to be deemed one that had been reserved for special use was that it was somehow demarcated in the terrain or otherwise clearly recognisable as such. A rather concurrent view of the need for some kind of demarcation of the areas where events take place also emerged from the reports.

A lack of demarcation might have led to the organisers of a rally trying to restrict movement under the everyman's right also in places outside the area where the event was taking place, which amounts to interference with the freedom of movement guaranteed in Section 9 of the Constitution. For this reason, the area where the event takes place should be defined more clearly than at present already in the decisions which police organisation issue in response to notifications concerning public events. Definition of the area where an event takes place was significant also from the perspective of the powers given to persons appointed to keep order at an event.

In the opinion of the Deputy-Ombudsman, decisions could include also instructions and guidelines concerning the physical demarcation of the event area. In addition, in order to safeguard the freedom of movement which is guaranteed as a fundamental right and the everyman's right, regulations and guidelines, of which the persons responsible for maintaining order and other officials at the event would be informed, could be issued under the Assembly Act. A regulation or guideline could specify, for instance, that in association with carrying out an event freedom of movement or the everyman's right must not be limited outside the area or time frame within which the event takes place.

The Deputy-Ombudsman informed the Ministry of the Interior of his views and asked it to forward copies of his decision to all State Provincial Boards and police services. A copy of the decision was also sent to AKK-Motorsport ry/AKK Sports Oy and the Ministry of the Environment for their information.

Case number 3329/4/04

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 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 min-

utes 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 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 atten tion 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

(1) A person elected to the position of Ombudsman or Deputy-Ombudsman shall without delay submit to the Parliament 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 or Deputy-Ombudsman.

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

CHAPTER 3
GENERAL PROVISIONS ON THE OMBUDSMAN AND THE DEPUTY-OMBUDSMEN

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

(1) If the Ombudsman dies in office or resigns, and the Parliament 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) 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.

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.

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

STATISTICAL DATA ON THE OMBUDSMAN'S WORK

Matters under consideration in 2006

Oversight-of-legality coses under consideration			*6,335*
Cases in initiated in 2006		4,241	
– complaints to the Ombudsman	3,620		
– complaints transferred from the Chancellor of Justice	42		
– taken up on the Ombudsman's own initiative	49		
– submissions and attendances at hearings	47		
– other written communications	483		
Cases held over from 2005		1,605	
Cases held over from 2004		489	
Cases resolved			*4,100*
Complaints		3,529	
Taken up on the Ombudsman's own initiative		52	
Submissions and attendances at hearings		45	
Other written communications		474	
Cases held over to the following year			*2,235*
From 2006		1,620	
From 2005		610	
From 2004		5	
Other matters under consideration			*155*
Inspections [1]		70	
Administrative matters in the Office		85	

[1] Number of inspection days 48

Oversight of public authorities in 2006

Complaint cases			*3,529*
Social welfare authorities		726	
– social welfare	418		
– social insurance	308		
Police		532	
Health authorities		345	
Courts		292	
– civil and criminal	266		
– special	1		
– administrative	25		
Prison authorities		275	
Local-goverment authorities		143	
Labour authorities		136	
Tax authorities		124	
Enforcement authorities		102	
Environment authorities		99	
Education authorities		99	
Prosecutors Transport and communications authorities		68	
Agriculture and forestry		66	
Immigration authorities		65	
Prosecutors		54	
Guardianship authorities		52	
Military authorities		45	
Customs authorities		40	
Highest organs of state		32	
Church authorities		26	
Julkiset oikeusavustajat		26	
Other subjects of oversight		175	
Private parties not subject to oversight		7	
Taken up on the Ombudsman's own initiative			*52*
Military authorities		10	
Healt authorities		8	
Police		6	
Social welfare authorities		6	
– social welfare	2		
– social insurance	4		
Courts		5	
– civil and criminal	4		
– administrative	1		
Prison authorities		5	
Enforcement authorities		2	
Education authorities		2	
Agriculture and forestry		2	
Customs authorities		1	
Environment authorities		1	
Other subjects of oversight		1	
Total number of decisions			*3,060*

Measures taken by the Ombudsman in 2006

Complaints		*3,529*
Decisions leading to measures on the part of the Ombudsman	*534*	
– reprimands	28	
– opinions	440	
– recommendations	12	
– matters redressed in the course of investigation	54	
No action taken, because	*2,126*	
– no incorrect procedure found to have been followed	607	
– no grounds to suspect incorrect procedure	1,519	
Complaint not investigated, because	*869*	
– matter not within Ombudsman's remit	94	
– still pending before a competent authority or possibility of appeal still open	461	
– unspecified	114	
– transferred to Chancellor of Justice	18	
– transferred to Prosecutor-General	5	
– transferred to other authority	24	
– older than five years	43	
– inadmissible on other grounds	110	
Taken up on the Ombudsman's own initiative		*52*
– prosecution	–	
– reprimand	9	
– opinion	12	
– recommendation	13	
– matters redressed in the course of investigation	3	
– no illegal or incorrect procedure established	7	
– no grounds to suspect incorrect procedure	7	
– lapsed on other ground	1	

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