Parliamentary Ombudsman of Finland

Summary of the Annual Report 2010

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Annual

Report

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TO THE READER

The Constitution of Finland requires the Parliamentary Ombudsman to submit an annual report to the Eduskunta, the Parliament of Finland. This must include observations on the state of the administration of justice and any shortcomings in legislation. Under the Parliamentary Ombudsman Act, the annual report must include also a review of the situation regarding the performance of public administration and the discharge of public tasks as well as especially of implementation of fundamental and human rights.

The undersigned *Petri Jääskeläinen*, Doctor of Laws and LL.M. with Court Training, served as Parliamentary Ombudsman throughout the year under review 2010. My term of office is from 1.1.2010 to 31.12.2013. Doctor of Laws *Jussi Pajuoja* likewise served as a Duputy-Ombudsman for the full year under review. His term of office is from 1.10.2009 to 30.9.2013. The other Duputy-Ombudsman was Licentiate in Laws *Maija Sakslin*, who was elected for a four-year term from 1.4.2010. I am on leave of absence from my post as a state prosecutor with the Office of the Prosecutor General for the duration of my term, Dr. Pajuoja is on leave of absence from his post as a deputy head of department at the Ministry of Justice and Ms. Sakslin from her post as a responsible reseacher with the Social Insurance Institution.

One of the posts of Deputy-Ombudsman was unfilled from 1.1.2010 to 31.3.2010. My predecessor as Ombudsman, Licentiate in Laws Riitta-Leena Paunio, acted as a substitute Deputy-Ombudsman from 19.1 to 22.2.2010 and from 1.3 to 5.3.2010.

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

The original annual report is almost 400 pages long. This brief summary in English has been prepared for the benefit of foreign readers. The longest section of the original report, a review of oversight of legality and decisions by the Ombudsman by sector of administration, has been omitted from it.

I hope the summary will provide the reader with an overview of the Parliamentary Ombudsman's work in 2010.

Helsinki, 19.4.2011

Petri Jääskeläinen
Parliamentary Ombudsman of Finland

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1 General comments

PETRI JÄÄSKELÄINEN

OVERSIGHT AND PROMOTION OF FUNDAMENTAL AND HUMAN RIGHTS BECOMING MORE EFFECTIVE

HISTORIC LEGISLATIVE REFORM

In March 2011 the Eduskunta approved a legislative reform under which a national human rights institution is being created in Finland and the procedures relating to the handling of complaints are being developed. These are historic reforms.

The national human rights institution is connected with the Paris Principles, which the United Nations General Assembly adopted in 1993. They require national human rights institutions to be statutorily founded, autonomous and independent bodies with as broad tasks and powers as possible to promote and safeguard human rights. Their remit should include, inter alia, education, training, research and information relating to human rights as well as tasks connected with monitoring of international human rights conventions and international cooperation. An institution must have a pluralistic composition, i.e. the various instances involved in human rights work on the national level must participate as comprehensively as possible in the institution's activities.

There was no human rights body meeting the requirements of the Paris Principles in Finland, but the establishment of one had been under discussion for years. An institution is necessary first of all because of European and international cooperation. In some international connections, a status in accordance with the Paris Principles can be a downright prerequisite for participation or being entitled to speak. The UN International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, ICC is responsible for granting accreditation

As the Parliamentary Ombudsman, Petri Jääskeläinen attends to cases dealing with the highest State organs, those of particular importance, and to cases dealing with courts of law, prisons, health care, guardianship and language legislation.

to national human rights institutions. An institution that has gained "A" status meets the Paris Principles and only it has the right to speak in, for example, the UN Human Rights Council.

A human rights institution is necessary also to meet purely national needs. It will gather together Finland's fragmented human rights structures and is thus also a national cooperative body. In addition, tasks associated with, for example, human rights education, training and information have not been comprehensively the responsibility of any instance.

The reforms relating to handling complaints will, in turn, make oversight of legality more effective, shorten processing times and increase the Ombudsman's opportunities to undertake measures on his own initiative. The numbers of complaints have doubled within a short period. The fairly strict obligation to investigate complaints that is statutorily imposed on the Ombudsman has reduced opportunities to focus resources in a way that is most purposeful from the perspective of complying with the law and implementing fundamental and human rights. For example, it has not been possible to investigate matters on the Ombudsman's own initiative or to conduct inspections as often as would have been necessary.

HUMAN RIGHTS CENTRE

The institution structure that we have now embraced seems to be a success. The idea that the national human rights institution would be created "under the aegis" of the Office of the Parliamentary Ombudsman was in the air for a long time. Within a working group set up by the Ministry of Justice, this linkage was explicated in such a way that a Human Rights Centre, which will have a Human Rights Delegation, will be created within the Office of the Parliamentary Ombudsman. The Human Rights Centre will be operationally autonomous and independent, but administratively part of the Office of the Parliamentary Ombudsman.

What is of essential relevance is that the national human rights institution will comprise all three components, i.e. the Human Rights Centre, the Human Rights Delegation and the Ombudsman's present tasks. Thus the totality of the institution's tasks and powers will be as broad as possible. The Paris Principles do not presuppose, for example, that the national human rights institution would have the power to investigate complaint cases, but in the institutional structure that we have adopted, also these are naturally included in the overall range of tasks.

Because the Human Rights Centre is administratively part of the Office of the Parliamentary Ombudsman, its personnel will be officials on the staff of the Office. The Ombudsman will appoint the Director and other staff of the Centre and decide on matters concerning them that are governed by the legal provisions on civil servants. He will appoint the Director after hearing the opinion of the Constitutional Law Committee. This is the same procedure as that followed when choosing a substitute for a Deputy-Ombudsman.

The funds available to cover the costs of the Human Rights Centre will come from the appropriation approved for the Office of the Parliamentary Ombudsman. However, the Centre itself will present its own proposed budget before this is included in the annual budget for the Office of the Parliamentary Ombudsman.

The Paris Principles require a national human rights institution to have an autonomous and independent status not only formally, but also financially and administratively. What must be borne in mind when this is evaluated is that within the structure that we have now embraced, the national human rights institution is a totality comprising the Human Rights Centre, its Delegation and the Ombudsman. From the perspective of the human rights institution's autonomy and independence, it is of central importance that the institution is independent in the external sense. It is precisely the Ombudsman's independence of the Government and of all other instances that guarantees the human rights institution's autonomy and independence. The relative powers of the various parts of the institution are not of significance from the perspective of the Paris Principles. Nor does the

Ombudsman's administrative leadership position threaten the Human Rights Centre's operational autonomy and independence in other respects, either.

When the Human Rights Centre's and the Ombudsman's tasks are taken care of under the same roof, i.e. in the Office of the Parliamentary Ombudsman, it is, however, important that the power of and the division of labour between the Centre and the Ombudsman are clearly defined. The way in which this will be effected is that the Human Rights Centre will be entrusted with a variety of general tasks associated with promoting, implementing and monitoring fundamental and human rights, but will not deal with complaints. Nor will it be able to deal on its own initiative with individual cases that come under the purview of the supreme overseers of legality nor to make statements about them.

It is also for this reason that the Human Rights Centre has not been statutorily given a similar right of unlimited access to information as the Ombudsman enjoys. The Centre has the right to receive public information and reports from authorities free of charge but, where secret information is concerned, its rights of access are the same as those that research institutions have.

In international cooperation, Finland's national human rights institution will usually be represented by the Human Rights Centre. Its most important cooperation partners will be, in addition to national human rights institutions in other countries and the UN International Coordination Committee (ICC), for example the European Union Agency for Fundamental Rights and the UN Human Rights Council. The Ombudsman will retain the international links that are associated with his task. These include, e.g., the global body IOI (International Ombudsman Institute), the European Union's network for cooperation between Ombudsmen and cooperation with Ombudsmen in the Nordic countries and the Baltic States.

HUMAN RIGHTS DELEGATION

The Human Rights Centre will have a Human Rights Delegation, which the Ombudsman will appoint for four years at a time. The Delegation will have not fewer than 20 and at most 40 members representing civil society, research into fundamental and human rights as well as other bodies that participate in promoting and safeguarding these rights. According to the reasons presented in support of the relevant legislation when it was introduced, the membership would include, in addition to civil society organisations and representatives of various ideological, religious and language groups and minority groups, also the supreme overseers of legality and special ombudsmen as well as representatives of various advisory bodies dealing with fundamental and human rights. By contrast, it is not intended that such bodies as ministries, municipalities and parliamentarians will be represented on the Delegation.

Since not all actors in the field of fundamental and human rights can be represented on the delegation at the same time, the intention is, according to the legislation's precursor documents, to follow the rotation principle, except with respect to the supreme overseers of legality, the special ombudsmen and, for example, the Sámi Parliament, in its composition. The instances other than those represented on the delegation at any given time will be a part of its cooperation network.

The Director of the Human Rights Centre will chair the Human Rights Delegation. This is a solution that is functional in practice and emphasises the unity of the Centre and its Delegation, for example when statements of position by the Centre are being presented.

The Delegation will meet the demands of the Paris Principles with respect to the national human rights institution having a pluralistic composition. It will offer a valuable forum, of the kind that we have lacked, for a discourse on and cooperation in relation to fundamental and human rights. It will bring together the various actors in the field of fundamental and human rights and thereby promote flows of information as well as coordination of handling of fundamental and

human rights-related affairs. Indeed, one of the tasks that have been statutorily assigned to the Delegation is to function as a national cooperative body for the fundamental and human rights sector.

The Delegation will deal with fundamental and human rights matters that are included in the Human Rights Centre's tasks and are far-reaching in their import and significant from the perspective of principle. It will decide on the main lines of the Human Rights Centre's operational policy and each year approve the Centre's activities plan and annual report. The intention is that in connection with the activities plan the Delegation will also deliberate the budget proposed for the Centre. The Centre's annual report will be separate from that of the Ombudsman and will not be submitted to the Eduskunta for deliberation. The thinking is that the Centre's dialogue with the Eduskunta will take place through various parliamentary committees.

HANDLING COMPLAINTS

The new regulations concerning handling of complaints have given the Ombudsman more scope for discretion and alternative powers in addition to emphasising the citizen perspective. The starting point for handling is the same investigation threshold as formerly: the Ombudsman investigates a complaint if there are grounds to suspect that a subject of oversight has acted unlawfully or failed to perform his or her duty. Even if this investigation threshold is not crossed, the Ombudsman can always investigate a complaint if for another reason he deems it necessary to do so. A reason of this kind can be, for example, promotion of implementation of fundamental and human rights.

Furthermore, also in those cases where there are grounds to suspect an unlawful action, the scope and depth of the investigation are now within the Ombudsman's powers of discretion. According to the new regulation, the Ombudsman takes those measures arising from a complaint that he deems necessary from the perspective of compliance with the law, protection under it or implementation of fundamental and human rights. The criteria that are subjected to discretion in the regulation take account of all of the tasks that are assigned to the Ombudsman in Section 109 of the Constitution. The criteria make it possible to consider on a case-by-case basis what kinds of measures a complaint calls for in the various stages of handling it. By "measures" is meant, besides the various investigative actions associated with investigating the complaint, also the final results of the complaint, such as an expression of opinion by the Ombudsman, a proposal, a reprimand or a prosecution.

I pointed out in my opinion article in the Ombudsman's 2009 annual report that investigation of a complaint should be considered in the light of the following questions:

- Can the Ombudsman help?
- Is a rebuke from the Ombudsman necessary?
- Is there a need for guidance or an expression of opinion by the Ombudsman in relation to the matter?
- Are an investigation and stance by the Ombudsman otherwise necessary?

The new regulation steers investigation of complaints towards the matters that are of greatest significance from precisely the aspect of those questions. For example, bearing compliance with the law in mind, it is necessary to take measures if the matter is of such a nature or gravity that a rebuke (or prosecution) by the Ombudsman is necessary. Correspondingly, when the matter is looked at from the angle of ensuring protection under the law, measures by the Ombudsman are needed in especially those cases in which the Ombudsman can help the complainant. Implementation of fundamental and human rights, in turn, presupposes measures if there is a need in the matter for guidance or an expression of opinion by the Ombudsman.

Handling of complaints is now *a priori* limited to matters less than two years old, whereas earlier the limit was five years. Studying old matters is often difficult and not purposeful. Indeed, the expiry period observed for complaints within European ombudsman institutions is typically one or two years. However, the provision does not prevent matters older than two

years being dealt with when there is a special reason to do so. The Ombudsman decides on a case-by-case basis whether a special reason exists.

Mentioned in the new regulation are the most typical reasons for which the Ombudsman does not take further measures on foot of a complaint. These are, in addition to expiration, the fact that the Ombudsman does not have power to intervene in the matter or that it is pending before a competent authority or that a regular channel for appeal is still open in the case. In these situations, the complainant is informed of the decision without delay and at the same time he or she can be told what legal remedies are available and given other necessary guidance. This procedure, which was earlier based on established practice, is now expressly confirmed in the Act.

A specific provision on the possibility of the Ombudsman transferring a complaint to another competent authority has been included in the Act. Earlier, transfers of this kind were based only on established practice, in which great restraint was adopted. In many cases, however, it is purposeful for an administrative sector's internal oversight or rectification possibilities to have been used before the Ombudsman begins investigating a matter any further. In an international comparison, this subsidiarity principle, as it is called, is very typical in the work of ombudsmen in various countries. Even in cases where a transfer is effected, the matter remains subject to the Ombudsman's oversight and the authority must inform the Ombudsman of its decision or other measures that it has taken within a deadline set by the Ombudsman.

The Eduskunta's Constitutional Law Committee stressed in its report (PeVM 12/2010 vp) on the Bill that there is still a need to develop the operational methods of the supreme overseers of legality starting from the perspective of citizens. Something that the Committee has considered especially important is the Ombudsman's proposals that a solution be achieved through conciliation or that redress be made for a violation that has occurred.

The Ombudsman has in fact proposed to authorities that they provide compensation for damage caused by their unlawful actions or as redress for violations. There has been a conscious effort in the past couple of years to increase compensation proposals and good experiences and results have been obtained with them. The right to an effective remedy for everyone whose human rights have been violated is guaranteed in Article 13 of the European Human Rights Convention. If the violation can no longer be rectified or corrected, redress must be made for it and the redress must be effected on the national level. A successful proposal by the Ombudsman that redress be made can in some cases save Finland from an appeal to the European Court of Human Rights and even being found guilty.

In an international comparison, one typical method of operation on the part of ombudsmen is endeavouring to achieve an agreed resolution to a disagreement between a complainant and an authority. Reaching an agreed settlement can be the fastest and most effective solution from the complainant's point of view. So far, conciliation-type methods have been used in the Ombudsman's practices only rarely, but the procedural methods are already under development.

SUBSTITUTE FOR A DEPUTY-OMBUDSMAN

Under a provision added to the Constitution in 2007, there can be a substitute for a Deputy-Ombudsman. The Parliamentary Ombudsman Act provides for a substitute to perform the tasks of a Deputy-Ombudsman who is prevented other than for a brief period from taking care of them or if one of the posts of Deputy-Ombudsman is vacant. It is the Ombudsman who decides to invite a substitute to take care of the Deputy-Ombudsman's tasks.

The provision in the Parliamentary Ombudsman Act had proved too rigid in practice to be purposeful. Instead of it being possible for a decision to invite a substitute to be based on an assessment of genuine need, what had to be decided was whether the Deputy-Ombudsman was being prevented from discharging his duties "other than for a brief period". The revised provision allows a substitute to be invited to

take care of a Deputy-Ombudsman's tasks, irrespective of the length of time for which the latter is prevented from discharging them, when the Ombudsman deems this necessary. The provision now corresponds to the regulation in the Act under which a substitute for a Deputy Chancellor of Justice is invited to step in.

NEW ERA

The legislative changes concerning the national human rights institution that will enter into force at the beginning of 2012 will take Finland's human rights structures to a completely new level. The Human Rights Delegation will for the first time bring together all of the key actors in the field of fundamental and human rights on a regular basis. It will provide a valuable forum for cooperation between them and coordinating their activities. The national human rights institution that will consist of the Human Rights Centre and its Delegation as well as the Ombudsman's activities will, in my view, meet the requirements of the Paris Principles well and thus will bring Finland's human rights structures into line also with international expectations.

The legislative amendments concerning handling of complaints that entered into force at the beginning of June 2011 make it possible for resources to be channelled to deal with cases in which the Ombudsman can help the complainant or in which measures by the Ombudsman are otherwise of real significance from the perspective of compliance with and protection under the law or implementation of fundamental and human rights. This improves the effectiveness of the Ombudsman's work.

On the whole, the reforms mean the beginning of a new era. It will strengthen people's protection under the law and promote implementation of fundamental and human rights.

JUSSI PAJUOJA

AVI OR ELY ACRONYM OR BACK TO THE START?

One of the Ombudsman's tasks is to oversee and inspect the State's regional and local administrative actions. It is a task that used to be a clear one on the level of legislation and simple in geographical terms. The old Constitution stipulated that for purposes of general administration Finland is divided into provinces, jurisdictional districts (i.e. court districts) and municipalities. Traditionally, inspections of the State's regional and local administration focused mainly on State Provincial Offices and Court District Offices.

With the restructuring of the State's regional administration that has taken place through the Reform Project for Regional Administration (known by the acronym ALKU, which is Finnish for "START"), the situation has decisively changed. The provinces and the State Provincial Offices were abolished at the beginning of 2010. Other bodies that ceased to operate at the same time were the TE (Employment and Economic Development) Centres, the regional Environment Centres, the Environmental Licence Offices, the Road Regions and the Labour Protection Districts. Their tasks were entrusted to the new Regional State Administrative Agencies (known by their Finnish acronym AVI) and the Centres for Economic Development, Transport and the Environment (ELY). The State's local administrative units, i.e. the Court District Offices, had been abolished even earlier, at the beginning of 2008.

The roles that the new bodies play differ from each other. The principal task of the ELY Centres is to support regional development. They promote enterprise, the functioning of the labour market, transport, a good environment as well as sustainable utilisation of nature and natural resources. By contrast, the tasks of the Regional State Administrative Agencies (AVI) are oriented more emphatically towards guidance and oversight. The matters that they oversee include implementation of fundamental rights and protection under the law.

Thus what is involved in the new regional administrative structure is, on the one hand, promotion and facilitation of regional development (ELY) and, on the other, guidance and control on the part of the authorities (AVI).

The duties of Deputy-Ombudsman Jussi Pajuoja include attending to cases concerning the police, social insurance, prosecution service, Defence Forces, transport and communications, data protection, education, labour and church.

HOW WERE THE CHANGES ARRIVED AT?

The old provincial division, which consisted of eleven provinces in mainland Finland and the autonomous region of the Åland Islands, remained unchanged in the period 1960–1997. The immutability of the division was underscored by the fact that the number of provinces could be changed only by enacting legislation.

A strong regional identity was associated with the old provinces. This still lives on because, among other reasons, the boundaries of the parliamentary constituencies of East, Central and Northern Finland are the same as those of the former provinces.

The emergence of a provincial identity played a role also in administration, provincial capitals as administrative centres and the State Provincial Offices there. A further indication of the strength of the identity is the fact that many of us are still able to name and locate the eleven old provinces along with their capitals.

The next phase in provincial administration was the administrative model that obtained from 1997 to 2009. It was a blend of old and new. The provinces of Oulu and Lapland along with the autonomous region of the Åland Islands continued as before, with no changes made. By contrast, the other nine provinces were replaced by three super-provinces, South-East-and West-Finland.

The effect of creating a regional administrative identity was severed in the super-provinces. With the province of West Finland stretching from Parainen to Pihtipudas, for example, it was difficult for a common foundation of interests and experience to come into being on the provincial level.

REGIONS AS THE FOUNDATION FOR A REGIONAL IDENTITY

To replace the old provincial division, the endeavour has been to prompt a new regional identity into being. Regions were regulated in the 1997 Division into Regions Act. A region must be as coherent an area as possible, a place where the population share a culture and community of interests.

When the area of a region is defined, the principles on which the definition is based are transaction and service links, transport to and from work, cooperation between municipalities, participation in extensive groups of municipalities, business and economic links, area divisions for the work of associations as well as cultural and historical considerations.

The number of regions in Finland at the moment has been 19 since East Uusimaa was annexed to Uusimaa by decision of the Council of State (Government) at the beginning of 2011. The least populous regions are the Åland Islands, with fewer than 30,000 inhabitants, Central Ostrobothnia with 70,000 and Kainuu with 80,000. The most populous is Uusimaa, which has over 1.5 million inhabitants.

The restructuring of regional administration meant a strengthening of the regions' status. The objective was that a region would become a rallying and coordinating regional development authority. The key instruments in the work of regions are the regional programme and the regional plan. With the restructuring, the education function formerly taken care of by State Provincial Offices, as well as the structural funds tasks within the social affairs and health function were transferred to the Regional Councils.

The aim is to strengthen regional democracy with the aid of the regions. Whereas earlier the State Provincial Offices represented the central Government's regional administration – top-down administration – the regions are groupings of municipalities, bottom-up administration.

Under the Division into Regions Act, the areas within which State regional administrative authorities operate must be based on the regional division unless special reasons require a different solution. In fact, the areas within which both the Regional State Administrative Agencies and the Centres for Economic Development, Transport and the Environment operate are indeed based on the regional division.

CLEAR TERRITORIAL DIVISIONS THE OBJECTIVE

The restructuring of regional administration was intended to achieve a clear division into territorial units. According to the Government Bill proposing the legislation, "the objective of the reform is to form regional units in such a way that they constitute totalities that are clear and purposeful from the perspective of the authorities, companies and communities, especially taking economic and work areas into account".

Fifteen Centres for Economic Development, Transport and the Environment have been created. Their area of operation is generally one region. Exceptions are the South East Finland Centre, whose area of operation comprises the regions of South Karelia and Kymenlaakso, and the Häme Centre, to the territory of which the Kanta-Häme and Päijät-Häme regions have been added.

There are six of the new Regional State Administrative Agencies. They are for South Finland, East Finland, South-West Finland, West and Central Finland, North Finland and Lapland. The linkage between the Agencies and regions is more distant; their operations cover the territory of anything from one to five regions.

Thus in especially the Centres for Economic Development, Transport and the Environment (ELY) the link-age between regions and agencies seems strong. However, it must be noted that the Centres are not the same as each other. Not all of them provide a full range of services; instead, tasks are taken care of in a way that transcends regional boundaries. Thus services are not necessarily produced in one's own region, nor are regions in the same situation in this sense.

The ELY Centres have three areas of responsibility: 1) business and industry, labour force, competence and culture, 2) transport and 3) the environment. The services included in all three areas of responsibility are provided by nine of the Centres. Four Centres provide services belonging to two of the areas of responsibility, whilst two others cater for only one area.

For example, the South Ostrobothnia ELY Centre (headquartered in Seinäjoki) is responsible for also Ostrobothnia's (Vaasa) transport and environmental affairs; likewise, Varsinais-Suomi's ELY (Turku) takes care of Satakunta's (Pori) transport and environmental affairs. The North Savo ELY in Kuopio still takes care of transport matters for South Savo (Mikkeli) and North Karelia (Joensuu), while the North Ostrobothnia ELY (Oulu) takes care of Kainuu's transport matters and the Uusimaa ELY those of the Häme region.

The Regional State Administrative Agencies (AVI) have five areas of responsibility: 1) Fire and rescue services and preparedness, 2) Base public services, legal rights and permits, 3) Police, 4) Occupational safety and health and 5) Environmental permits.

Not all Agencies provide a range of services including all that belong to the five categories. For example, the Lapland AVI is based in Rovaniemi, but occupational safety and health matters for the Lapland region as well as environmental licences and water management permits for there are handled by the North Finland AVI in Oulu. Environmental licences and water management permits in South West Finland are not handled at the regional headquarters in Turku, but instead have been entrusted to the South Finland AVI, which is headquartered in Hämeenlinna.

More precise information on the Agencies' and Centres' functions and areas of responsibility can be found on their web sites. Also to be found there is a list of municipalities; clicking on the name of a municipality reveals which Agency or Centre serves it. It is not necessarily an easy task, because there were 336 municipalities in Finland at the beginning of 2011. Of these, nearly 180 are of a kind where services belonging to at least one main area of responsibility are produced elsewhere than by the AVI or ELY of the region in which the municipality is located.

INTERIM EVALUATION

One of the objectives in restructuring the State's regional administration was to create a system with a division of the country into clear regions. With clarity in mind, alone the names of the administrative bodies have caused problems. One of the quarters from which public criticism has come is the Research Institute for the Languages of Finland. When a body is called, for example, the North Finland Regional State Administrative Agency, the name creates a mental image of the geographical area of operation, which certainly includes the northernmost part of Finland.

Therefore it is confusing that the Lapland Regional State Administrative Agency has an area of operation that is different from that of the North Finland Regional State Administrative Agency.

As those who did the preparatory work for the restructuring have pointed out, it is often the situation that with reform come new concepts, which take time to learn and to establish themselves.

However, the problem is not only language-related, but also structural. Because bodies take care of tasks in each other's geographical areas of operation, the North Finland Regional State Administrative Agency (Oulu) is responsible also for occupational safety and health and environmental matters in the territory of the Lapland Regional State Administrative Agency (Rovaniemi) as well. Thus, depending on the area of responsibility involved, the North Finland Regional State Administrative Agency takes care of or doesn't take care of tasks also in Lapland.

An objective of the restructuring of regional administration is to explicate the division of labour between authorities and eliminate overlapping of functions. With the geographical areas of operation and the spheres of competence of the new authorities in mind, these objectives are not being accomplished particularly well. The Regional State Administrative Agencies and the Centres for Economic Development, Transport and the Environment are geographically overlapping organisations, whose areas of operation and headquarters locations generally differ from each other nevertheless. Already that is conducive to making cooperation and the division of labour between different bodies more difficult. Also within agencies, areas of operation are often overlapping; in other words, a unit is responsible for some tasks in a neighbouring unit's territory.

TREND TOWARDS MERGING FUNCTIONS – OR DISPERSAL?

An objective of the restructuring of regional administration is to add efficiency to the authorities' operations and gather together tasks to form bigger totalities. In the sector of education and culture, however, the result appears to be a fragmentation of tasks.

Tasks included within the sphere of administration of the Ministry of Education and Culture were formerly taken care of almost without exception through State Provincial Offices. With the restructuring of regional administration, the spheres of responsibility were divided between the Regional State Administrative Agencies and the Centres for Economic Development, Transport and the Environment. The latter were entrusted with, inter alia, tasks associated with vocational and adult education as well as matters relating to physical exercise, libraries and youth activities. Some tasks were also transferred to Regional Councils.

On inspections of the education and culture function, the way in which the administrative sector has been split up has been seen as a failure. Something that has been perceived as a threat is that as a consequence of fragmentation no one any longer has an overall picture of the state of the education and culture function in the regions. There has also been a perception that fragmentation is weakening the prestige of the administrative sector in the field.

The situation is awkward also from the perspective of the Ministry of education and Culture. Before the restructuring, the Ministry directed cultural departments in five State Provincial Offices. Since the restructuring, it has had to direct six Regional State Administrative Agencies and fifteen Centres for Economic Development, Transport and the Environment, a total of 21 bodies.

OPPOSITE TREND

The police function is one of the regional administrative agencies' areas of responsibility. In reality, the relationship between them and the police administration is very loose and very few personnel resources are devoted to handling it. A police area of responsibility operates in three Regional State Administrative Agencies, where it takes care of some planning, evaluation and coordination tasks.

That the police role remains marginal is attributable to the police administration's own organisational restructuring. The police organisation was earlier three-tier, comprising the ministerial, provincial and court district levels. With the abolition of court districts and the restructuring of regional administration, the provincial tier was eliminated. The Police Administration, which is subordinate to the Ministry of the Interior, directs and guides operative police activities. The local police services and special units are directly subordinate to the Police Administration.

When the size of local police services increased substantially as part of the restructuring of the police organisation, the services became regional-level actors. In many respects, however, the police services' areas of operation do not correspond to the regional division. Thus the police administrative structure has been developed from its own starting points. At the same time, there has been a disengagement from the restructuring of State regional administration and the regional division that has served as its basis.

NEW ORGANISATIONS, OLD INSTRUMENTS

One of the stumbling blocks impeding the restructuring of regional administration has been the fact that information systems are still not fully in place and operate poorly. This has caused difficulties with respect to both official work and customer service.

According to national plans, the intention was that a comprehensive information system, called by the acronym VALDA, produced by the Government IT Shared Service Centre to manage official documents would be ready for joint use by the agencies and centres when they began their work in early 2010. However, that did not happen. For example, it emerged on inspections of the AVI and ELY offices in Oulu in November 2010 that they were still using five old registry systems in four different networks.

According to a report provided by the Ministry of Finance in late 2010, the VALDA system would be adopted by the Regional State Administrative Agencies at the beginning of 2011 and the Centres for Economic Development at a later date. The timetable for its introduction by the latter had still not been decided at that time.

It also emerged in the course of preparations for the inspection visit to Oulu that the agencies' and centres' web sites were partly out of date. On the web site of the Regional State Administrative Agency, for example, some links led misleadingly to the old web pages of the Oulu State Provincial Office. However, the texts of the pages had been updated to correspond to the AVI era.

WHAT WILL THE SITUATION BE IN TEN YEARS' TIME?

The initial premise adopted in the Government Bill proposing the restructuring of regional administration is that when regional organisations are being formed, research data relating to the development of administration and the outlines of European development must be taken into account. The objective is that the productivity of regional administration and the results it achieves will thereby improve.

Thus the Government Bill creates the impression that development of regional administration is based essentially on research data. That is not necessarily the case. When the restructuring was planned, its basic unit, the region, was accepted as a given. However, a region is not a unit that can be defined either in terms of research or statistically.

When the Division into Regions Act was being passed, the Eduskunta's Administration Committee recorded the reasons for the division. The Committee considered it important to emphasise that "the division into regions is founded centrally on the formation of will taking place in municipal administration. Thus functional and economic factors as well as purposefulness when it comes to planning regions make it advisable to make the assessment a priori from this perspective".

Thus a key concept when regions are being carved out is the formation of will that is taking place in municipal administration. It, in turn, may well be founded on research results, but it can also be unfounded.

Without being an expert on administrative science, it would appear to me that one problem with the restructuring of regional administration is that the region as a basic unit is often too small. Where the Regional State Administrative Agencies are concerned, it is pretty obvious that one region does not have a sufficiently large population base to sustain an agency's operations. Only the Lapland AVI operates in one region, but it does not offer services belonging to all areas of responsibility. The organisation of the Centres for Economic Development, Transport and the Environment is likewise difficult on the region level, as revealed by the fact that only nine full-service centres have been created.

Overlapping between organisations would also appear to be a problem. At the end of one inspection visit I asked the directors of the Regional State Administrative Agency and the Centre for Economic Development, Transport and the Environment what they expected their organisations would be like in ten years' time.

The answer was that instead of two bodies there would be only one and that the total number of bodies in the country would be fewer than ten.

Time will tell what happens.

MAIJA SAKSLIN

THE ENVIRONMENTAL FUNDAMENTAL RIGHT AND OVERSIGHT OF LEGALITY

MONITORING FUNDAMENTAL RIGHTS

Deputy-Ombudsman Maija Sakslin's duties include attending to cases concerning social welware, local-goverment, enforcement, agriculture and forestry, environmental authorities, immigration, customs, taxation and children's rights.

Protecting nature and animals is one of the key themes in today's political and civic discourse. Questions associated with sustainable development and societal responsibility are an essential aspect of companies' business operations as well. Environmentrelated matters that feature in the decisions made by the Parliamentary Ombudsman include those pertaining to physical planning, building, nature conservation and environmental protection, environmental permits, environmental health care and waste management as well as a variety of waterrelated matters. In addition, complaints made to the Ombudsman concern, for example, cadastral surveys, road surveys, agricultural subsidies and oversight of a variety of subsidies. Alongside agriculture and forestry, matters relating to fisheries, game management and reindeer herding, food safety as well as animal health and welfare fall within the scope of the Ombudsman's oversight of legality. All of these categories of matters have a close linkage with protection of the environment and animals.

A central task of the Parliamentary Ombudsman is to oversee implementation of fundamental and human rights. Section 20 of the Constitution assigns responsibility for nature and its biodiversity, the environment and the national heritage to everyone. The public authorities must endeavour to guarantee for everyone the right to a healthy environment and the possibility to influence decisions that concern their own living environment.

The text archives of the Parliamentary Ombudsman contain fewer than fifty decisions in which reference is made to the environmental fundamental right enshrined in Section 20 of the Constitution. Among even these decisions, the actual position adopted with respect to oversight of legality is based on application of constitutional provisions in only a part of them. Although the number of decisions is indeed modest, it is not possible solely on its basis to assess what significance the environmental fundamental right has had in oversight of legality nor how oversight of legality has promoted implementation of the environmental fundamental right. For example, decisions concerning physical planning and building as well as conservation of buildings may be important from the perspective of the environment and cultural heritage even if the environmental fundamental right is not applied at all in conjunction with them.

RESPONSIBILITY FOR NATURE AND ITS BIODIVERSITY

Under Section 20 of the Constitution, responsibility for nature and its biodiversity as well as the environment is something that belongs to everyone. Responsibility in the meaning of the provision applies to both the public authorities and private persons. It is stated in the preparatory works to the fundamental rights reform that the provision encompasses both preventing destruction or despoilation of the environment and proactive measures that are favourable to nature. The provision expresses responsibility for preserving the diversity of organic and inorganic nature in economic and societal activities. The ways in which the individual's role in protecting the environment can be realised are both proactively taking measures and passively refraining from damaging it. In oversight of legality, the responsibility of both the individual and of the public authority has been simultaneously emphasised when the provision has been invoked.

In one complaint it was criticised that the Regional environment centre had tried to create a nature conservation area in part of a land holding against the owner's will. Observations on the basis of which the area in question was interpreted as being a habitat of flying squirrels were made in conjunction with a forest-use notification. According to the Regional environment centre, the area contained tree hollows and resting places for flying squirrels. In its view, regeneration felling would probably destroy or markedly degrade these breeding and resting places for flying squirrels in the area. It deemed the area to be also otherwise of significant natural value and recommended that a nature conservation area be established there under the provisions of the Nature Conservation Act. The land owner opposed the decision concerning the nature conservation area.

What was at issue in another complaint concerning a proposal by an authority to establish a nature conservation area was protection of a species of leafroller moth that was classified as extinct in Finland. A Regional environment centre had informed the complainant in a letter that the extremely rare species *Cydia discretana* existed on his farm. It recommended that the area be protected under the Nature Conservation Act. *Cydia discretana* is not among the species warranting special protection, and the destruction or degradation of the sites where it is found is not directly prohibited by law. However, it is an endangered species in the meaning of the Nature Conservation Act. For this reason the Regional environment centre recommended the creation of a private conservation area to protect the moth's habitat. Also in this case the land owner criticised the authority's action.

When I was assessing the environmental authorities' action, I pointed out that under the environmental fundamental right enshrined in Section 20 of the Constitution, responsibility for the environment belongs to everybody and that Section 22 of the Constitution requires the public authorities to guarantee the observance of fundamental rights and liberties and human rights. The Nature Conservation Act obliges an environment centre to promote and oversee environmental protection in its region. For this reason, the environment centres could not be regarded as having exceeded their discretionary powers, acted unlawfully or otherwise erroneously when they recommended to a land owner that a nature conservation area be established.

The action of authorities was also criticised in an earlier complaint because, inter alia, they had approved dredging operations, which they had deemed to be minor separate projects, solely on the basis of phone calls. The complainants reported that the reasons for carrying out the dredging had included protecting the chrysomelid beetle species *Macroplea pubipennis* in the vicinity of a proposed Natura nature conservation area. It was pointed out in the decision that, looking at the matter from the perspective of promoting the responsibility for nature and its diversity in the meaning of Section 20 of the Constitution, a better procedure to follow would have been to require notifications as provided for in the Water Act and the Water Decree to be made for the dredging operations. Any need for a permit can be appropriately assessed on the basis of a written notification.

THE OPPORTUNITY TO INFLUENCE DECISION MAKING

Increasingly common focuses of complaints in environmental matters are inadequate opportunities to participate in and defective provision of information in relation to decision making affecting the living environment. The issue in complaints is often that the involved parties have not had an adequate opportunity to have their views heard. Section 2.2 of the Constitution states that democracy entails the right of the individual to participate in and influence the development of society and his or her living environment. This provision has been regarded as expressing, together with the environmental fundamental right, the democracy principle and the idea of environmental citizenship that is founded on it. Opportunities to participate and exercise influence increase environmental awareness and strengthen responsibility for the living environment. In addition, local expertise, values and perceptions, allowing for which produces considered and well-founded decisions, are mediated to decision making with their aid. The right to information safeguards the acceptability of decisions and improves their quality.

Criticism in one complaint related to the actions of municipalities and administrative authorities in procedures for making documents available for viewing. According to the complaint communication, what had become an increasingly common practice was that of making the periods when various documents could be viewed and comments or appeals concerning them made coincide with the most important summer holiday period, when many municipal offices are closed and the skeleton staffs on duty answer the telephone only selectively.

The solution to the matter was founded on reconciling the fundamental rights relating to the environment and good administration with each other. It is important from the perspective of their implementation to ensure that with respect to, among other things zoning and environmental permits, procedures for having documents available for public scrutiny are arranged in such a way that real opportunities for citizens to familiarise themselves with the documents and to express their comments and criticisms and make appeals are safeguarded. In summer, for example, documents must be available for the public to see them also for a sufficiently long time in June or August. It must also be ensured that if the relevant municipal office is closed during the summer, this does not make it more difficult to see documents. It was stated in the decision on another case concerning the legality of the way in which documents were made available for viewing that, although the procedure followed could not be deemed unlawful, taking the constitutional provision relating to influencing the living environment into account, it would have been advisable to act differently.

The right to information can also apply to the kind of living-environment-related matter that is not pending or otherwise under processing. That was the situation in a case where the complainant had written to a municipality and said he wanted to hear what measures had been taken or were being commenced to rehabilitate a lake that was in poor condition. That the complainant wished to receive an answer was clear from the letter. It was pointed out in the decision that Section 20 of the Constitution imposes an obligation on the public authorities to endeavour to guarantee for everyone the possibility to influence decisions that concern their own living environment. Safeguarding the availability of adequate information is a prerequisite for implementation of a fundamental right. Therefore it would have been advisable for the municipality to reply to the complainant in writing and inform him about those implemented and planned rehabilitation measures for the lake of which it was aware, the parties involved in the rehabilitation measures as well as the municipality's involvement in the rehabilitation.

As I see it, it is obvious that the authorities do not have an absolute duty to reply without delay to all kinds of general enquiries that require broad explanation. However, the obligation to promote implementation of fundamental rights calls for proactive measures on the part of the public authorities. When considering to what extent and within which time frame enquiries must be replied to, the objective must be that information is available sufficiently to ensure that the opportunity to influence decision making with a bearing on the living environment is implemented in reality.

Among the things that emerged when the complaint was being investigated was that delay in replying to the letter was due to the environment department's workload, the need to deal with ongoing extensive, acute matters and a permanent backlog of work. It was found in one survey that the workload of the environment department was constantly greater than the available resources. The matters to be taken care of had to be constantly prioritised in the municipality to ensure that acute matters requiring immediate measures were taken care of. If shortcomings relating to resources are general in a municipality, this inevitably affects implementation of a fundamental right. The situation can not be considered acceptable.

A real opportunity to exercise influence presupposes timely receipt of information in a variety of projects that influence the environment. From the perspective of the opportunities to participate and influence that are enshrined in Section 20 of the Constitution, it has been regarded as somewhat problematic, for example, that a municipality arranges an architectural competition before the zoning plan in question has been on public view as even a draft. Safeguarding opportunities to influence decision making with a bearing on the living environment would also have been an argument in favour of people living close to an airport being given the opportunity to present their views before significant flight-route rearrangements associated with the use of runways were made.

In a case concerning the establishment of a temporary storage depot for liquefied gas, the residents of the area were not given an opportunity that was adequate in the meaning of the Constitution to influence decision making with a bearing on their living environment. It was pointed out in the decision that it is important to ensure that those who make decisions on a matter are aware of any views that city residents may have on, inter alia, safety questions. Provision of information about the matter and handling of the matter should have been timed in such a way that the period between them would safeguard a real opportunity for the residents to participate and present their opinions.

WHAT ABOUT ANIMAL RIGHTS?

Although overseeing implementation of animal rights does not actually belong to the Parliamentary Ombudsman's remit, also they can indirectly become a focus of oversight of legality.

That was the situation in, for example, a case relating to the killing of a capercaillie (*Tetrao urogallus)* that had strayed into a city. The police had shot the bird, which had been causing a disturbance. According to the person making the notification, the capercaillie had been causing a disturbance for several days. One of the main grounds mentioned was the nuisance caused by the bird's defecation. Because the Parliamentary Ombudsman's task is to oversee implementation of fundamental rights and because the Constitution assigns responsibility for nature and its diversity to everyone, the action of the police was evaluated also in the light of these constitutional provisions.

According to the reasons presented for the decision, what had to be taken as the starting point in assessing the action of the police was the concrete nature of the danger caused by the capercaillie and the magnitude of the disturbance as well as how urgent it was to remove the bird. The facts presented in the case did not indicate that it would have been an especially urgent one. At the time of the event, there was no danger of a kind that would have required the immediate killing of the capercaillie, even though the bird had impeded children's outdoor activity. Killing the bird should have been seen as only an action of last resort. Before that, the possibility of using other means should have been examined. From the perspective of safeguarding fundamental rights, moving the bird to another location would have been an alternative that was amenable to fundamental rights and accorded with the principle of proportionality.

In contrast to this decision concerning the killing of a capercaillie, no reference to the environmental fundamental right has been made in decisions concerning the hunting of protected wolves or lynxes and hunting licences.

Oversight of legality can also have an indirect importance for animal welfare. Let us think, for example, of decisions that concern banning fishing for salmon and trout in the sea area of the River Tornionjoki fishery district, application of the River Tenojoki Fishery Agreement and regulations in fishing licence-related matters, the actions of a fishery authority and fishery overseer in monitoring fishing and shortcomings in regulation of it or, for example, the actions of a reindeer herding association in building a reindeer fence under the provisions of a state treaty between Finland and Norway.

Complaints are also often made to the Ombudsman about the authorities' passivity, such as for example instances of their not having overseen animal welfare sufficiently effectively and intervened in alleged cases of neglecting to care for animals or shortcomings in animal transport, or such matters as the earmarks used to identify animals not withstanding wear and tear. In these cases, whether they concern a sow being kept in a cage that prevents her from turning or a horse being kept in conditions that contravene the Animal Welfare Act, the Ombudsman's oversight amounts to monitoring of the animal welfare authorities. Measures under the Animal Welfare Act can be taken by a Regional State Administrative Agency, a municipal veterinarian, a municipal official responsible for health protection or the police. They are empowered to conduct inspections and must, through advice, prohibitions and orders, strive to ensure that shortcomings in animal welfare are redressed. The Ombudsman must also exercise oversight to ensure that the supervisory authorities act lawfully and do not exceed their authority.

An obligation to promote implementation of fundamental rights has been imposed on the public authorities in the Constitution. Together with the environmental fundamental right, the provision could provide a basis for intervening in some situations of passivity on the part of authorities.

RESPONSIBILITY AND INTERACTION

Since the Fundamental Rights reform of 1995, its Section 20 had been applied in two or three decisions by the Ombudsman each year. Nowadays, a reference to the environmental fundamental right features in six to eight decisions. In addition to these, the issue in several complaint cases has been a procedure that affected the environment and natural diversity in many different ways, although the environmental fundamental right did not feature in the actual assessment of legality.

A change that is more important than growth in the number of cases in oversight of implementation of fundamental rights is strengthening of the legal significance of the constitutional provision. It would appear that the environmental fundamental right has gradually undergone a transformation from a political and moral obligation that is regarded as a guideline to the status of a genuine fundamental right, which has a strong interpretative influence in guidance of the Ombudsman's consideration. This manifests itself in the Ombudsman's decisions as above all an emphasis on the responsibility of the public authorities and the individual as well as a cherishing of interaction in relation to decision making.

2 The Ombudsman institution in 2010

2010 was the Finnish Ombudsman institution's 90th year of operation. The Ombudsman began his work in 1920, making Finland the second country in the world to adopt the institution. The next countries to follow the example were Denmark in 1955 and Norway in 1962. The Ombudsman institution originated in Sweden, where the office of Parliamentary Ombudsman was created by the Riksdag in 1809.

The International Ombudsman Institute, IOI, currently has about 160 members. However, some ombudsmen are regional or local; Germany and Italy are examples of countries that do not have parliamentary ombudsmen. The post of European Ombudsman was created by the EU in 1995.

2.1 TASKS AND DIVISION OF LABOUR

The Ombudsman is a supreme overseer of legality elected by the national parliament, the Eduskunta. He or she exercises oversight to ensure that those who perform public tasks obey the law, fulfil their duties and implement fundamental and human rights in their activities. The scope of the Ombudsman's oversight includes courts, authorities and public servants as well as other persons and bodies that perform public tasks. By contrast, private instances and individuals who are not entrusted with public tasks are not subject to the Ombudsman's oversight of legality. Nor may the Ombudsman examine the Eduskunta's legislative work, the activities of parliamentarians or the official actions of the Chancellor of Justice.

The two supreme overseers of legality, the Ombudsman and the Chancellor of Justice, have virtually identical powers. The only exception is oversight of lawyers, which is the sole responsibility of the Chancellor of Justice. Only the Ombudsman or the Chancellor of Justice can decide to bring a prosecution against a judge for an unlawful action in an official capacity.

In the division of labour between the Ombudsman and the Chancellor of Justice, however, responsibility for matters concerning prisons and other closed institutions where people are detained without their consent as well as for deprivation of freedom as regulated by the Coercive Measures Act has been centrally entrusted to the former. He or she is also responsible for matters concerning the Defence Forces, the Border Guard, peacekeeping personnel and courts martial.

The Ombudsman is independent and acts outside of the traditional tripartite division of the powers of the state – legislative, executive and judicial. The Ombudsman has the right to receive from authorities and others who perform a public service all the information he needs in order to perform his oversight of legality. The objective is, inter alia, to ensure that various administrative sectors' own systems of legal remedies and internal oversight mechanisms operate appropriately.

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

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

In addition to the Ombudsman, the Eduskunta elects two Deputy-Ombudsmen. All serve for four-year terms. The Ombudsman decides on the division of labour between the three. The Deputy-Ombudsmen decide on the matters entrusted to them independently and with the same powers as the Ombudsman.

The Eduskunta elects the Ombudsman and two Deputy-Ombudsmen. From left, Ombudsman Petri Jääskeläinen and Deputy-Ombudsmen Maija Sakslin and Jussi Pajuoja.

In 2010 Ombudsman Jääskeläinen dealt with cases involving questions of principle, the Council of State (i.e. Government) and other of the highest organs of state. In addition, his oversight included matters relating to courts and administration of justice, the prison service, health care and language. The matters for which Deputy-Ombudsman Pajuoja was responsible included police, the prosecution service and the Defence Forces, education, science and culture as well as labour affairs and unemployment security. Deputy-Ombudsman Sakslin (from 1.4.2010) dealt with matters pertaining to, for example, social welfare, children's rights, regional and local government as well as distraint and foreigners.

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

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

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

The tasks statutorily assigned to the Ombudsman provide a foundation also for determining what kinds of values and objectives can be set for both oversight of legality and the work of the Office in other respects as well. The values of the Office of the Parliamentary Ombudsman were confirmed in 2009. When they were being defined, the central ones to which the Office subscribes were examined from the perspectives of clients, the authorities, the Eduskunta, the personnel, and management. The project continued in 2010, when the theme was how to get values into an everyday setting and working; for example the question of where and how values should manifest themselves in practice.

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

2.3 MODES OF ACTIVITY AND AREAS OF EMPHASIS

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

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

Fundamental and human rights come up in oversight of legality not only when individual cases are being investigated, but also in conjunction with, e.g., inspections and deciding the thrust of own-initiative investigations. This report contains a separate Chapter 3, which deals with fundamental and human rights.

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

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

An emphasis on fundamental rights is reflected also otherwise in determining the thrust of the Ombudsman's activities. In addition to oversight of fundamental and human rights, also their active promotion is

THE VALUES AND OBJECTIVES OF THE PARLIAMENTARY OMBUDSMAN

Values

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

Objectives

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

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

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

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

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

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

regarded as being part of the Ombudsman's remit. In connection with this, the Ombudsman has discussions with various bodies that include the main NGOs. On inspections and when investigating matters on his own initiative he takes up questions that are sensitive from the perspective of fundamental rights and have a broader significance than individual cases. The special theme in oversight of fundamental and human rights in 2010 was language rights and the requirement that clear and precise language be used. The content of the theme is outlined in Sub-Chapter 3.5 dealing with fundamental and human rights.

2.4 PROJECTS FOR REFORM

Two legislative projects that will influence the Ombudsman's activities in the next few years were still under preparation in 2010.

A working group appointed by the Ministry of Justice in summer 2009 to examine possibilities of creating a human rights institution in accordance with the Paris Principles concluded its work in summer 2010 and a Government Bill concerning the matter was submitted to the Eduskunta in the autumn. It was proposed in the Bill that a Human Rights Centre, a state body tasked with promoting fundamental and human rights and which would be autonomous in its operations and independent of other actors, be created under the aegis of the Office of the Parliamentary Ombudsman. Additionally proposed was the statutory establishment in connection with the human rights centre of a human rights delegation, which is intended to meet the requirement in the Paris Principles that the national human rights institution feature an extensive cooperation network or a pluralistic composition.

Some significant changes, which will affect the Ombudsman's activities, to the provisions of the Parliamentary Ombudsman Act were also proposed in the Bill. Ombudsman Jääskeläinen deals in greater detail with the amendments to the Parliamentary Ombudsman Act and the human rights centre in his comment article in the beginning of this annual report. The Eduskunta approved the legislative amendments on 8.3.2011.

Preparations for ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) were still under way at the Ministry for Foreign Affairs during the year under review. Ratification presupposes the creation of a national monitoring body. The OPCAT Working Group, which is doing the preparatory work, recommends that the Ombudsman act as this monitoring body. The monitoring body would be tasked with, inter alia, inspecting places where people who have been deprived of their liberty are held or can be held, such as prisons, police cells and psychiatric hospitals. This task will bring new reporting obligations and will require an expansion of the Ombudsman's inspections, development of their contents and the use of experts from outside the Office. The OPCAT Working Group concluded its task in March 2011.

2.5 COMPLAINTS AND OTHER OVERSIGHT OF LEGALITY MATTERS

The number of complaints received in 2010 was 4,079, or about 300 fewer than in the previous year. Factually, the number of complaints has remained on the same level, because about 350 relating to one matter were received in 2009. The number of complaints resolved during the year was 3,960, or nearly as many as were received.

The number of complaints arriving by post or telefaxed or delivered personally has been gradually declining in recent years and, correspondingly, the number received via e-mail has substantially increased. About 54% of complaints arrived by the electronic route in 2010. It was the second year in which e-mailed complaints represented the majority. The percentage in 2009 was 55%.

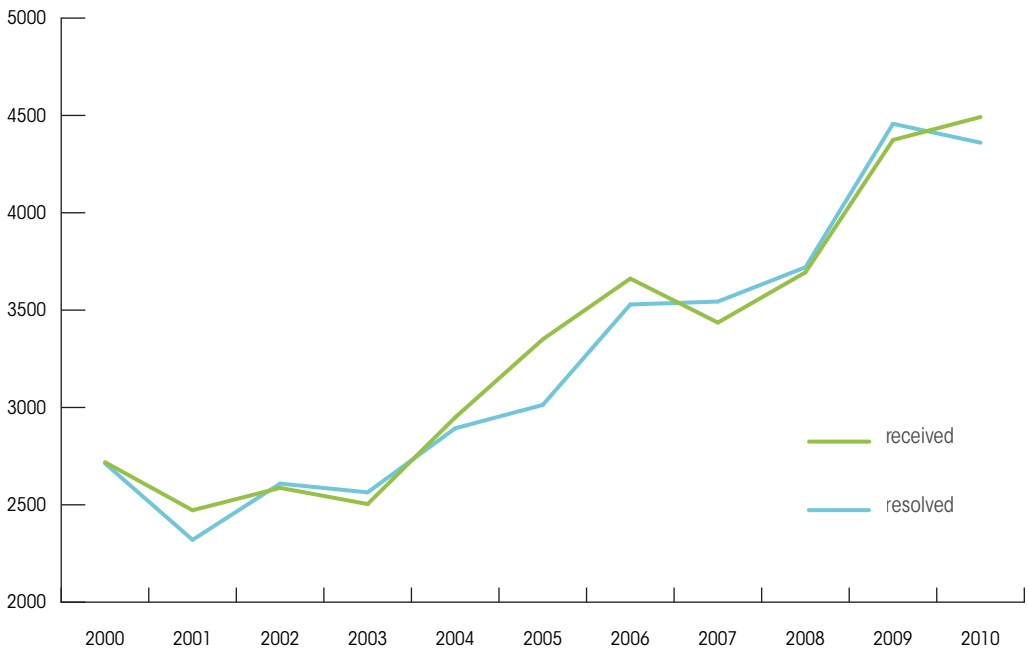
Complaints that have reached the Ombudsman are recorded in their own subject category (category 4) in the register of the Office of the Parliamentary Ombudsman. Within about a week, the complainant

is informed by letter that the complaint has been received. A notification that a complaint has arrived by e-mail is sent immediately.

Some complaints are dealt with through an accelerated procedure. Just over 800 complaints, or around 20% of the grand total, were dealt with this way in 2010. The purpose in dealing with complaints through the accelerated procedure is to ensure already at the reception stage that those matters recorded as complaints that do not require closer examination are preliminarily separated. The accelerated procedure is suitable in especially cases where there is manifestly no ground to suspect an error, the time limit has been exceeded, the matter is not within the Ombudsman's remit, the complaint is non-specific, the matter is pending elsewhere or what is involved is a repeat complaint in which no ground for a re-appraisal of the decision in the earlier complaint is evident. A

▮ received ▮ resolved	2009	2010
Complaints	4,346 4,458	4,034 3,960
Transferred from the Chancellor of Justice	27	45
Taken up on own initiative	72 80	63 52
Requests for submissions and attendances at hearings	49 47	60 58
Other written communications	322 318	290 290
Total	4,816 4,903	4,492 4,360

Oversight-of-legality matters received and resolved in 2009–2010



Complaints received and resolved in 2000–2010

notification letter about complaints that are being dealt with through the accelerated procedure is not sent to the complainant. If it emerges that a complaint is not suitable for accelerated handling after all, it is returned to the ordinary complaints category, and a notification letter is sent to the complainant from the Registry. In matters that are being dealt with through the accelerated procedure, a draft response is sent within one week to the party deciding on the case. The complainant is sent a reply signed by the legal officer taking care of the matter.

Letters of an enquiry nature received from citizens, clearly unfounded communications or those that concern matters that are not within the Ombudsman's remit or are non-specific in their contents as well as unanimous letters are not dealt with as complaints; instead, they are recorded in their own category of matters (Category 6, other written communications). However, they are counted as oversight of legality matters and forwarded from the Registry to the Secretary General, who distributes them to the notaries and inspectors. The person who has sent a letter of also this kind receives a reply from the Office of the Parliamentary Ombudsman. The reply concepts for this category of matters are examined by the Secretary General. In 2010 there were 290 communications belonging to this register category.

Letters that are received for information only are likewise recorded, but not replied to. However, the Secretary General examines them. Contacts that are made using the feedback form on the web site are dealt with in accordance with these principles. In 2010 nearly 800 communications intended for information were received.

In 2010 the ten biggest categories of cases accounted for 80% of complaints. The numerical data for the ten biggest categories are shown in Annex 2.

A total of 52 matters were investigated on the Ombudsman's own initiative in 2010. Of these, 35, or 67%, led to measures by the Ombudsman. Of the own-initiative matters in 36 cases an authority was asked for a report or statement. Of these, 26, or just over 72%, led to measures by the Ombudsman.

The Office of the Parliamentary Ombudsman aims to deal with all complaints within a maximum target period of one year. This objective has been gradually approached in the course of recent years. Whereas at the beginning of the decade 50–60 complaints over two years old were being transferred to the following year, there were none of them at all at the end of 2010. The year under review was the second successive year when of no complaints over two years old was postponed until the following year. The number of complaints pending for more than a year and a half has declined. At the end of 2010, slightly over 80 complaints that had been pending for longer than a year and a half and about 360 that had been pending for over a year were postponed until 2011 (see table on the next page).

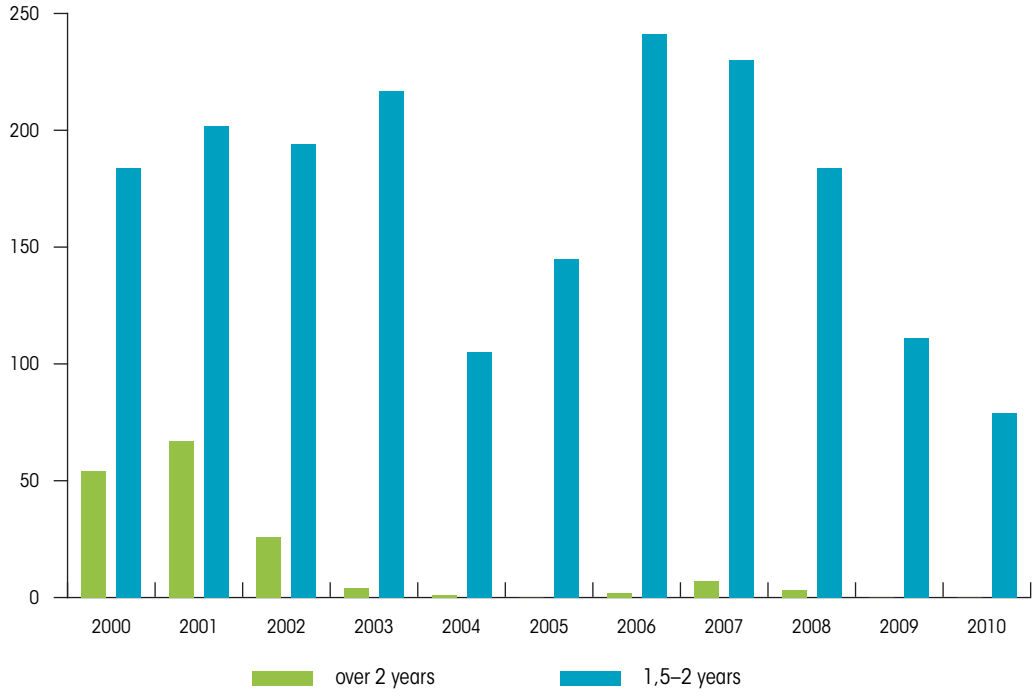
The statistical data on the Ombudsmans's work in 2010 are shown in annex 2.

The average time needed to deal with oversight-of-legality matters was 5.8 months at the end of the year. This represents a decline from the previous year's average, which was 6.1 months (see table on next page).

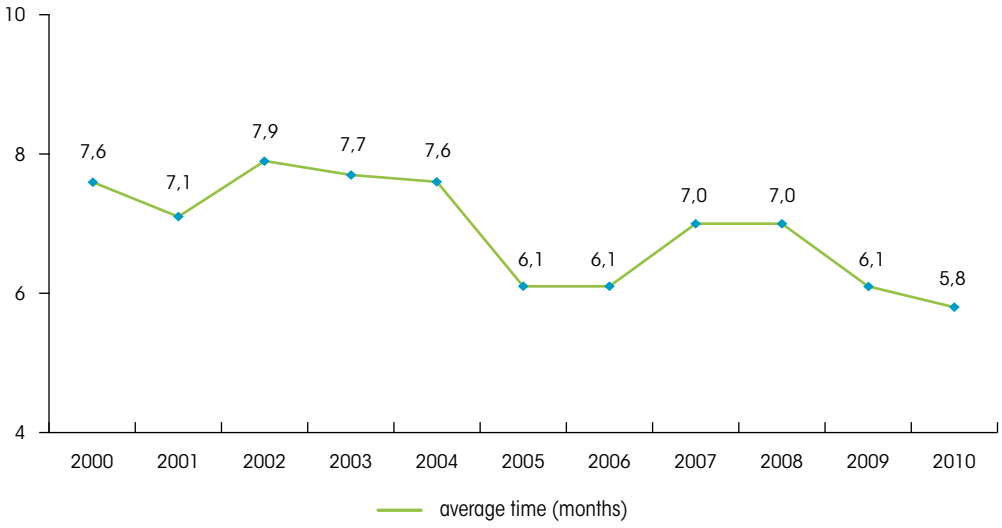
2.6 MEASURES

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

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



Cases pending for longer than eighteen months in 2000–2010



Average time taken to deal with complaints in 2000–2010

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

Decisions that led to measures totalled 782 in 2010, which represented nearly 20% of all decisions. Complaints were investigated fully, i.e. by obtaining at least one report and/or statement in the matter, in 1,270 cases, or just over 32% of all cases. About 53% of cases that were investigated fully led to measures by the Ombudsman. In about 47% of cases, i.e.1,854, there was no reason to suspect that an erroneous action had been taken, and erroneous actions were not established in 368 cases (about 9%). The complaint was not investigated in 25% of cases (991).

The most common reason for a complaint not being investigated was the fact that the matter was still pending in a competent authority. An overseer of legality does not usually intervene in a matter that is being dealt with in an appeal instance or other authority. Pending matters that were not investigated represented 13% of cases (532) in which decisions were issued. In addition, matters that do not fall within the Ombudsman's remit and, as a general rule, those over five years old were not investigated.

If complaints that were not investigated are excluded from the examination, the share of all investigated complaints represented by those that led to measures was 25%.

No prosecutions for breach of official duty were ordered in 2010. 49 reprimands were issued and 667 opinions expressed. Rectifications were made in 46 cases in the course of their investigation. Decisions categorisable as proposals totalled 20, although stances on development of administration that in their nature constituted a proposal were included in also other decisions. See table on the next page.

2.7 INSPECTIONS

Inspection visits to 68 places were made during the year under review (58 the previous year). A list of all inspections is shown in Annex 3. The inspections are described in greater detail in conjunction with the various categories of cases.

Two-thirds of the inspections were conducted under the leadership of the Ombudsman or the Deputy-Ombudsmen and the remainder by legal advisers. Six inspection visits of prisons and police detention facilities were conducted without advance notice.

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

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

2.8 COOPERATION IN FINLAND AND INTERNATIONALLY

EVENTS IN FINLAND

Finnish Ombudsman institution marks 90th anniversary

The 90-year history of the Office of the Parliamentary Ombudsman was marked in many ways. February 2010 saw the arrangement in the Citizen's Info office in the Pikkuparlamentti annex building of three information events that were open to the general public. The keynote addresses at the events were made by the Ombudsman or the Deputy-Ombudsmen and

MEASURES TAKEN BY PUBLIC AUTHORITIES

Public authority	Measure						Total number of decisions	Percentages*
	Prosecution	Reprimand	Opinion	Recommen-dation	Rectification	Total		
Social security		9	162	1	11	183	773	23,7
- social welfare		9	133	1	7	150	493	
- social insurance			29		4	33	280	
Police		7	120		4	131	701	18,7
Health care		12	84	4	6	106	448	23,7
Prisons		3	80	6	5	94	329	28,6
Labour			44		2	46	245	18,8
Courts		1	30	1	2	34	223	15,2
- civil and criminal		1	28	1	2	32	203	
- special								
- administrative			2			2	20	
Environment		1	27		1	29	143	20,3
Education			24	2	2	28	134	20,9
Local-government		6	19	1	1	27	195	13,8
Other subjects of oversight		4	13		3	20	149	13,4
Enforcement			16			16	96	16,7
Defence administration			12		1	13	40	32,5
Transport and communications		1	5	1	5	12	72	16,7
Agriculture and forestry		1	9		1	11	69	15,9
Guardianship			6	2	1	9	58	15,5
Customs			8			8	41	19,5
Taxation		1	2	1		4	63	6,3
Asylum and immigration		3				3	60	5,0
Prosecutors			1		1	2	89	2,2
Highest organs of state			1	1		2	37	5,4
Church			2			2	14	14,3
Municipal councils			2			2	23	8,7
Private parties not subject to oversight							10	
Total		49	667	20	46	782	4 012	19,5

* Percentage share of measures in decisions on complaints in a category of cases and measures investigated on own initiative

described the institution in general. The themes included social affairs, police matters and closed institutions, constitutional rights, good administration, municipal affairs and minorities.

To mark the anniversary, a jubilee book containing a compilation of articles on various sectors of the Ombudsman's oversight of legality was published. The articles were written by staff members at the Office of the Parliamentary Ombudsman. The book was published not only in Finnish and Swedish versions, but also in English, thanks to which it found an extensive international readership.

The actual 90th anniversary celebration event was on 11.2.2010 in the auditorium of the Pikkuparlamentti annex building. The guests invited were, in addition to representatives of Finnish cooperation instances – the Eduskunta, authorities, the scientific community, NGOs and media – ombudsmen from other Nordic countries and Estonia as well as European representatives of the Board of the International Ombudsman Institute (IOI). President of the Republic Tarja Halonen honoured the event with her presence. Speaker Sauli Niinistö conveyed the greeting of the Eduskunta.

Ombudsman Jääskeläinen opened the event with some words of greeting. The Finnish Broadcasting Company journalist Ari Mölsä had compiled a visual presentation titled "Vignettes from the recesses of the archives". The festive presentation was made by Professor, Director Pia Letto-Vanamo on the theme "Does national justice have a future?" In his speech, the Swedish Ombudsman Mats Melin congratulated the world's second oldest ombudsman institution. He expressed, also on behalf of his Nordic colleagues and the IOI, his thanks to former Ombudsman Riitta-Leena Paunio for the significant work that she had done in the community of ombudsmen.

The Ombudsman sculpture "Kaikki", which means "all" or "everything", by Hannu Siren was presented at the event. The Parliamentary Ombudsman can award the sculpture to a Finnish or foreign person, authority or association that has meritoriously contributed to observance of legality and implementation of fundamental and human rights. The Ombudsman presented a silver version of the sculpture to President Tarja Halonen in recognition of her exceptionally worthy efforts to promote legality and fundamental and human rights.

The jubilee book contains a compilation of articles dealing with various sectors of the Ombudsman's oversight of legality.

The programme also featured a recitation by the actress Noora Dadu and a musical recital by the Virtuosi di Kuhmo quartet.

Other events in Finland

The Parliamentary Ombudsman's annual report for 2009 was presented to the Speaker of the Eduskunta on 8.6.2010.

Numerous groups from Finland visited the Office and discussions with them focused on topical matters and the Ombudsman's activities.

A silver Ombudsman sculpture was presented to President Tarja Halonen at the 90th -anniversary celebration on 11.2.2010. The presentation was made by Ombudsman Petri Jääskeläinen and his predecessor Riitta-Leena Paunio. (Top right)

The programme for the 90th -anniversary celebration in the Pikkuparlamentti annex building included a recitation by the actress Noora Dadu. (Bottom right)

Three events for the public were held in the Citizens' Info centre in the Pikkuparlamentti annex building as part of the celebrations marking the 90th anniversary of the Ombudsman institution. Each event had its own theme.

The Ombudsman, the Deputy-Ombudsmen and members of the staff of the Office made presentations and participated in numerous events during the year. The gatherings at which Ombudsman Jääskeläinen spoke included a Finnish Bar Association seminar, a lawyers' seminar organised by the Social Insurance Institution, a seminar jointly arranged by the Eduskunta and the World Bank, the 30th anniversary celebrations of the Finnish Association for Medical Law and Ethics and a seminar arranged by the Centre for Human Rights of Persons with Disabilities.

The Office of the Parliamentary Ombudsman and the Office of the Chancellor of Justice arranged a joint gathering for their staffs during the year under review.

INTERNATIONAL CONTACTS

The Office of the Parliamentary Ombudsman received visits during the year under review from representatives of the parliaments in Japan, Armenia, Kosovo, Bulgaria and Kenya as well as other groups of visitors from China, Russia, Nepal and Afghanistan.

The biennial meeting of Nordic ombudsmen took place in Greenland on 20–21.8.2010. The Ombudsman, the Deputy-Ombudsmen, the Secretary General and one legal adviser attended the gathering.

A meeting of the European region of the International Ombudsman Institute was arranged in Barcelona on 4–5.10.2010. The Ombudsman, Deputy-Ombudsman Sakslin and one legal adviser participated.

Deputy-Ombudsman Sakslin has been a member of the Executive Board of the European Union Agency for Fundamental Rights and attended its meetings in Vienna and Baden on 22–24.9.2010 and in Vienna on 13–15.12.2010.

The Parliamentary Ombudsman belongs to the European Ombudsmen Network, the members of which exchange information on EU legislation and good practices at seminars and other gatherings as well as through a regular newsletter, an electronic discussion forum and daily electronic news services. Seminars intended for ombudsmen are arranged every other year by the European Ombudsman together with a national or regional colleague. The liaison persons, who serve as the network's nodal points on the national level, also meet in Strasbourg every other year.

A meeting of the European Ombudsman Network's liaison persons took place in Strasbourg on 6–8.6.2010. The principal aim was to develop cooperation with the European Commission's on-line problem solving network. The legal adviser from the Office who acts as the liaison person attended the meeting.

The Parliamentary Ombudsman has belonged to the cooperation network involving the Council of Europe's Commissioner for Human Rights and national human rights actors since its foundation in 2007. The main activities are direct exchanges of information between members, thematic workshops as well as a newsletter about Council of Europe functions that is published at approximately fortnightly intervals. The annual meeting of liaison persons has been arranged in Strasbourg or Budapest.

The year under review saw a shift in the network's activities more towards the NPM (National Preventive Mechanism) project associated with implementation of the Optional Protocol to the UN Convention against Torture (OPCAT) and workshops arranged within this framework as well as a newsletter relating to the theme. The Ombudsman has not been able to participate in these activities, because Finland has still not completed the process of ratifying the Optional Protocol.

The meeting of cooperation network liaison persons during the year under review took place in Strasbourg on 3.12.2010. One of the matters discussed there was a proposal by Secretary General Thorbjørn Jagland of the Council of Europe that help be sought from the national level to deal with the case backlog of the European Court of Human Rights. The proposal was associated with a high-level conference arranged in Interlaken in February 2010 to discuss the future of the Court. At that conference, the Member States approved an action plan in accordance with which ways of mediating comprehensive and objective information to possible complainants to the Court should be studied. The legal adviser from the Office of the Parliamentary Ombudsman who serves as the liaison person attended the meeting.

Legal advisers from the office also attended a Council of Europe seminar dealing with safeguarding of the rights of mental health patients that took place in Bilbao on 16–19.11.2010 and an international seminar for ombudsmen who monitor defence forces in Vienna on 25–28.4.2010.

During the year, the Office of the Parliamentary Ombudsman replied to numerous requests from international bodies and other cooperation partners for information on human rights or the Ombudsman's activities.

2.9 SERVICE FUNCTIONS

SERVICES TO CLIENTS

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

Two lawyers at the Office are tasked with advising members of the public on how to make a complaint. They dealt with some 2,700 telephone calls last year and about 170 people visited the Office in person.

The Registry at the Office receives complaints and replies to enquiries about them, in addition to responding to requests for documents. Last year, the Registry received about 2,500 telephone calls. There were around 290 personal visits by clients and 230 requests for documents. The records clerk mainly provides researchers with services.

COMMUNICATIONS

The media are informed of those decisions by the Ombudsman that are deemed to be of special general interest. About 35 bulletins outlining decisions made by the Ombudsman or a Deputy-Ombudsman were issued in 2010. The bulletins are also posted on the Internet in Finnish, Swedish and English.

In addition, decisions of considerable legal significance are posted on the Internet. About 260 of them were posted during the year. Publications, such as annual reports and brochures, are likewise posted on our web site.

The Ombudsman's web pages in English are at the URL: www.ombudsman.fi/english, in Finnish at: www.oikeusasiamies.fi and in Swedish at: www.ombudsman.fi. At the Office, information needs are also the responsibility of the Registry and the referendaries (legal advisers).

A project to prepare for and inaugurate an electronic desk in the Office was launched in autumn 2010 and the intention is that it will have been concluded by summer 2011.

2.10 THE OFFICE AND ITS PERSONNEL

The regular staff totalled 56 at the end of 2010. This was an increase of two on the previous year, because two secretarial posts were transferred from the Chancellery of the Eduskunta to the Office of the Parliamentary Ombudsman. The number of persons in the Office did not increase from the previous year as a result of the transfers of posts.

In addition to the Ombudsman and the Deputy-Ombudsmen, the regular staff of the Office comprised the Secretary General, five principal legal advisers, ten senior legal advisers and fourteen legal advisers and two lawyers with advisory functions. There were also an information officer and an online information officer, two investigating officers, four notaries, a records clerk, a filing clerk, an assistant filing clerk, three departmental secretaries and five office secretaries. A list of the personnel is shown in Annex 4.

In accordance with its rules of procedure, the Office has a management group comprising, in addition to the Ombudsman, the Deputy-Ombudsmen and the Secretary-General, three representatives of the personnel and the Information Officer as secretary. Discussed at meetings of the management group are matters relating to personnel policy and the development of the Office. The Management Group met 13 times in 2010.

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

3 Fundamental and human rights

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

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

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

This review begins from the international level with a summary of the year's human rights events. Most of this section is devoted to a review, articulated by fundamental rights, of decisions by the Ombudsman in 2010 that involved implementation of one or several fundamental and human rights.

3.1 HUMAN RIGHTS EVENTS

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

With the adoption of the Lisbon Treaty, the EU became a legal person and can accede to, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is stated in Article 6 of the Convention that the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Treaty is intended to streamline and clarify the Union's decision making. Under its provisions, the roles, tasks and composition of the institutions are altered to correspond to the needs of an enlarged Union.

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

In December 2009 the European Council adopted a new programme of work in the field of justice and home affairs for the years 2010–2014 (the Stockholm Programme). It is a follow-on to the Tampere and Hague programmes. A central objective of the Stock-

holm Programme is to ensure implementation of citizens' fundamental rights and strengthen their security. The Programme comprises seven chapters: an introduction, citizens' rights, a Europe of law and justice, a Europe that protects, access to Europe in a globalised world, migration and asylum matters, and the external dimension of freedom, security and justice. The aim with the Stockholm Programme is to strengthen a Europe of law and justice.

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

The Agency's first operational framework for a five-year period was confirmed in February 2008. It specifies the target areas in which the Agency can, in accordance with its founding decree, collect, analyse and distribute information as well as draft reports and make submissions. The areas of emphasis that have been chosen for the Agency's work include questions relating to racism and discrimination, children's rights as well as to asylum-seekers and migrants. In 2010 the Agency published several research reports (dealing with, inter alia, discrimination against minorities, the status of asylum-seeking minors, children's rights and various discrimination-related themes). Deputy-Ombudsman Maija Sakslin was elected to the Executive Board of the Agency for a five-year term beginning in July 2010.

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

In spring 2011 the Eduskunta enacted legislation under which an autonomous and independent Human Rights Centre will be established under the aegis of the Office of the Parliamentary Ombudsman. The Centre will be entrusted with the tasks associated with promotion of fundamental and human rights that are not currently taken care of sufficiently comprehensively or in an adequately coordinated manner. These tasks cover both the fundamental rights guaranteed in the Constitution and the human rights enshrined in international conventions, including those guaranteed by the EU.

The Human Rights Centre will have a Director and a Human Rights Delegation. The tasks statutorily assigned to it will cover, together with the Ombudsman's duties relating to oversight of legality, the totality of tasks that belong to a national human rights institution in accordance with the UN-approved Paris Principles. The reform will create an umbrella-type institutional structure, which will have synergetic effects on the existing fundamental and human rights structures as well as on work in this field. The objective is to create a framework within which fundamental and human rights affairs can be better coordinated as well as to promote exchanges of information and cooperation in these matters.

Finland took part during the year under review in negotiations with a view to the EU acceding to the European Convention on Human Rights. Finland also participated in a working group that is doing the preparatory drafting for an optional protocol to the UN Convention on the Rights of the Child that will allow individuals to make complaints. A working group doing the preparation to bring the Optional Protocol to the Convention on the Rights of the Child on the

sale of children, child prostitution and child pornography into effect has been continuing its work. The intention is to have a memorandum on entry into force completed in spring 2011.

A working group doing the preparatory work to bring the Council of Europe Convention on Action against Trafficking in Human Beings into force completed its report on 31.8.2010 and presented it to the Minister for Foreign Affairs. The report has been on an extensive round of submissions that ended in December 2010. A Government Bill will probably be introduced in the new Eduskunta emerging from the general election (in April 2011) in autumn 2011 or spring 2012.

A working group appointed by the Ministry for Foreign Affairs as long ago as September 2006, and which includes also a representative of the Office of the Parliamentary Ombudsman, continued to study the prerequisites for ratification of *the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*. It has been proposed in conjunction with the preparatory work on the matter that the Parliamentary Ombudsman be appointed as the national oversight body that the Optional Protocol presupposes. The report drafted by the working group began an extensive round of submissions in spring 2011. Legislation is planned to be introduced by the Government in autumn 2011.

Speaking at an annual seminar of the Finnish Bar Association in January 2011, the Ombudsman drew attention to the length of time that the process of ratifying the OPCAT Additional Protocol is taking. Finland signed the Additional Protocol as long ago as 2003, but preparatory work on the matter had still not been completed at the beginning of 2011. The Ombudsman pointed out that delay in ratifying international human rights conventions would appear to be one of more general challenges facing Finland as a state governed under the rule of law.

In 2010 Finland made several reports on national implementation of human rights conventions. Its third report on implementation of the Framework Convention for the Protection of National Minorities was provided in February and its fourth report on implementation of the European Charter for Regional or Minority Languages in September 2010. Finland's combined 5th and 6th periodic report on the Convention against Torture was made in September 2010. Its fifth report on the Council of Europe's revised European Social Charter was made in December 2010.

3.2 COMPLAINTS AGAINST FINLAND AT THE EUROPEAN COURT OF HUMAN RIGHTS IN 2010

In 2010 a total of 377 new cases (489) against Finland were registered at the European Court of Human Rights. A Government response was requested arising from 30 complaints. At the end of the year, decisions were pending in 551 cases (408).

The latest additional protocol, the 14th, to the Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on 1.6.2010. Its purpose is to safeguard the prerequisites for the effective functioning of the European Court of Human Rights by improving the efficiency with which complaints are screened and handled. The protocol facilitates more extensive handling of simpler matters in a slimmed-down composition (a new single-judge formation and greater powers for the committee formation), and with this a new admissibility criterion ("significant disadvantage") was adopted. In addition, the term of office of judges of the Court was extended to nine years, but can not be renewed. At the same time, the Council of Europe Commissioner for Human Rights was given the right to intervene by submitting written comments and taking part in oral hearings before all Chambers or the Grand Chamber.

A very large proportion, about 95%, of the complaints made to the European Court of Human Rights are ruled inadmissible. This is done either in a single-judge formation or through a so-called Committee decision (3 judges). The respondent State is not informed of this decision; instead, notification is made, in writing, only to the complainant. Thus the matter does not call for measures with respect to the State. In 2010

a complaint was ruled inadmissible or was struck from the list of cases in 214 (342) cases, of which 186 (304) by Committee decision and 31 (38) by Chamber decision.

A decision that a complaint satisfies the prerequisites for admissibility is made by the Court either in Committee formation (3 judges) or in Chamber formation (7 judges). A decision confirming a friendly settlement can also be made, whereby the complaint is struck from the Court's case list. The remaining judgments are given either in Committee or Chamber formation or by the Grand Chamber (17 judges). In its judgment, the Court resolves a case concerning an alleged violation of human rights or confirms a friendly settlement.

The Court issued 17 judgments concerning Finland during the year under review, i.e. fewer than in the previous year (29). In all but one judgment, a violation of a right guaranteed in the Convention on Human Rights was established.

In addition to judgments, the European Court of Human Rights issued 31 (38) decisions in Chamber formation. Of these, 14 (28) ended in a friendly settlement after the complainant and the government had reached agreement and six (14) cases were struck from the Court's agenda after Finland had conceded that a violation of a human right had occurred. In 11 Chamber-formation decisions no violation of a human right was established, or the complaint was ruled inadmissible on processual grounds.

In a total of 48 (67) Chamber-composition decisions (judgments + decisions) the State of Finland incurred a record annual cost figure of over €463,000 (€385,000).

A total of 201 (228) requests for an interim injunction to suspend enforcement of a national judgment in a case concerning a foreigner were made to the Court of Human Rights. Of these, the Court ruled in 195 cases. An interim injunction was granted in 80 cases, the request was turned down in 110 cases, and in five cases the request was deemed inadmissible on the ground that it had been made too late. In seven cases the Court lifted a temporary injunction that it had already granted.

By the end of 2010 Finland had received a total of 151 (128) judgments from the Court, and 74 (54) complaints had been decided on (through a decision or a judgment) as a result of a friendly settlement or a unilateral declaration by the Government. The number of times that the Court found against Finland in the period 1.11.1998–31.12.2010 is strikingly large, at 119 (99). In the same period, the total number of times that all of the other Nordic countries have been found guilty is 89 (54).

EIGHT VIOLATIONS OF FREEDOM OF SPEECH

On 4.2.2010 the European Court of Human Rights simultaneously issued five judgments that confirmed a violation of the freedom of speech enshrined in Article 10. The judgments related to the same totality of matters, in which journalists were subjected to measures under criminal law arising from reporting about a former National Conciliator and a person close to him.

The issue in the case *Flinkkilä and others* concerned legal proceedings in which a former National Conciliator A and his lady friend B had in a national court demanded a penalty and compensation for damages from journalists on the ground that articles published in a magazine were regarded as having violated B's privacy. The articles concerned an incident that had occurred in A's home and as a result of which A had been given a suspended sentence in a district court and B fined. A court of appeal, which had been the last national court instance to deal with the case, had fined four journalists for disseminating information that violated privacy and ordered them to pay compensation for damages to B. The Court of Human Rights took the view that, although B was a private person, she had stepped into the limelight of publicity in the circumstances of the case. The articles had been based mainly on an interview given by A, and detailed information about B's life had not been provided. Revealing B's identity had served the public interest. The court also took into consideration that B's identity had featured in the media already earlier and that the articles were associated closely with A's dis-

missal from his post. The Court also found that the penalties imposed on the journalists were disproportionate relative to their freedom of speech. On these grounds, the Court found that Article 10 of the Human Rights Convention had been breached. It ordered the State to pay the four journalists a total of €22,000 for material damages, each of them €2,000 for non-pecuniary damages and all of the complainants a total of €5,000 for the cost of legal proceedings; in other words, it ordered a grand total of €35,000 in compensation.

In the case *Iltalehti and others* a newspaper had published a large photograph of B. The court of appeal had found the reporting and publishing B's picture to have been unnecessary and thus inappropriate and ordered the publishing company to pay compensation for damages, inter alia, €5,000 for mental suffering. The court of appeal had dismissed a prosecution against the editor-in-chief of the newspaper. The Court of Human Rights assessed the case on grounds similar to those set forth above and ordered the State to pay the publishing company €12,000 compensation for material damages as well as €4,000 for the costs of court proceedings.

In the *Soila* case a court of appeal had ordered a journalist to pay compensation for damages to B, because he had dealt with B's private life in an illustrated newspaper article extensively and in a manner that, in the view of the court of appeal, violated B's privacy. The Court of Human Rights found that Article 10 of the Human Rights Convention had been violated and ordered the State to pay the complainant €2,000 compensation for material damage as well as €3,000 for the costs of legal proceedings.

The issue in the *Tuomela* case related to newspaper articles about B that had dealt with, inter alia, events associated with the incident mentioned and the consequences of the incident and provided information and background details concerning B's identity. Some of the information had been published for the first time and before judgments relating to the incident had been given. The information concerning B had been limited in the articles mainly to the judgment that she had been given on foot of the incident. The Court of Human Rights found that Article 10 had been breached and ordered the State to pay compensation totalling €12,000 for material damages to all of the complainants, compensation of €2,000 each to two journalists for non-pecuniary damages and a total of €4,000 for the costs of legal proceedings; i.e. a grand total of €20,000.

Also in the *Jokitaipale and others* case the Court of Human Rights found that Article 10 of the Convention had been breached in the same totality of cases, and it ordered the State to pay all of the complainants a total of €39,000 in compensation for material damage as well as compensation of €5,000 for non-pecuniary damage to each of the journalists; i.e. a grant total of €54,000.

Freedom of speech had been violated also in the *Niskasaari and others* case (6.7.2010). A journalist with a newspaper and its editor-in-chief had been fined for "public slander committed through a printed product" and ordered to pay compensation as a result of reporting in the newspaper about a Child Ombudsman with the Mannerheim League for Child Welfare. The Court of Human Rights took the view that domestic courts had not weighed against each other the competing interests of the Child Ombudsman and the complainants and had therefore not considered the matter from the perspective of whether the complainant had had the right to publish the article, nor had they taken into consideration the correction subsequently published in the paper. The Court found that the unreasonably long time taken to deal with the case (6 years and 3 months) had likewise breached a right as protected in Article 6. It ordered compensation in the amount of €28,688 to be paid to the complainants for economic damages and costs of €8,500.

The seventh judgment in which Finland was found guilty of having violated freedom of speech was the *Mariapori* judgment (6.7.2010). A person who had criticised the tax authorities in her book had been given a suspended prison sentence for slander and ordered to pay damages. The Court of Human Rights took the view that what had been involved was acceptable discussion of an important matter that was of public interest and that the imposition of a prison sentence in relation to it had been in no way justified. The Council of Europe has in its resolution 1577(2007) called on all of its member states to abandon immediately prison sentences in slander

cases. In this case, alone the severity of the sanctions showed that interference with freedom of speech had not been necessary in a democratic society. Due to the disproportionality of the sanction, the Court did not find it necessary to begin a closer examination of the arguments that the complainant presented in her book. Also Article 6 had been breached in that the trial had lasted so long (about 6 and a half years). The State was ordered to pay the complainant compensation of €33,390 for material damages, €6,000 for suffering and court costs of €10,000, i.e. a grand total of €49,390.

The eighth violation of freedom of speech during the year under review was established in the *Saaristo and others* case (12.10.2010). In it, journalists had been fined for violating the privacy of a person who had taken part in a presidential election campaign as an information officer; this had happened when newspaper articles reported this person's extramarital affair with the former spouse of a TV journalist (Supreme Court KKO 2005:82). The Court of Human Rights noted that the veracity of the information presented in the articles had not been disputed, and the reporting had been done in an objective manner. The person had, in accordance with his tasks associated with the election campaign, publicly championed the aims and objective of one presidential candidate by belonging to the candidate's inner circle and thereby appearing conspicuously in the media during the campaign. By accepting these tasks, he must have understood that his own person would receive public attention and that the scope of his protected private life would be more limited. The Court of Human Rights took the view that the reasons presented by the domestic courts, although relevant in and of themselves, had not adequately demonstrated that intervention in the complainant's freedom of speech had been necessary in a democratic society. The State was ordered to pay compensation of €14,900 for material damages and €13,000 in costs.

The only judgment concerning Finland last year in which a breach of human rights was not established also related to freedom of speech. In the case *Ruokanen and others* (6.4.2010), the fines imposed on reporters for gross slander and the total of €89,000 in damages that they had been ordered to pay meant, in the opinion of the Court, an acceptable intervention in the exercise of freedom of speech. The reporting was deemed to have been contrary to the presumption of innocence and to have damaged persons' reputations when it had been written, as a factual claim, in a newspaper article that a pesäpallo (Finnish baseball) championship party had ended in a student being raped, but there was no mention of the fact that a criminal investigation had not yet been initiated at that stage.

TWO JUDGMENTS CONCERNING THE LEGAL TIME PERIOD OF THE DECREE IMPLEMENTING THE PATERNITY ACT

The issue in the *Backlund* and *Grönmark* cases (6.7.2010) involved Section 7.2 of the Decree implementing the Paternity Act, according to which a suit to confirm paternity should have been initiated within five years of the Paternity Act entering into force on 1.10.1976, i.e. not later than 1.10.1981. In both cases, a complainant born before the entry into force of the Paternity Act had filed a suit to confirm paternity after the statutory five-year legal time period had expired and the suits were not examined.

The Court of Human Rights took the view that the strict time limit set for a paternity confirmation suit and failure to take the circumstances of individual cases into account weakened protection of private life. Taking into consideration the absolute nature of the time limit in question and the fact that the Supreme Court did not allow exceptions to it (e.g. KKO:2003:107), a fair balance had not been struck between the dif-ferent interests. In the Backlund case, the State was ordered to pay €6,000 in compensation for non-pecuniary damage and €5,000 in costs, and in the Grönmark case correspondingly €6,000 and €5,000. In addition, the Court decided in both cases to postpone handling of the question of any material damages until later. Thus the total amount of the State's liability for compensation in these cases may increase further in the future.

VIOLATIONS OF THE RIGHT TO A FAIR TRIAL

At issue in the *Suuripää* case (12.1.2010) was, in addition to the duration of the trial, also the question of whether the Supreme Court should have held an oral hearing in a case of bribery involving a civil servant (KKO 2002:51). The Court of Human Rights ruled that, taking into consideration the importance of the case from the complainant's point of view, the Supreme Court could not have been able to deal with the case appropriately without directly examining the account that the complainant had personally given and without holding an oral hearing. Both this and the approximately 3 years and 11 months taken to deal with the case in two legal instances meant a breach of Article 6. The Court of Human Rights ordered the State to pay the complainant compensation of €6,250 for suffering and costs of €2,500.

What was at issue in the *A.S.* case (28.9.2010) was a sex offence in which the judgment was based partly on a video interview with a minor involved party, although the accused had not been given the opportunity to put questions to the child. The Court of Human Rights had not deemed the accused to have waived his rights, although he had consented, on certain conditions, to the video being viewed. Since the video interview with the child had been the only direct evidence and the complainant had not been able to put questions to the child, the procedure violated the requirements of Article 6. The State was ordered to pay the complainant compensation of €3,500 for suffering and €6,338 in trial costs.

JUDGMENTS CONCERNING UNDUE DELAY IN TRIALS

The right to a trial within a reasonable period of time was regarded as having been violated, alongside other breaches of rights, in three of the cases mentioned in the foregoing (Niskasaari and others, Mariapori and Suuripää). In addition to these, the European Court of Human Rights found that the right safeguarded in Article 6 had been breached in four other cases as well:

- *Huoltoasema Matti Eurén and others* (19.1.2010): an administrative law case took over 6 and a half years to complete; the State was ordered to pay €2,500 to compensate for the costs of legal proceedings.
- What the *Rangdell* case (19.1.2010) involved was two sets of civil proceedings (one lasting over 4.5 years in one court instance and the other about 6.5 years), arising from which the State was ordered to pay compensation of €8,000 for suffering and costs of €3,000.
- In the *Raita* case (16.2.2010) civil proceedings took about 8 years and 2 months; the State was ordered to pay €2,500 in compensation for trial costs.
- In the *Nousiainen* case (23.2.2010) a criminal trial lasted nearly 8 years. The State was ordered to pay each of the complainants €3,000 in compensation for suffering and €1,976 in trial costs.

CASES THAT ENDED IN FRIENDLY SETTLEMENTS OR WITH A UNILATERAL DECLARATION

In 14 of the cases that ended in friendly settlements the complainant had withdrawn the complaint to the European Court of Human Rights after the State of Finland had offered to make recompense and pay the costs of legal proceedings. Six (13) ended with a unilateral declaration by the Government, i.e. an admission that a breach of human rights had occurred (marked with an asterisk * in the table). All of the cases that ended in this way during the year under review concerned the duration of legal proceedings (information on the duration of the proceedings is not revealed in all cases).

V.S. (12.1.2010)*	Civil proceedings	over 7 years	€3,895
Vunukainen (12.1.2010)	Criminal proceedings		€5,500
Arhela (12.1.2010)	Criminal proceedings		€11,250
Ackermann (19.1.2010)*	Civil proceedings	over 11 years	€10,450
Marttinen (16.3.2010)	Criminal proceedings		€11,500
Marsynaho (30.3.2010)*	Administrative court proceedings	over 6 years 6 months	€4,940
Kohi and Kuisma (10.11.2009)	Civil proceedings		€14,500
Paronen (11.5.2010)	Civil and criminal proceedings		€11,000
Pohjarakennus Oy Korpela (18.5.2010)*	Administrative court proceedings	nearly 9 years	€7,125
Ruohoniemi (22.6.2010)	Criminal proceedings		€13,000
Parviainen (22.6.2010)	Criminal proceedings		€4,200
Kellosalo (29.6.2010)	Administrative court proceedings		€5,900
Lehtinen (31.8.2010)*	Criminal proceedings	over 11 years	€10,213
Huovinen and Ekostyle Oy (31.8.2010)	Administrative court proceedings		€3,850
Leino (7.9.2010)	Civil proceedings		€4,500
Hietanen (7.9.2010)	Criminal proceedings		€8,500
Auto-Nestor Oy and others (7.9.2010)*	Civil proceedings	over 10 years	€3,656
K.E. (28.9.2010)	Criminal proceedings	over 10 years	€6,085
Nurminiemi (9.11.2010)	Civil proceedings		€9,800
Silvasti (30.11.2010)	Criminal proceedings		€3,800

Agreed settlements in cases concerning length of proceedings

COMPLAINTS OTHERWISE RULED INADMISSIBLE BY CHAMBER DECISION

A total of 11 (11) complaints dealt with in Chamber formation were ruled inadmissible on the ground that no breach of a right was established or on a variety of processual grounds.

The *Ahlskog* decision issued by the Court on 9.11.2010 concerned the new legal remedies against undue delays in trials that entered into force on 1.2.2010. The Court found the Act on recompense for delays in trials to be an effective legal remedy in the manner required by Article 13. Since the legal proceedings to which the complaint referred were still pending in Finland and since it was possible to seek compensation for the delay on the national level, the Court decided not to examine the complaint on the ground of failure to exhaust domestic legal remedies. Correspondingly, the Court likewise ruled the complaint inadmissible as premature in the *Olkinuora and others* case (14.12.2010).

In the *Koivusaari and others* case (23.2.2010), which concerned the Vrouw Maria wreck, the Court rejected the complainant's claims with respect to, inter alia,

protection of property, retroactivity of legislation, effectiveness of legal remedies and discrimination. At issue in the *Wikstedt* case (12.10.2010) were claims, which did not succeed, relating to the fairness of a bankruptcy process. In the *Sydänmäki* case (21.9.2010) the Court rejected a complaint alleging the Bank of Finland's pension system was discriminatory on the ground of failure to avail of domestic legal remedies. The *Artemi and Gregory* case (30.9.2010) involving a complaint against 22 EU states, Finland among them, and alleging restriction of the right of movement of EU citizens was struck from the court's agenda because of the complainants' passivity.

In the *Elomaa* case (16.3.2010) a claim of self-incrimination by the complainant in association with a distraint procedure did not succeed. In the case *Aalto and others* (23.3.2010) the Court rejected claims by the complainant and 1,035 other complainants concerning access to a court, the duration of court proceedings and protection of property in a case in which the issue was the effect, in a situation where not a single one of the complainants had yet retired, on Defence Forces personnel of amendments made to the State Pensions Act in 1995.

The duration of a criminal trial (5 years 1 month 23 days) in a defamation of character case was not found to be in breach of Article 6 in the *Remes* case (9.2.2010). An unreasonable duration was likewise not established in the *Arolainen* case (9.11.2010), in which the complainant himself was found to have contributed to the criminal trial lasting over five years.

The issue in the *Penttinen* case (5.1.2010) was the duration of a case of administrative law. Several appeal cases concerning an appointment to an official post by a municipality had been in progress, the longest-lasting for 3 years and 8 months. The Court found that Article 6 was applicable to the application process for municipal posts when national law safeguarded the right to apply for a post and the right to appeal against an appointment decision, but took the view that a reasonable time for handling the matter had not been exceeded.

COMPENSATION AMOUNTS

In the cases where the finding went against it, the State of Finland was ordered to pay the complainants compensation totalling just over €313,000 (about €204,000 in 2009). The total may still increase, because in two cases the Court adjourned the question of material damages to be resolved in a separate judgment. It is noteworthy that alone freedom of speech violations incurred costs of nearly €248,000. Cases that ended with friendly agreements or unilateral declarations incurred a payment obligation of nearly €154,000 (€182,000). Thus complaints about breaches of human rights cost the State of Finland a total of over €463,000 (€385,000) in payments ordered during the year under review.

NEW COMMUNICATED COMPLAINTS

A response from the Government was requested in relation to 30 (38) new complaints. In one case, the Court issued its decision already in the course of 2010 (the K.E. case, concerning the duration of a criminal trial, which is mentioned in the table above). The other cases are awaiting decision by the Court.

The issue in two of the new communicated complaints was again an alleged instance of breach of freedom of speech. The question in three cases was the compatibility of our legislation on house searches from the perspective of Articles 6, 8 and 13 of the Human Rights Convention when a house search is not ordered by a court and the legality of the house search can not be referred after the fact to a court for resolution (The Court found in its ruling on the complaint on 15.2.2011 that a breach of Article 8 had occurred when a search warrant had not been requested in advance and the persons affected had not had the opportunity to have the decision to issue the warrant or the manner in which the house search had been conducted effectively examined retrospectively by a court). The issue in three cases is alleged gender discrimination on the part of the Bank of Finland's early retirement scheme with respect to those persons recruited by the Bank before 3.5.1977. Three of the

communicated complaints concern refusal of entry and deportation (to Italy and Malta) of asylum-seekers in accordance with the so-called Dublin treaty arrangement from the perspective of Article 3.

Two cases involve a precedent decision by the Supreme Court. In one of them, a Government response from the perspective of Article 6 has been requested with respect to Supreme Court decision 2010:41, in which protection against self-incrimination was not regarded as extending to a person convicted of concealing stolen goods, although the sentence imposed on the co-defendant on the main charge had been quashed on the same ground. The other case involved failure to arrange an oral hearing in a case concerning a lottery-related offence (KKO 2008:119).

The issue in one communicated complaint is, from the perspective of Articles 8, 12 and 14, that the authorities had not agreed to change the personal identification number of a complainant, who had changed gender from male to female, so that it expressed the altered gender, because the complainant's wife had not consented to a registered civil partnership.

3.3 THE OMBUDSMAN'S OBSERVATIONS

3.3.1 FUNDAMENTAL AND HUMAN RIGHTS IN OVERSIGHT OF LEGALITY

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

The purpose of the section is to outline a general picture of implementation of fundamental rights in administration and other activities that fall within the Ombudsman's powers of oversight. The feature of the decisions that is specifically highlighted here is their key fundamental and human rights-related content – several decisions will be dealt with in greater detail in the sections dealing with specific categories of cases, where the angle of examination is broader. It has not been possible to include here all of the decisions that are of significance from the perspective of fundamental and human rights.

3.3.2 EQUALITY, SECTION 6

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

The demands made by the *University of Helsinki's* faculty of medicine with respect to dentists specialising in oral and maxillofacial surgery were contrary to the intention of the Specialist Dentists Decree and placed those specialising there in an unequal position relative to those receiving equivalent training at the University of Turku (3515/4/09*).

The arguments that the *National Board of Customs* had presented in support of the processing arrangements it had chosen for handling applications for changes in automotive tax were that they were overall beneficial from the perspectives of the time taken to process matters, uniformity of decisions and process economics, i.e. the overall costs. With respect to importers of car models that were already then *a priori* more unusual, handling of applications for

changes had been delayed for as much as nearly a year longer than in the case of importers of models about whose vehicles sufficient comparative information was available to determine a general asking price. In addition, individual determination of the asking price of these rarer vehicles was also unusually time-consuming. The procedure could be considered problematic from the perspective of equality of taxpayers (1460/4/08).

Health care in a prison must be arranged for inmates in a way that it gives them an equal opportunity relative to the rest of the population to promote their health, prevent diseases and to avail themselves of adequate health services (4091/4/08 and 3510/4/09).

A *city social welfare department* required applications for income support to be made in writing. An exception to this requirement had been made in the case of one person by allowing these matters to be taken care of by e-mail. This was contrary to the principle of equality (1656/4/10).

The Act on the population data system and the Population Register Centre's *certification services* that entered into force on 1.3.2010 meant that prisoners who had no address of residence other than the address of the prison had no possibility, even at their own request, to have the mailbox or street address of the prison entered in the population data system. This situation cannot be considered satisfactory from the perspective of the principle of equality (626/4/09*).

The unequal status of *Sámi speakers* compared with Finnish- and Swedish-speakers was highlighted in a case that concerned a city's failure to arrange a completely Sámi-speaking day-care place for a child. The matters that a municipality must take into consideration when arranging services include equal treatment and the requirements of non-discrimination (3209/4/08*).

PROHIBITION ON DISCRIMINATION

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

The Ministry of the Interior's police department had approved the inauguration of an automatic traffic control system that produced documents, which were in part contrary to the Language Act, to be sent to road users. Because Finnish- and Swedish-speaking road users had been placed in unequal positions relative to each other on language grounds and no acceptable reason for this could be demonstrated, the Ministry acted contrary to the prohibition on discrimination (2523/4/08*).

In the course of an emergency call, *a duty officer at an emergency response centre* had asked a man who had called to report violent behaviour on the part of his wife how much he (the caller) and his wife weighed. The expressions used by the duty officer and the fact that the duty officer stated in his explanation that he did not understand why the man called and asked for help if the woman was not heavier than him expressed an attitude that was contrary to the prohibition on discrimination and placed people in different positions on the ground of gender (1799/4/09*).

It was not contrary to the prohibition on discrimination when *a church parish's so-called depression training activities* focused only on people with families, because in 2009 the objective of diaconal family work had been to support families. Focusing activities primarily on people with families was natural and justified from the perspectives of the effectiveness of both peer support and group dynamics and there was an acceptable reason for it (264/4/09).

What is not contrary to the prohibition on discrimination is a refusal to prescribe an erection drug for a prisoner patient if the need for it results from sexual intercourse between inmates. There is an acceptable

reason for refusal, because the Prison Act requires that all prisoners, irrespective of gender, must be able to serve their sentences in safety, without being subjected to harassment, inappropriate treatment, pressure or exploitation during the time they are imprisoned. Sexual intercourse between inmates increases tensions in the prison community, which jeopardises order and security in the institution (4091/4/08 and 3510/4/09).

THE RIGHT OF CHILDREN TO EQUAL TREATMENT

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

In order to safeguard the fundamental and human rights of children, it is important that the authorities receive information on all children who are in need of help. Therefore private persons have the right to make a child protection report without being prevented from doing so by secrecy regulations and are not required to disclose their personal particulars when they make a report (935/4/10).

Placing a child in *police detention facilities* must always be assessed from the child's point of view. Placing the child otherwise than separate from others must have some benefit from the child's perspective compared with placing it on its own (2682/4/09).

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

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

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

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

PERSONAL INTEGRITY AND SECURITY

Section 7.1 of the Constitution guarantees everyone the right to life, personal liberty, integrity and security. Section 7.3 prohibits violation of the personal integrity of the individual as well as deprivation of liberty arbitrarily or without a reason prescribed by an Act. The latter sub-section contains explicatory rules concerning intervention in personal integrity and deprivation of liberty. They apply to both the legislator and those who implement the law. All deprivations of liberty and interventions in personal integrity must be founded on laws enacted by the Eduskunta, and they must not be arbitrary. Personal liberty is a general fundamental right, one that protects not only a person's physical freedom, but also his or her freedom of will and right of self-determination.

Personal integrity and safety in health care and social welfare

The restrictions that were imposed in a psychiatric hospital with respect to a patient's property, freedom of movement and contacts were contrary to the Mental Health Act insofar as they were based, rather than on the prerequisites provided for in the Act, on the *department's own rules* (134/2/09*).

A magnetic belt can be used in caring for an elderly patient only for the purpose of guaranteeing the patient's safety and only to the extent that it is essential in each individual case (363/4/09*).

Because what is involved *in investigating a suspicion of sexual exploitation of a child* is implementation of the child's fundamental right to safety and personal integrity, the child has a right to have the investigation conducted expertly and urgently (1480/4/09).

Good health care and hospital treatment includes the structural safety of the health care unit, because this contributes to implementing the safety that is guaranteed as a fundamental right. This did not happen in a case where a patient had managed to *fall* from a hospital window at a height of about 10 metres and sustained very serious injuries (3494/4/09*).

Drug tests conducted in a social welfare unit, the prerequisites for the measures and the principles observed in conducting them should be provided for in an Act, because what is involved is an intervention in personal integrity (2085/4/09*).

In a case investigated on his own initiative based on an inspection of a *service centre for mentally handicapped persons,* the Substitute Deputy-Ombudsman found that what is of central relevance in the use of binding is the limited time for which restriction measures are used, and they must be used only for as long as is necessary for the direct protection and safety of the patient or another person. The use of limb restraints to curb aggressive behaviour is permitted only when it is essential and milder measures are not available (44/2/08).

Intervention by the police in personal liberty and integrity

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

It was in and of itself justified that the police began looking into the situation of *two 12-year-old boys,* who were together late at night in the city and their behaviour was unusual. Although there were no signs of the use of intoxicants, the police took them to a sobering-up station, which was regarded as being the most suitable place to look into the matter. The

parents had been called from there and they immediately collected the boys and took them home. The report obtained did not reveal the reason why the police did not contact the parents immediately, in which case an episode lasting about an hour and obviously upsetting for the boys could perhaps have been avoided. The Deputy-Ombudsman drew a sergeant's attention to the fact that, especially where minors are concerned, the use of the most lenient means possible must always be given careful consideration (3743/4/09).

A suspect had been apprehended on a Sunday morning and interrogation could begin only a day later. The action of a detective superintendent was criticised, because deprivation of liberty must be kept *as brief as possible*. In this case, safeguarding the investigation did not call for an arrest on a Sunday morning and no other acceptable reasons for this action had been presented, either (2576/4/09).

Personal integrity presupposes that the regulations concerning a bodily search and a frisk are interpreted preferably more narrowly than more broadly. Requiring a person to squat while naked and inspecting his groin and anus to find drugs that are possibly concealed there is, legally evaluated, closer to a bodily inspection than to a frisk. If what had been involved in the situation to which the complaint related had been a frisk, the examination should have been limited only to what the inspected person was wearing, and an inspection of a person stripped naked – with a pocket torch in the manner described in the complaint or without one – is not a frisk (4623/4/09*).

Customs district officials stopped a bus and ordered the passengers out. Outside the vehicle, a person's luggage and the contents of his pockets were inspected. In its report arising from a complaint, the customs district took the view that the measure had been based on either a suspicion of a crime or an administrative examination that had begun in the customs area. The Deputy-Ombudsman found this to be deserving of criticism. An authority can not intervene in personal integrity without a reason stipulated in an Act and the authority must have a clear conception of its power and the reasons for the measure when it takes action (2899/4/09*).

Safety

It emerged in an investigation of a complaint concerning *a search for a person* that the perceptions held by the Ministry of the Interior's police department and its rescue department as to who has power of decision in the use of emergency location-finding were mutually contradictory. The Deputy-Ombudsman found it important that the use of location-finding in those situations that involve obvious distress or immediate danger in the meaning of the Act takes place quickly and that the use of measures is not slowed by, for example, differing views on the part of the authorities taking part in the search as to who has power of decision in the matter. What can in the final analysis be involved is the duty of the public authorities to safeguard everyone's life and security (2137/4/08).

When it is protecting a *safe learning environment,* a training institution must assess the weights relative to each other of this statutory obligation – by means of which safety as a fundamental right is promoted – and of implementation and safeguarding of other fundamental rights. If the reason presented for a ban on body piercings is occupational safety with respect to the work periods that the training includes, what must at least be assessed in the matter is why the ban is necessary in order to guarantee safety in the case of each sector of training and whether the safety of students could be guaranteed in some other way that would restrict the fundamental rights, such as equality, self-determination and privacy, of persons with piercings as little as possible (2948/2/08*).

Conditions of persons who have been deprived of their liberty

The last sentence of Section 7.3 of the Constitution contains a constitutional imperative which means that the treatment afforded a person who has been deprived of freedom must meet the demands of, inter alia, international human rights conventions. The rights during the time that they are deprived of freedom of persons who have been detained on grounds that are in and of themselves lawful constitute a distinct special group of their own in the Om-

budsman's oversight of legality. Numerous cases concerning these matters are resolved each year. The fundamental rights of persons who have been deprived of freedom must not be limited without a reason founded in law.

As one of the most central measures that intervene in liberty-related rights, *remand matters* must be dealt with carefully and expeditiously, and it is very important in them to follow clear and predictable operational practices. Deviating from a practice that had become established between a district court and the police, a district court had in one remand case failed to ensure that the defence counsel assigned to the person whose remand in custody was being sought was summoned to the remand hearing and had not seen to it that the attorney was summoned in the court hearing where the remand application was dealt with (4246/4/08*).

A meeting with a remand prisoner being kept in a *police prison* while awaiting a trip to court had been refused on the ground that prisoners on their way from prison to court were not allowed to meet anyone other than their defence counsel. Other meetings should have been agreed with the prison of placement. The action resulted ultimately from inclarity about the power to decide on meetings in such cases. The Deputy-Ombudsman found that there was justification for a remand prisoner having the opportunity to meet especially close relatives and other persons close to him or her also in police detention facilities if there are no investigation-related restrictions on a meeting or concerning its timing (4334/4/09*).

A detained person should have been informed that it was possible to switch off the light in the cell for the night if this was requested. Likewise, preparations should have been in place to ensure that arrested persons being brought to a police prison after dinner could be provided with at least some nourishment. Snack bags were distributed in the police prison in the evening, but because the complainant's arrival had not been expected and no preparation for it had been made, he had to do without food until lunch the following day (627/4/10).

8-15 warders had been present at *an examination that required a prisoner to be stripped naked*. This action had been deserving of criticism in the light of the proportionality principles that the Prison Act contains and the principles of least disturbance. To the extent that security considerations call for the presence of several warders when an examination is conducted, the degree of intervention in the prisoner's rights that the measure causes can be reduced by keeping the other warders behind, for example, a door, a screen or some other visual obstruction (590/4/09* and 1215/4/09).

The Ombudsman proposed to the Ministry of Justice that it consider whether it was necessary to enact legislation regulating oversight of a remand prisoner's observance of a *commitment to remain free of intoxicants* and his placement in a special section for prisoners who have agreed to this arrangement, as has been done in the case of persons serving prison sentences. The current law does not contain a provision dealing with remand prisoners although the Constitution presupposes that the rights of those who have been deprived of liberty be safeguarded in an Act (4734/2/09). There is likewise a need for legislation specifically relating to situations in which *restriction of movement that is imposed as a condition of trial release* significantly influences the prisoner's private and family life (2807/4/08* and 1539/2/10*).

PROHIBITION ON TREATMENT VIOLATING HUMAN DIGNITY

Section 7.2 of the Constitution states that no one may be sentenced to death, tortured or otherwise treated in a way that violates human dignity. The prohibition on treatment that offends human dignity applies to both physical and mental treatment and is intended to cover all cruel, inhuman or degrading forms of punishment or other treatment. The provision has largely the same content as Article 3 of the European Convention on Human Rights, according to which no one may be tortured or treated or punished in an inhuman way. When evaluating what is treatment that violates human dignity, one is always to some degree bound by the changing values and perceptions in society

and the case law with respect to application of the Constitution and of the Convention does not always have the same content.

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

The obligation to treat people in a way that accords with human dignity and the so-called Police Cells Act do not make possible a situation in which a person in police custody has to be *naked in the detention space* and without anything to cover himself (2949/4/08*).

Although training in a *special Jaeger battalion* involves selected conscripts who have voluntarily applied for this training and although conscripts must be treated equally, differences between individuals with regard to their ability to bear stress must nevertheless be taken into consideration. What one person interprets as physical exercise, another may consider humiliation that violates his human dignity. Superiors must have the ability to recognise these differences, especially during the basic training period for conscripts (1989/2/09*).

When the persons in question are those "who no longer have the resources to point after the fact to shortcomings in the treatment they have received or the behaviour of carers", the unit that provides the care as well as those who work there have a special responsibility to ensure that the persons who are their clients and live in the unit in question receive *social care* of a high quality and appropriate treatment that recognises human dignity (1467/4/09).

Comments such as "do you let the woman give you one in the gob?" addressed by a *duty officer at an emergency call centre* to a man who had called to report violence by his wife could, in the light of their contents and the tone of voice used, be considered to violate the caller's human dignity (1799/4/09*).

3.3.4 THE PRINCIPLE OF LEGALITY UNDER CRIMINAL LAW, SECTION 8

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

3.3.5 FREEDOM OF MOVEMENT, SECTION 9

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

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

An *order of a general nature* given by a chief superintendent to remove a person who had earlier caused a disturbance from the area of a police station if "he shows up without any business being there" was problematic in the light of not only the provision in the Police Act concerning removal from a scene, but also from the perspective of freedom of movement, and because no distinction was made in the order between protected public premises and other areas (3032/4/09).

3.3.6 PROTECTION OF PRIVACY, SECTION 10

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

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

RESPECT FOR THE PRIVACY OF HOME

It was pointed out in a decision concerning an action by a *distraint official* that measures other than those to seek property, distrain and an interim measure are possible in a debtor's dwelling only in an exceptional situation, when it is unavoidable or when the debtor consents to it. In addition, a measure must accord with the principle of proportionality (805/4/09*).

House searches conducted by the police

Whether measures on the part of the authorities that extend into the sphere of domestic peace are founded in law is a matter that often arises when the police conduct house searches. In recent years, a large proportion of complaints concerning house searches conducted by the police have related to presence during the search. It would appear that the police quite easily – and often on grounds that give rise to criticism – fail to reserve an opportunity for the occupant of the premises to be present at the event. There have likewise been problems with the fact that the occupant has not had the opportunity to call a witness to the scene.

Policemen had entered *through the unlocked door of a single-family home*, presenting as the reason for this that they had a need to speak directly with a person suspected of a crime, without there being a legal provision that gave the police the right to do this. The Deputy-Ombudsman pointed out that the police do not have a general right to act in the sphere of the sanctity of the home only on the ground that it is necessary in order to perform police tasks. Entering the sphere of the protected sanctity of the home against the occupant's will presupposes a legal provision that gives one the right to do this (2758/4/09*). The serious attention of an *officer in charge of an investigation* was drawn to thorough consideration of the prerequisites for conducting a home search, the main rule that a search warrant is required for a house search and the requirement that a protocol of the house search be drafted (3686/4/08*).

The police neglected to *inform the target persons of a house search in advance* and to reserve an opportunity for the custodian of the premises to be present, as the Coercive Measures Act requires (1333/4/08). The police acted incorrectly when a suspect who had been deprived of liberty was not asked whether he wished to be present at a house search and have his *own witness* summoned to the event (1485/4/09*, likewise 2701/4/09). The complainant was not informed, in the manner that the Coercive Measures Act requires, that a search of his home was to be conducted, and no adequate reasons were given for the fact that the complainant was not provided with an opportunity to be present when the search was conducted in his home and he was not asked whether he would like to invite his own witness to the event (3404/4/08*).

PROTECTION OF FAMILY LIFE

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

Prisoners' family life

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

It was pointed out in a case involving an unsupervised meeting between *a remand prisoner and his partner* that when a decision on an unsupervised visit is being taken, the disruption that the meeting may cause to order in or the functioning of the prison must be assessed. What is acceptable in oversight-of-legality practice is that assessment of the supervision that a previously unknown prisoner, who has just arrived in the prison, needs at a meeting is more difficult than in the case of an inmate with whom the prison staff have already been able to work. However, this does not mean that some or other regular "time to get acquainted" can be stipulated as a prerequisite for an unsupervised meeting being approved. Decisions on unsupervised meetings must be made individually in the case of each applicant and application, taking precisely his or her situation as well as the purpose and objective of the regulations on unsupervised meetings into consideration (1602/4/08).

When a decision whether or not to grant permission for an unsupervised meeting to the parties in a *registered civil union* is being made, the aspects relating to protection of family life must be taken into consideration in the same way as with spouses in a marriage (757/4/08). Protection of family life was also the issue in a decision in which the Ombudsman pointed out that the prison authorities must try to support and promote *contacts between persons who have been deprived of their liberty and their families* (824/4/08*).

It is not lawful to make a *shared address* as shown in the population data system a prerequisite for an unsupervised meeting (987/4/08). When restrictions on movement are set for the *conditional release* of a prisoner, protection of private and family life must be taken into consideration (2807/4/08*).

Supervising a meeting between a *person in psychiatric hospital care* and relatives must be regarded as a restriction of contact in the meaning of the Mental Health Act (3605/4/08*).

CONFIDENTIALITY OF COMMUNICATIONS

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

Often, the limits of the protection of the confidentiality of communications arise when authorities are conducting criminal investigations and in communications to and from persons in closed institutions. Confidentiality of prisoners' communications is in many cases important also to ensure that the right to a fair trial is implemented.

Confidentiality of communications in a prison

The Prison Act makes it an absolute requirement that a prisoner must be able to *telephone a lawyer* and other legal assistants in confidence. If making the call presupposes supervision, said supervision must be taken care of in such a way that, having made sure who the recipient of the call is, the warder leaves the room so that he does not hear the call nor be able to do so. If necessary, inspection in such a situation can be taken care of by, for example, making visual observations through a window (1509/4/09).

The Ombudsman gave a reprimand to a prison warder who had opened *a letter that had arrived for a prisoner from his legal counsel*, although the letter

should not have been examined or read. The prohibition on inspection had been violated by opening the envelope. (4025/4/09). The Ombudsman gave a reprimand to a prison warder who had opened a letter to a remand prisoner from the Criminal Sanctions Agency. What was involved was the kind of mail item from a supervisory authority that may not by law be inspected (2571/4/10).

An inmate's letters had been categorically read in a prison and the only reason given for this was the inmate's *criminal background*. In the view of the Ombudsman, it is difficult to see that the legislation would have been intended to justify regular reading of a letter solely on the ground that the person had committed certain kinds of crimes (1552/4/09).

Correspondence between a prisoner and an authority that oversees the prison or the actions of its personnel or with an authority that oversees implementation of human rights and with which the prisoner has the right under international conventions to complain or appeal must not be inspected or read. However, this does not mean *the police and prosecution authorities or courts*. According to the Ombudsman, it is not fully clear whether reasons have been given to explain why confidentiality does not extend to the police and prosecution authorities or to courts, although they too belong to the domestic system of legal remedies that are available to prisoners to check the legality of the actions of a prison and its staff. The Ombudsman made a proposal to the Ministry of Justice that it consider whether the Prison Act as presently constituted provides adequate protection for a prisoner's correspondence with the judicial administration, prosecution and police authorities or whether the Act would need to be amended in this respect (3349/4/08*).

An official in a supervisory position in the Prison Service acted unlawfully and in a manner that breached the correspondence-related right of the lawyer who was the complainant *when he refused to deliver a letter that the lawyer had sent to an inmate* without the letter being opened in the presence of the inmate, when there was no reason in the case to believe that the letter contained anything that was forbidden in the prison (3010/4/08*).

Confidential communications jeopardised

Disturbance in *Itella Oyj's* mail distribution was involved in a case in which the Deputy-Ombudsman found that a person's privacy had been jeopardised when complaints had been made about his post and, despite the special monitoring of it that Itella had arranged as a result of the complaints, the post had failed to arrive in the way that it should have. A disturbance in mail distribution always means a potential breach of confidentiality of the mail (2808/4/09).

Patients in *an isolation ward in a hospital* were not allowed to use their own mobile phones; instead, calls had to be made from the hospital's mobile phone, which could be used for two 10-minute calls each day. This practice meant a restriction of contact, although under the Mental Health Act contacts or possession of property by patients can not be restricted by means of general or ward- or hospital-specific regulations; instead, restrictions must be decided on individually according to the prerequisites stipulated in the Mental Health Act and following the procedure set forth in the Act. It must also be ensured in a hospital that patients can make their calls in such a way that other patients can not hear the contents of those calls (2415/4/08).

PROTECTION OF PRIVACY AND PERSONAL DATA

The confidentiality provisions of the Act on the Openness of Government Activities must be taken into consideration when assessing the *handling of personal data in an open information network*. In conjunction with handling and deciding on application and other matters (such as complaint matters) by an individual office holder or client of municipal administration, matters relating to the client's or complainant's privacy and information concerning them can be disclosed. Information of this kind can be, for example, data concerning a person's health or lifestyle or family life that are required under the provisions of the Act on the Openness of Government Activities to be kept secret (2885/4/09).

Assessment of a person's ability to work is based on personal data. Personal data relating to capacity for work should be dealt with and a worker's privacy intervened in as little as possible. The stated purpose of an order to determine the state of health of a senior inspector at an environment centre was especially to assess the effect that an impediment of his mobility would have on his prospects of being able to perform his work tasks. The information in the introductory part of a statement by the head of department, in which the senior inspector's career since 1983, his tasks then and later and their performance as well as periods of sick leave were not necessary from the perspective of evaluating his capacity to perform his current work tasks. The department head's characterisations of the senior inspector as a person that appeared in the statement were likewise not necessary information (3778/4/08).

That an extract from the *register of vehicles* that was attached to a car at a presentation intended for the public included a mention of the name indicated in the register as the owner was not essential in order to carry out enforcement. The Deputy-Ombudsman pointed out that it follows from the requirement of purposefulness enshrined in the Personal Data Act and the principle of proportionality in the enforcement code that the name should have been removed from the copy of the extract from the register (1158/4/09). The Deputy-Ombudsman found that a sheriff had violated a complainant's privacy in a case of an appeal by the complainant when he submitted, on his own initiative, confidential documents, which had nothing to do with the matter being dealt with by the court, to an administrative court (2783/4/08*).

Due to an error in their network identifier, two emails sent from a distraint office had ended up in the *inbox of an outside party*. One of them, which contained confidential information, had been sent without using a secured e-mail connection. The Ombudsman pointed out that it was essential from the perspective of privacy that the case of a person with distrainable debt be handled in a distraint office with the care that the secrecy regulations presuppose and that matters relating to the case that are required to be kept secret are not disclosed to outsiders (3356/4/08*).

Because everyone has *the right to determine their own appearance*, it must be possible to provide reasons for regulations banning body piercings during the work periods included in training in an educational establishment in a way that takes the special features of each individual sector of training into consideration (2948/4/08*).

Privacy in health care and social welfare functions

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

The envelope of a letter mailed by *a joint authority* bore the marking "contains epicrisis". This, the Ombudsman found, revealed the information, which was required to be kept secret, that the person indicated as the recipient of the letter had used the health services. In itself, the fact that a person has been receiving treatment in some or other health care unit is information that is required to be kept confidential (529/4/09). Documents containing confidential health-related information should not have been sent for information to the leading officials of a municipality or members of a board, because handling the documents was not included in their remit (2096/4/09*).

A point emphasised both in the precursor documents of the Personal Data Act and in guidelines published by the Data Protection Ombudsman is the importance of written consent when handling of sensitive personal data is involved. In the Ombudsman's opinion, however, consent need not always be in writing. Unless a social welfare client has given written consent to have confidential information concerning him or her disclosed, the authority must demonstrate that it has the *specific consent to disclose data* that the Act requires (2822/4/08*). It was not acceptable that the content of a consent relating to handling of sensitive data was open to interpretation. A city had acted unlawfully when the consent requested from a complainant should have been *explicit and itemised* (1635/4/08*).

Matters that must be taken into consideration when applying the Decree concerning drafting of *patient records* are protection of private life and aspects relating to the individual's protection under the law (805/4/08*). It follows from the European Court of Human Rights decision in the case *I. v. Finland* (2008) that the keeper of a social welfare and health care register must collect and monitor log data in order to oversee the use of an electronic client register, even though detailed legislation concerning the matter has not yet entered into force (2360/3/10).

When he left the room where he met patients, a *health centre doctor* left a computer monitor screen with information on other patients' state of health switched on so that the patient could see them. The doctor thereby jeopardised the confidentiality of the data that the patient records contained (1553/4/09*).

It should have been understood at a health centre that *leaving open the door of the room where medicines are distributed* to an opiate-dependant patient may violate protection of the patient's privacy and jeopardise confidentiality of data concerning his state of health (3975/4/08*).

Guardianship

Implementation of the *interest of a principal* who is under guardianship includes also ensuring protection of his or her privacy. Likewise in accordance with the principal's interest is respect for his of her right of self-determination, which can be implemented by, for example, authorising another person to obtain personal data concerning oneself (2586/4/08).

The Ombudsman proposed to the Ministry of Justice that it consider whether the *confidentiality regulations applicable to guardians* would need to be explicated, for example in such a way that, on the one hand, the precise content of the absolute duty of confidentiality and, on the other, aspects that possibly make confidentiality less stringent – for example the need to reduce the risk of harm – are expressed as clearly as possible on the level of an Act in the confidentiality regulations and not just in the reasons presented for them. Something that could be evaluated in the same context is what effect could the fact have that the principal is unable to express his or her position on providing information (1903/4/09*).

3.3.7 FREEDOM OF RELIGION AND CONSCIENCE, SECTION 11

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

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

3.3.8 FREEDOM OF SPEECH AND PUBLICITY, SECTION 12

FREEDOM OF SPEECH

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

The monitor screens in an upper secondary school had a message on them reading "The use of this workstation is supervised. Maintenance can track

the use of the display in real time." The Deputy-Ombudsman found this activity to be open to criticism from the perspective of good administration that aspires to truthful advice and more generally preservation of trust, because what was threateningly said in the message was that the students' freedom of expression and the Act on Data Protection in Electronic Communications were being deliberately flaunted. *Monitoring of a school's information network must be founded in an Act* and on good data-protection practices, and messages on monitors must be truthful (640/4/09*).

Looked at from the perspective of freedom of speech, the requirements set forth in the Detention Act and in its precursor documents that prisoners be given access to the prison library sufficiently often or the opportunity to use public library services should not be limited in such a way that they apply only to prisoners who are studying. The library-related provision does not authorise case-by-case discretion solely on the basis of a prisoner's studying. From the perspective of implementation of freedom of speech, *all prisoners should have the right to receive information* (2400/4/08*).

A ban on photography in the exhibition areas imposed by the Art Museum of the Ateneum was open to criticism, because restrictions of freedom of expression must be founded in an Act. However, because photographing in an art museum did not belong in the core area of freedom of expression and because reasons that were in and of themselves acceptable could be presented in support of the ban, the matter did not have any consequences for the museum other than the Deputy-Ombudsman informing it of his opinion. In addition, the Deputy-Ombudsman proposed to the Ministry of education and Culture that it make an appraisal to see if legislative measures were called for in the matter (2998/4/08*).

A *policeman* in charge of conducting a criminal investigation may not – although also a policeman has the right of freedom of speech – for example after the criminal investigation detach himself from his official position and freely comment on solutions in his capacity "as a citizen". This kind of detachment may be impossible also during the criminal investigation, because all kinds of comments that are intended to be general can easily be associated with an individual case that is under investigation (1690/4/10).

PUBLICITY

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

The Ombudsman has received many complaints concerning publicity of recorded material, although in most cases the complainant has still had the opportunity to avail of a statutory right to refer the matter to a competent authority for resolution. Then the Ombudsman has advised the complainant to use this legal remedy in the first instance.

Delay in dealing with a matter concerning a request for information

In many complaints concerning publicity of documents, however, the issue has been the time taken to deal with a request for information. The Act requires an authority to deal with this kind of matter "without delay" and information about a public document to be provided "as soon as possible", not later than two weeks or – subject to certain preconditions – no later than a month after the request. Closely associated with publicity of administration is also the general demand of openness of administration and service-mindedness when a client is seeking the information he or she needs.

The Ombudsman issued a reprimand to the Ministry of Justice (3584/4/08*) and the *Central Administrative Unit of the Criminal Sanctions Agency* (2626/4/09*) for delay in handling customer requests for information. The Ministry had acted unlawfully when a complainant's request for a document had been replied to only about five months after it arrived at the Minis-

try. Where the Central Administrative Unit of the Criminal Sanctions Agency was concerned, there were two cases involved. In the first, the documents requested were not supplied until about five months after the request for them had been made; in the second case, after a request for documents had been made three times, the matter was transferred to the competent authority about three months after the first request. In addition, a reply to the first request had been sent and expressed the conclusion that the documents requested were no longer needed by the person requesting them.

An authority is following incorrect procedure if it does not provide documents within the time that the regulation requires, but instead only later, for example in conjunction with a decision or other solution to be made in the matter. If a document request does not unambiguously express what documents the request applies to, the authority must, taking account of the provision in Section 13.1 of the Act on the Openness of Government Activities, ask the requesting person to itemise his or her request as well as, if necessary, help the person to itemise the documents in relation to which information is desired (1738/4/08). A request to examine log data must be replied to within the deadline set forth in the Act on the Openness of Government Activities (4058/4/08*).

There were delays in meeting requests for information also in the *Ministry of the Interior's police department* (2916/4/09), *the social welfare and health department of the South Finland State Provincial Office* (432/4/09), *the City of Mikkeli* (114/4/09), *the National Institute for Health and Welfare* (3509/4/09*) and *Riihimäki Prison* (3349/4/08*).

Other problems in handling requests for information

The publicity principle was not implemented in five cases in which *district courts* had erroneously considered a request for documents made by the complainant as so vague that it was regarded as not being possible to fulfil. The complainant had requested copies of decisions made by a district court between 1.1.2008 and 31.7.2009 on appeals against distraint decisions and in which the appellant's demands had been met either fully or in part. Inter alia, the IT Centre for Judicial Administration had taken the view that the documents requested could have been itemised using court's database. The complainant should have been given a reply with factual content to the request for documents. Insofar as the district court had taken the view that in the case there was a need for a secrecy order covering a part of the requested material, the complainant should also have been made aware that he is entitled to receive from the court an appealable decision on his request for documents. Matters did not advance at all to this stage (3065, 3085, 3148, 3223 and 3411/4/09*).

Something that prevented effective implementation of the publicity principle was the fact that accessing the blank application form on the *Valtiolle.fi search service for jobs with the State* web site, i.e. obtaining information from a public document, presupposed signing in using a bank ID or a special verification card, even if no application were made. From the client's point of view, the availability of the form to everyone on a web site that was open to everyone would be conducive to promoting implementation of the publicity principle by making the availability of information on public documents more effective (3661* and 3999/4/08*).

A fishing industry inspector at a TE (Employment and Economic Development) Centre acted incorrectly when, having refused to provide the information requested, he failed to inform the complainants of the reasons for his refusal. Nor had he enquired whether the complainants wanted the matter to be referred to the TE Centre for resolution. Also when it is not possible to provide information on a document because the authority does not have document in question, the person requesting the information should, in accordance with the principles enshrined in the Act on the Openness of Government Activities, be given guidance and, if this is requested, an appealable decision (3180/4/08).

When a request for information was made to it, a *police service* should have made a decision – be it then to furnish the documents containing the requested information, a refusal complete with instructions on

how to appeal the decision or a transfer of the request for information – rather than, only after a complaint was made and the Office of the Parliamentary Ombudsman contacted, the officer in charge of the investigation replying – without providing instructions on how to appeal – that the criminal investigation material could not be supplied because the criminal investigation was still ongoing (1987/4/09*).

In the opinion of the Deputy-Ombudsman, a *request for information* made on the ground of being an involved party can not be refused for any reason other than one provided for in the Act on the Openness of Government Activities or otherwise in law. When considering a request for information, an authority must not use grounds that are beyond the scope of the Act on the Openness of Government Activities as a starting point for assessing whether the use of the legal remedy associated with the case would lead to a positive result from the point of view of the person requesting the information (1540/4/09*).

The procedure for applying for permits to study the *War Archive* were in part unclear and difficult to understand (367/4/09*). An authority may not refuse a request for documents by referring to documents given earlier (2515/4/08).

An administrative court had required a police service to give a document to a complainant on the ground of the latter being an interested party. Since the document could no longer be found at the police station, the police had acted *contrary to good data-management practice* and violated the interested party's right of access to information, something that is safeguarded as a fundamental right (2783/4/08*). *The National Bureau of Investigation* (KRP) first replied to a request for information by stating that the documents that the complainant wanted did not exist. Only after the complainant's second request were the documents discovered, as a consequence of which KRP's attention was drawn to the importance of good data-management practice (2823/4/10).

An official with the *Security Police* had sent an applicant for an official position a defective copy of an appointment memorandum. This was a flawed procedure (2955/4/09*).

In the opinion of the Ombudsman, it is open to interpretation whether it is possible solely on the basis of the facts behind the assignment of a guardian to impose a general restriction on *the right of a legally competent principal to authorise someone to obtain information about him or her from the guardian.* On the other hand, paying attention on a case-by-case basis to the validity of an authorisation given by a principal is not, however, completely out of the question in the activities of public guardians, either (2586/4/08).

In the view of the Ombudsman, *the right, founded in an Act, of a principal under a guardianship order to enjoy data protection* can not be limited by means of the basic thinking behind guardianship, i.e. that of protecting the principal, since the basic starting point in guardianship is, on the one hand, respecting the principal's right of self-determination and human dignity and the principal's right to receive information is not linked to an ability to understand the significance of the information being asked for. Modes of procedure by means of which the principal's real opportunity to receive information should be adopted on a case-by-case basis in handling requests for information. It would be advisable for the accustomed practice being to implement a principal's request for information primarily in the way that he or she wants, and this could be deviated from only when special reasons associated with meeting the request in practice exist (4208/4/08*).

Provision of information by an authority

The association Oikeustoimittajat ry (Court Reporters) asked the Parliamentary Ombudsman to examine the legality of the actions of three district courts when they failed to give a reporter a public summary of the verdict, as required by the Act on the Publicity of Trials in General Courts, in trials that had been declared secret, in spite of a request for this having been made.

In the view of the Ombudsman, what must first of all be assessed in a publicity-positive sense is when the case has "prompted considerable interest in the public realm". A court can assess the degree of public interest only in the light of the facts known in each

individual case. The wording of the Act indicates that a court should be able to notice the considerable public attention that is focused on a case that it is handling without this having to be separately studied more broadly. Secondly, a question that the Act poses for the court to assess is what case is societally significant. Considerable public interest being focused on a case may already in itself indicate that the case is also societally significant. Besides, a court can and must independenly assess the societal significance of a case also when it has not prompted public interest.

In the light of the circumstances of the case that had come to light in those particular instances, the district courts had not been under an obligation to provide a public summary of the verdict in a criminal case involving sex offences against a child. From the perspective of the principle of trial publicity, it would have been advisable to provide public summaries (3947/4/08*).

The concrete course of a rape had been explained in unnecessary detail in a *police bulletin*. There were no investigation-related reasons for this and it was likewise not possible in the case to justify the bulletin by citing prevention of possible similar cases or getting possible other victims to come forward (3835/2/09*).

3.3.9 FREEDOM OF ASSEMBLY AND ASSOCIATION, SECTION 13

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

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

3.3.10 ELECTORAL AND PARTICIPATORY RIGHTS, SECTION 14

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

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

A complainant had lost his right to vote in Finland in the 2009 *European Parliament elections,* because the Spanish authorities had announced that he would exercise his franchise in the elections in question in Spain. That was in spite of the fact that he had moved back to Finland from Spain as long ago as 2004 and made a notification of change of country to an administrative court. The complainant reported that he had been able to vote without difficulty in other elections held in Finland, but in the European Parliament elections had not been able to exercise his fundamental right to vote.

The Deputy-Ombudsman established that the loss of the complainant's right to vote in Finland was due to a Directive, binding on Finland, that had been incorporated into the provision of Section 26.5 of the Electoral Act as well as on the interpretation of and practices relating to the Directive that the Member States

had collectively agreed. The intention with the provision is to prevent people from voting or standing as candidates in more than one Member State in the same election. The Deputy-Ombudsman urged the Ministry of Justice and the Population Register Centre to ensure in good time before the 2014 European Parliament elections that EU citizens receive appropriate and adequate information on the principles on which their right to vote is based and on exercising that right as well as the procedure followed in elections held in Finland (2018/4/09*).

A prisoner did not get to vote despite the fact that he had announced in prison his willingness to vote in the *European Parliament elections*. The Ombudsman drew the attention of the prison to its duty to promote implementation of participation rights. A prison authority had not fulfilled its duty to implement and promote fundamental rights sufficiently carefully if it had to state that it did not find the prisoner's claim that he had not been able to vote "sufficiently credible". The procedures followed by a prison in arranging voting in the institution must be such that there is afterwards no uncertainty as to whether or not some or other inmate may not have been able to exercise this fundamental right (2033/4/09).

The City Board in Lahti neglected its duty to promote *the municipal residents' participation rights*, which manifested itself in an illegal procedure followed when dealing with a residents' initiative. The residents' initiative, which concerned opportunities for mobility on the part of visually impaired people, was not handled in the way provided for in the Local Government Act. The person who presented the initiative was not informed of measures carried out arising from it and the measure was not referred for appropriate handling. The city's social welfare and health department issued a statement on the initiative, but the matter was not referred to the technical affairs and environment department for deliberation and preparatory work; instead, all that was done in the matter was to refer to a reply from the technical board about another matter. The way the manner was handled was also contrary to the Administrative Procedure Act, since enquiries concerning handling of the matter were not replied to appropriately and handling of the matter in various city authorities was unduly delayed. A reply was not given in the City Board minutes to a clear and itemised question. It remained unclear in the case how the matter had been resolved, because all the minutes contained were a reference to various statements explained in its introductory part (39/4/09*).

3.3.11 PROTECTION OF PROPERTY, SECTION 15

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

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

Matters of which the Ombudsman has emphasised the importance in his decisions concerning *guardianship* are the care that guardians must exercise in their deliberations as well as the cooperation that is needed between principals and guardians especially in decision-making concerning household chattels. That is because the matters involved are very important personal ones from the principal's point of view, and dealing with household chattels does not require the permission of an administrative court. Irrespective of whether the principal's opinion is decisive when various measures are being considered, a guardian can not neglect to elicit the opinion of a principal who understands the matter as to what property he or she wishes to be kept, for example in conjunction with a move to another address (3026/4/08*).

The attention of a deputy police chief was drawn to the principles underlying decisions concerning *temporary possession of firearms* and clear outlining of reasons for the decisions as well as otherwise to the requirements of the Administrative Procedure Act, and additionally to the fact that informal storage of weapons in a police station on the basis of an agreement or similar arrangement is not permitted. The Deputy-Ombudsman informed the Ministry of the Interior and the National Police Board of his observations concerning the unclear nature of the regulations (709/4/09*).

The police had neglected to ensure that *a confiscated car entrusted to it for storage* did not suffer damage. The car had been kept in a place that was as such appropriate, a fenced, locked and guarded storage area. In this light, that the car became the target of a crime could not be regarded as the fault of the police. By contrast, the police service had neglected to take measures to protect the car from further damage immediately after they became aware that its window had been broken. Rain had wet the inside of the car and ruined it (2637/4/08).

A prosecutor decided that *property that had been seized* must be returned to its owner. A detective superintendent was given a reprimand because, despite instructions from the prosecutor, he did not take steps to return the property, but instead, without a legally acceptable reason, kept it in the possession of the police for several weeks until it was distrained (2479/4/08*).

3.3.12 EDUCATIONAL RIGHTS, SECTION 16

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

The obligations that Section 16 of the Constitution imposes on the public authorities have been taken into consideration with respect to university studies by legislating for, inter alia, selection tests as well as by making instruction and sitting examinations cost free. Because the requirement of being *cost free does not cover exam books,* the Deputy-Ombudsman did not find any grounds on which the books for selection tests should be cost free or available free of charge to everyone, either (1468/4/10).

According to the Deputy-Ombudsman, *anti-intoxicant abuse* activities in the cost-free upper level of the *comprehensive school* should be arranged, together with the trips and outings associated with them, otherwise than as working time included in the school's curriculum or else they should be made a clear part of the upper level's school work (1697/4/09*).

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

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

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

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

THE NATIONAL LANGUAGES

A district court's e-mail system responded to an email sent to an address the use of which had been discontinued by sending an error message that was only in English. This violated language rights and was contrary to the principle of advice and service that good administration includes (537/4/10*).

The *recommendations on good accounting practice*, which give accountants a concrete conception of the obligations that the law imposes on them to observe good accounting practice, have not been available in Swedish. This constitutes an infringement of accountants' rights with respect to equality of language, because Swedish-speaking accountants do not have the opportunity to read the recommendations, which in actual fact define the contents of their statutory tasks, in their own language (930/2/10*).

The Ombudsman drew the attention of a *junior constable* to the need for care in handling matters when he had by mistake sent a motorist who spoke Swedish as his mother tongue a notification of a fine that was in Finnish only (1437/4/10). *The Ministry of the Interior's police department* had neglected to ensure that the language-related rights of Swedish-speaking road-users were implemented also in practice in automatic traffic monitoring when it approved the inauguration of a defectively functioning traffic-monitoring system, which printed out documents that were in part contrary to the Language Act (2523/4/08*).

When the police call on a crowd to disperse and announces what the consequence of failure to do so would be, what is involved is the provision of information that is important from the perspective of the persons in the crowd. Therefore in a bilingual area the police must, on their own initiative, act bilingually also when issuing general orders to, for example, vacate the area and explaining the reasons for these orders. The language in which interaction continues with respect to each individual person after this is determined on the basis of the language that he or she uses or states as the preferred language of use (3795/4/08*).

A municipality's provision of information failed in part to satisfy the language rights of Finnish-speaking municipal residents when information that was very significant from the point of view of municipal residents was published in Swedish only in its newsletter (1795/4/09*).

The name plate on the outer door of the *National Defence Training Association's* office was only in Finnish. The Association has as such also a Swedish name (Försvarsutbildningsföreningen). The Association was informed that it is essential that a bilingual body that performs a public administrative task demonstrate also outwardly that it operates in both national languages (1922/3/10).

An employment and economic development office had neglected to safeguard a complainant's right to transact business and receive service in his own mother tongue when a Swedish-speaking client had been served also in Finnish. The office should have served the client in his mother tongue from the very beginning and not require that he specifically invoke his language rights. In addition, a labour policy statement should have been written only in Swedish (2117/4/09*). An employment and economic development office acted in contravention of the Language Act when a client had not been directed to an official with a command of Swedish to deal with a matter, even though such persons would have been available (2645/4/10*).

The Ombudsman has pointed out in earlier decisions (2575/4/06 and 63/4/07) that when an official work-

ing in a bilingual authority uses the opportunity that the e-mail system provides to send *an automatic notice of absence*, this message must be drafted in both Finnish and Swedish to ensure that language rights are implemented on a basis of equality. This *a priori* requirement had to apply also to bilingual State institutions, such as the Government Institute for Economic Research, irrespective of whether it exercises public power, the officials employed there hold civil servant status or are on contract or what language abilities an individual civil servant or employee has. A bilingual authority must take care of drafting a bilingual notice of absence if the employee can not do it him- or herself and arrange the possibility of transacting business also in Swedish (2809/4/08*).

A bilingual section in a prison acted contrary to the Language Act when the forms available to inmates to initiate an application for an unsupervised meeting with a visitor were only in Finnish and measures to redress the matter had begun only as a result of a request by the Ombudsman for a report, and when decisions on applications in Swedish had been given in Finnish (3088/2/08*).

A bilingual authority should strive a priori *in its provision of information* to ensure that information is provided simultaneously in both of the national languages. Otherwise language-related fundamental rights and equality of language will be diluted (3284/4/08).

It was not acceptable from the perspective of language rights that a complainant had been given, for information, a *mixed-language document*, to which had been appended a separate explanation of expressions that were in the wrong language An interested party must receive an appropriate coherent document in his or her own mother tongue, either Finnish or Swedish (3301/4/08*).

Giving a name *in English only* to an authority or one of its operational units and having the name appear as such in information aimed at the public is not compatible with the starting point that the national languages of Finland are Finnish and Swedish. It is not conducive to cherishing the country's language-related cultural heritage or promoting the use of both national languages, either. This procedure likewise fails to implement the principle that in their activities the authorities must on their own initiative demonstrate to the public that they use the language that is determined according to the authority's official area, and not that in information aimed at the public the language of the official area must be used (4032/4/08*).

An authority must ensure in *measures conducted without consent* that decision documents and other significant documents are translated into a language that the party in question can understand (1763/4/09).

When the right that everyone has to minimum subsistence is implemented by means of social *assistance*, it must be especially ensured with respect to social assistance clients that persons who apply for this benefit adequately understand their own rights and also their statutory obligations. From the perspective of an authority's obligation to provide information and the comprehensibility of each individual matter being handled, how the authority ensures that the client's language-related rights are implemented is not of secondary importance (708/4/09).

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

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

3.315 THE RIGHT TO SOCIAL SECURITY, SECTION 19

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

THE RIGHT TO INDISPENSABLE SUBSISTENCE AND CARE

Numerous cases relating to *the time taken to process applications for social assistance* were resolved during the year under review. It was pointed out in these solutions that social assistance is a key monetary benefit that safeguards the constitutionally guaranteed right to indispensable subsistence and care. A municipality has a duty to ensure that it can perform its tasks under the Social Assistance Act without delay. Shortage of staff and the resultant backlog of applications for social security do not justify delays in handling these applications. The Act requires that applications be dealt with in seven weekdays. Delays that have prompted criticism have lasted from a few days to over ten.

Special attention was drawn during the year under review to persistent delays in handling social assistance applications on the part of the *City of Tampere*. As long ago as on 10.6.2008 in a decision addressed to the Tampere City Board (see page 158 of the Ombudsman's Annual Report for 2008) the Ombudsman adopted a general stance on the City Board's actions in social assistance matters and gave it a reprimand. The Deputy-Ombudsman noted in decisions issued during the year under review that the West and Central Finland Regional State Administrative Agency was monitoring the situation and considering whether it had grounds to initiate the procedure to impose a conditional fine in the matter. If the situation is not quickly redressed and brought into compliance with the legislation in force, the Deputy-Ombudsman will consider what measures this long-standing unlawful behaviour in handling social assistance applications will give grounds for (inter alia 1643/4/09, 1850/4/09 and 2072/4/09). Information subsequently received indicates that the situation with regard to handling social assistance applications in Tampere has improved.

A municipality must allocate resources for its statutory tasks, if necessary by increasing personnel resources or channelling them in such a way that the individual's right to indispensable subsistence and care is implemented also in practice for example in summertime or in other holiday periods (1089/4/09).

When the Child Welfare Act was being legislated, the child's fundamental right to protection was accorded priority over the family's right to protection of privacy (935/4/10).

THE RIGHT TO SECURITY OF BASIC SUBSISTENCE

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

THE RIGHT TO ADEQUATE SOCIAL WELFARE AND HEALTH SERVICES

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

The right to adequate health services

A child's right to adequate health services and high-quality health care and medical treatment was not implemented because an *x-ray examination* of a right hand that had been injured in an accident *was not performed during the A&E unit stage* (486/4/09*). The arrangement of treatment does not accord with fundamental right or the Mental Health Act if *a minor* needing urgent psychiatric hospital treatment has to be accommodated in a ward for adults because ward places for child or adolescent patients are not available (1778/4/09*).

A health centre had failed to fulfil its statutory duties, because it did not arrange *an appointment for a follow-up examination of an ear infection* for the complainant's child or obtained the service from other providers, although it was aware that it could not arrange the service itself (3772/4/08*). *A referral concerning a child* was drafted and forwarded to the place where further treatment was to be given only four weeks after the need for this treatment had been established. As a result of this neglect of a statutory duty, the child's right to adequate health services and high-quality health care and medical treatment was not implemented on that occasion (3804/4/09*).

The right to adequate health services was not implemented when a health centre doctor did not exercise special care and caution when prescribing a medicine that lent itself to abuse and failed to give the patient *adequate information on using the medicine* (1553/4/09*). High-quality health care and medical treatment does not include an opiate-dependent patient receiving substitution treatment having to wait over a month for a doctor's appointment to *have the dosage checked* (3975/4/08*).

A health centre doctor should have examined more carefully than actually happened how great the need for the course of antibiotics prescribed for a patient three times really was. Treatment of the patient's asthma would also have required a longer period of PEF monitoring (2827/4/09).

A patient's right to adequate health services was not implemented when an on-duty health centre doctor based *a patient's diagnosis,* made during a house call, on inadequate preliminary data. It is a part of high-quality treatment that a doctor making a house call is aware of at least the patient's recent history of illness and familiarises him- or herself with the relevant data in the patient records (4027/4/09*). A patient's right to adequate health services and high-quality health care and medical treatment was not implemented, because he was not prescribed preventive antibiotic treatment before a toe operation and no more bone than happened was removed in the operation; if more had been removed, the possibility of straightening the toe would have been better (4092/4/09*).

A general guideline according to which retinal detachment surgery was not to be performed on an A&E basis was in effect in an eye clinic. *The general guideline was unlawful,* because it excluded the operations in question from the scope of special medical treatment and did not safeguard the right to health services (4116/4/08*). By means of a system in which university central hospitals are responsible for *round-the-clock on-call treatment of eye diseases*, including also the operations that are needed on an emergency basis, the right of eye patients, including those needing retinal detachment surgery, to health services and immediate treatment when they urgently need it can be safeguarded (1706/2/10*).

In conjunction with a birth, an anaesthetist should have begun administering the anaesthetic only when the surgeon performing the operation was satisfied that the necessary staff were present, because the mother being anaesthetised for a long period prior to the child's birth affected its vitality at the moment of birth. Acting that way would probably have made it possible to prevent anaesthetics entering the child's bloodstream and helped contribute to the child not being in such poor condition when it was born. Round-the-clock preparedness for emergency caesarean section surgery safeguards the implementation of adequate health services (3482/4/08).

When certificates and statements provided by a doctor are not associated with a patient's treatment and therefore a fee can be charged for them is a matter that can be unclear and open to interpretation on the

basis of legislation. *The system of charges in health care* must be clear and comprehensible and charges must be determined so that they do not put services beyond the reach of those who need them. It is also a matter of safeguarding equality between people. For these reasons the Ombudsman considers it essential that those health services for which a charge can be made are defined exhaustively and precisely in an Act (1739/4/09*).

A prison health service must give inmates an opportunity equal to that enjoyed by the general population to promote their health, prevent diseases and receive adequate health services. The policy on treatment of erectile dysfunction adopted by the Criminal Sanctions Agency's health care unit – in accordance with which an erection drug can be ordered and provided free of charge as a part of health care only in special cases of illness – in conjunction with which (in civilian life) also Social Insurance Institution (Kela) compensation for erection drugs can be obtained on the basis of a specialist physician's certificate – did not take sufficiently into account a prisoner's right to high-quality health and medical care in cases where the prisoner has a medically confirmable need to receive treatment for erectile dysfunction (4091/4/08 and 3510/4/09). An opportunity equal to that enjoyed by the general population to promote health, prevent diseases and receive adequate health services was not implemented in the case of a complainant when he did not receive sufficient pain medication *in a prison*, because the head physician in the prison took the view that constant use of the medicine was not warranted owing to the patient's history of heavy intoxicants abuse (847/4/09).

Implementation of the Treatment Guarantee

It emerged from several cases resolved during the year that the treatment covered by the Treatment Guarantee legislation has not been fully implemented.

In a case concerning the actions of *Ylioppilaiden terveydenhoitosäätiö* (The Finnish Student Health Service, YTHS), the Ombudsman found that YTHS had not complied with its obligations under the Treatment Guarantee where access to oral health care was concerned. YTHS's status as an arranger of health care for students is founded on the Primary Health Care Act and agreements that YTHS has made with municipalities and the Ministry of Social Affairs and Health has approved. Under these agreements, an obligation in accordance with the Primary Health Care Act to arrange health care services for students has been transferred to YTHS. A service producer which, on the basis of an agreement it has concluded with a municipality and by virtue of the Primary Health Care Act, discharges tasks that belong to basic security of health care, must produce the services in such a way that they correspond quantitatively and qualitatively to the level that the Act requires. YTHS is obliged to comply with the legislation associated with arranging services in accordance with the Primary Health Care Act, including also the regulations concerning the Treatment Guarantee. It is not possible to deviate from statutory obligations through agreements, unless the possibility of so doing is specifically provided for in an Act (1619/4/09*).

The right to adequate health services *remained unimplemented* within the time period meant in the Treatment Guarantee legislation also when

- a patient had to wait for a cataract operation for over six months (4653/4/09* and 631/4/10*) and over 10 months (4422/4/09*)
- a patient was put on a waiting list for treatment only following an examination by a dentist more than five months after his need for treatment had been assessed (3964/4/08*)
- a patient was informed in September 2009 that the waiting period for dental treatment was six months and that he would be given an appointment for examination by March 2010 (3656/4/09*)
- a patient had to wait about eight months to be admitted for oral health care treatment (1851/4/09*)
- a patient had to wait for the follow-up examination by a child psychiatrist that had been deemed necessary in April 2008 and about nine and a half months for treatment to commence. The psychiatric care that the child needed was arranged, contrary to the regulations on access to treatment,

only well over a year after a referral for it to the child psychiatry polyclinic had been drafted in April 2008 (3356/4/09*)
- a patient was admitted for a shoulder operation only more than eight months after the need for treatment had been assessed, although according to expert medical opinions he should have had the operation following an urgent timetable (774/4/09*)
- a municipality could not always arrange for its residents to have direct contact with a health centre or arrange appointments for them with a doctor (2976/4/09*)
- a health centre could not announce the date of admission for treatment in conjunction with assessment of the need for treatment (855/4/09)
- an intermunicipal joint authority for basic care could not always arrange for the residents of its participating municipalities to have direct contact with a health centre or arrange doctor's appointments for them (1110* and 1127/4/09*).

Defective entries in patient records

Updating of patient records and their careful drafting in child welfare make it possible to plan, implement and follow-up the treatment and care of a child. Adequate and appropriate as well as error-free entries strengthen the child's protection under the law and help promote the emergence of a trusting relationship between an authority and the family. Client entries concerning a child are especially important when evaluating the child's need for protective welfare measures and the services and support functions that must be arranged arising from this. Entries in child welfare records likewise have an influence when planning and implementing the support or other services that need to be arranged for parents. It is on the basis of the client records that an authority maintains and the entries made in them that the authority makes decisions concerning the individual as well as decisions in the meaning of Section 6 of the Act on the Status and Rights of Social Welfare Clients. One of the purposes of client entries is also to ensure in any after-the-fact evaluation by an involved party or another authority that the authorities have acted appropriately in the matter (1527/4/09).

The Deputy-Ombudsman stressed the importance of *entries in patient records* not only from the perspective of the patient's protection under the law and right to receive information, but also with a view to the health care personnel's protection under the law in a situation where it was not possible after the fact to assess what had happened in the event, since appropriate entries in patient records had not been made. The missing entries in the patient records meant that additional clarity concerning a course of events about which there were different conceptions, the conversations that had taken place or the instruction given were not available in the case (2239/4/08).

Entries in patient records in a neurosurgery unit and a paediatric clinic *were not made appropriately*, when a report on an operation was drafted in such a way that did not reveal why removal of a brain tumour had remained small, although there were possibilities to remove also a bigger portion (41/4/09).

Correction of entries in patient records was not done in the way required when both the original and the corrected entry were not legible afterwards (2827/4/09). Records relating to a patient's medical rehabilitation did not contain entries concerning the drafting of a rehabilitation plan together with the patient, as the Act requires (2697/4/09).

The making of entries in patient records was neglected at a health centre in conjunction with a patient's need for treatment being assessed over the phone (1851/4/09*). The entries that the regulations require had not been made concerning assessment of a complainant's need for treatment and provision of information (774/4/09*).

Deficiencies in entries in patient records were also identified in cases 3481*, 3964*, 3975* and 4116/4/08* as well as 3804*, 4027* and 4072/4/09*.

THE RIGHT TO HOUSING

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

3.3.16 RESPONSIBILITY FOR THE ENVIRONMENT, SECTION 20

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

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

When an appropriate report on *consultations with neighbours* had not been presented in conjunction with a building permit application and when a building inspector had not ensured after this that the neighbours' views had been heard, he acted erroneously. The building inspector should have asked the applicant to complement his application with a report on consultations to elicit the views of the neighbours and, in the event of the requisite complementary report not being supplied, he should have consulted the neighbours himself (3631/4/08*).

Because a regional environment centre can, upon application by or with the consent of the land-owner, create a *private nature conservation area*, it can also propose the creation of a private nature conservation area and request the land-owner's consent or suggest to the land-owner that he apply for the creation of a conservation area himself (1938/4/08*).

3.3.17 PROTECTION UNDER THE LAW, SECTION 21

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

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

The demand for good administration follows in the final analysis from the Constitution and provisions on

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

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

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

Dealt with in the following are sub-areas of a fair trial and good administration that feature a lot in the Ombudsman's work. Owing to the large number of decisions during the year under review, not all of the approximately 300 in which the rights safeguarded by Section 21 of the Constitution were dealt with have been included. Besides, the various features of an individual decision may have been dealt with in several factual contexts. The presentation is based on an examination of the fundamental and human rights demands associated with a fair trial and criteria of good administration.

OBLIGATION TO PROVIDE ADVICE AND SERVICE

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

The appropriate service that belongs to the service principle and the client-orientation that takes the needs of clients as the starting point in the arrangement of services presuppose the use of clear and understandable language in communications and signs, including those used in operational units, aimed at the public. Using only English (e.g. *Stroke Unit*) in these conjunctions does not satisfy this requirement (4032/4/08*).

The obligation to advise and serve was not fulfilled in the case of one patient when a hospital did not inform him that commitments to pay for treatment had been refused and of an appointment that had been reserved for him to phone a hospital doctor to arrange for follow-up treatment to be carried out (3049/4/08). A complainant should have been given also a written report afterwards outlining the referral practice followed in the hospital, even though a nurse had provided information about the principles underlying on-call services in the course of a telephone call (3906/4/08). A hospital district should have arranged its activities in such a way that it was able to perform its tasks also during holiday periods. When tasks associated with implementing a client's protection under the law are involved (in this case displaying documents associated with an appointment decision), special attention must be paid to the matter (3214/4/08).

When presenting *an estimate of the time needed to handle a matter*, a registrar did not adequately examine and take into consideration factors that could possibly have a substantial effect on the handling time. The time eventually turned out to be four times longer than had been announced. The registrar could have corrected his error by giving the complainant a new estimate of the handling time when his original estimate proved incorrect (4832/4/09*).

A local register office must inform the person whose affairs are being taken care of by a guardian of the established procedures that it follows in hearings. A person of that kind should be told that he or she has – insofar as the local register office has adopted this practice on an established basis – the opportunity to invite some or other relative to assist at a hearing concerning his or her guardianship (2171/4/08*).

A TE (employment and economic development centre) and an employment and economic development office should have informed a complainant that the target group of training had changed and, to the extent that possibilities permitted, offered him alternative training (140/4/09*). What would have corresponded better to the obligation to provide advice that is enshrined in the Administrative Procedure Act is that an employment office would have directed a complainant to contact his pension institution concerning matters to do with his unemployment pension (187/4/08).

The requirement that clear language be used applies also in a situation where a representative of an authority agrees terms of employment with a new worker. It is important for a new worker to know what tasks he or she is being engaged for and what wages will be paid for it. In one case, a summer worker at a university hospital thought she had been engaged as a temporary replacement for an auxiliary nurse. However, her qualifications were not sufficient for this task and instead she was engaged as an apprentice (2573/4/08).

A complainant had to wait over five hours for his turn to deal with his business at an employment and economic development office because the work situation there was difficult (2840/4/10). An employment and economic development office acted contrary to the obligation to advise that is enshrined in the Administrative Procedure Act when a client was not referred to an official with a command of Swedish to take care of his business, even though such persons would have been available (2645/4/10*).

The advice given to a client by a Social Insurance Institution (Kela) office with respect to compensation for the costs of medicines had been flawed (24/4/10). A joint authority should have informed a complainant that his request for a document had been transferred for handling as a reminder in accordance with the Patient Act (2383/4/08). A municipal unit responsible for work with handicapped persons had neglected to explain to a client the effect that a change in temporary care for his daughter would have on client fees (2005/4/09).

What is involved in the instructions for filling out a change-of-address notification form is advice relating to initiating this matter. Therefore the person making the notification must receive adequate information about the form regarding the practical significance that separately stating the mailing address and the home address has in reality and whether having mail delivered to the mailing address stated possibly still requires other measures. Because the population data legislation makes it possible to announce a separate mailing address to the population data register, and reasons for this choice need not be separately presented, the starting point from the client's perspective can be that a person who specifically wants to state an address other than his home address as his mailing address has made a conscious choice, the basis for which can be ensuring delivery of mail or some other reason, in the matter (3438/4/08*).

Advice relating to institution of proceedings and possibilities of appealing

The question of a complainant's right to import a car without paying car tax could not be considered so clear that, on the basis of the obligation to advise that is enshrined in the Administrative Procedure Act, there would not have been reason to advise the complain-

ant about the possibility of obtaining a precedent decision in the matter (1745/4/08).

Replying to written communications

Good administration presupposes that letters other than frivolous ones addressed to authorities are replied to appropriately and without undue delay. No special deadline has been stipulated in the Administrative Procedure Act with respect to handling matters without delay. When it is arranging services as well as when replying to applications, enquiries or letters addressed to it, an authority must take into consideration what kind of matter is involved in each individual case and what significance the matter has for a client of social welfare. Something that can also be of significance in the matter is whether what is involved is a so-called subjective right or, for example, the arrangement of an urgent service (4523/4/09).

A distraint office had not replied to an enquiry that had been sent to it by e-mail, although it could be concluded from the e-mail message that its sender had expected to receive a reply to it and that it related to a matter that had earlier been dealt with in the distraint office (3799/4/09). A complainant had sent an e-mail requesting information concerning personnel levels in pre-school groups and kindergarten classes from a city official in charge of ordering early-education services. These questions should have been replied to, because they were clearly factual and belonged within the official's then sector of operation (2837/4/09). A head physician failed to perform his statutory duty when he did not reply to requests to get in touch that had been e-mailed to him by a complainant (2976/4/09*).

A document request sent to a fire station by a complainant was not replied to at all. The request was responded to only after the matter came up when the Office of the Parliamentary Ombudsman got in contact (4778/4/09). A director of basis services should have replied to letters that were sent to him enquiring about the practices followed in arranging a city's transport services (1056/4/09).

It took almost a year to provide a reply to *a reminder in the meaning of the Patient Act* and this carelessness resulted in the complainant's reminder being handled only after a request for an explanation had been received from the Office of the Parliamentary Ombudsman on foot of a complaint (724/4/09). A senior inspector from the Ministry for Employment and the Economy *replied to a letter from a complainant* only nearly two years after he had informed a Deputy-Ombudsman that the matter was being dealt with in the Ministry (3262/4/08).

A policeman had not replied to a letter that a complainant had sent him criticising a notification of a fine that the policeman had sent him. The fact that the police station had received a request for an explanation concerning the same matter from the Ombudsman at around the same time was not an acceptable reason for not answering the letter (2523/4/08*).

THE RIGHT TO HAVE A MATTER DEALT WITH AND THE RIGHT TO EFFECTIVE LEGAL REMEDIES

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

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

The effectiveness of legal remedies can in certain cases presuppose recompense being made in one way or another for the harm that rights violations have caused. In trial procedures Article 13 of the European Convention on Human Rights leaves room for choice in the way recompense is effected. The Ombudsman can not intervene in courts' decisions, nor can he have an input into the way recompense is made. However, the Ombudsman does have the possibility of making various proposals with a view to recompense. The immaterial damage caused by undue delays in criminal trials is in certain cases compensatable in trial procedures. (Viz. KKO 2005:73 and 2006:11). As a legal remedy against delays in trials before district courts, a new Chapter 19, which provides for a case to be declared urgent, was added to the Code of Judicial Procedure. In the same conjunction, an Act on Compensation for Excessive Duration of Judicial Proceedings was put on the statute books. It gives an interested party a right to receive compensation out of State funds if the proceedings before a general court in a tort, application or criminal case are delayed.

What is typically involved in cases belonging to this category is obtaining an appealable decision or, more rarely, application of refusal of leave to appeal. Both factors influence whether a person can at all have a matter referred to a court or other authority to be dealt with. The Constitutional Law Committee has in its practice regarded refusals of leave to appeal that are general in character and unitemised as problematic from the perspective of Section 21.1 of the Constitution (e.g. PeVL 70/2002 vp pp. 5–6). It is also important with the effectiveness of legal remedies in mind that an authority provides a direction of redress to facilitate an appeal or at least sufficient information for the person to be able to exercise the right of appeal. In addition, the reasons presented in support of a decision are in an essentially important position when it comes to exercising the right to appeal against it.

A complainant demanded in a letter to the Ministry for Foreign Affairs that the matter of his *suspension from duty be taken up without delay* and his suspension no longer be continued. The Ministry acted unlawfully when it did not resolve the matter of suspension from duty without delay nor issue a new appealable administrative decision in the matter (3894/4/09*).

A complainant's right to have his matter dealt with was not implemented when a *prison doctor* refused to give the patient a copy of a rehabilitation plan that had been drafted in another care institution and told the patient to ask the institution in question for a copy. The complainant's request should have been handled either as implementation of the right to check that is enshrined in the Personal Data Act or as a request for information under the provisions of the Act on the Openness of Government Activities (4601/4/09). A deputy governor of a prison had refused to inform a prisoner whether his letters had been withheld when the prisoner enquired about this. It remained unclear in also a report supplied to the Ombudsman in a complaint case whether the prisoner's letters had been withheld and if so, for what reason. A categorical refusal to provide information about the situation leads to the prisoner being deprived of his opportunity to demand rectification and appeal against a decision to withhold (1552/4/09).

When a complainant had herself and also through her representative demanded more contact and when this demand had not been acceded to, and the demand had not been withdrawn, a social welfare department had factually limited, in the meaning of the Child Welfare Act, contact between a child and its mother. The social welfare department should have issued *a decision limiting contact* in the case (767/4/09).

A complainant was not given a written, reasoned and appealable decision on foot of his application to have *an order to keep a child in care rescinded*. (4082/4/09*). Municipal authorities refused to supply a complainant with the documents she had requested and which related closely to her child, although they happened to be kept in the child's father's patient records. The issue in the case was the client's constitutional right to receive an appealable decision in a matter. The delay of over a year in making a decision on a document was not only unlawful, but also unreasonable towards the complainant (638/4/10).

A person who had applied for transport services as provided for in the Services and Assistance for the Disabled Act was not given a reasoned decision as to whether he was entitled to transport services in accordance with the Act. If, for example, the requirement of severe disability in mobility that is a prerequisite is not met in the applicant's case, an appropriately reasoned decision to refuse service must be made in the case. After this, the matter can be handled secondarily as an application for transport support in accordance with the Social Welfare Act (981/4/09).

The joint authority of a hospital district should have given a patient's parents a written decision, together with instructions regarding an appeal, to *refuse advance permission* (seeking treatment in another European Economic Area member state at the hospital district's expense) (41/4/09).

Supervision of a meeting between a patient and his relatives should have been done by means of *an appealable decision in accordance with the Mental Health Act*, unless supervision had been agreed with the patient (3605/4/08*). Patients in State psychiatric hospitals must be informed that they have a right to obtain an appealable decision concerning restriction of contact or possession of property, unless they accept the practice followed in the ward (2415/4/08).

The chair of a municipal board and a referendary did not have the right to decide on the board's behalf whether a demand for rectification arising from a decision made by an official subordinate to the board should be left unexamined (3536/4/08). Proper procedure had not been followed in handling a demand for rectification when a mayor had not referred it to the appropriate municipal body for resolution, but instead had first replied to it with an administrative letter (649/4/09).

When it selected an applicant lacking the requisite qualifications without an application period, a municipal cultural board could not cite as the reason for its decision a provision in the municipal administrative regulations that was, contrary to Section 107 of the Constitution, in conflict with Section 4.3 of the Municipal Office Holders Act. When an enquiry made to the board factually contained also a rejection of the application, a ban on appealing could not have been associated with it (1409/4/09).

A written reasoned decision should have been made when temporary possession of firearms was extended and it should have been given, together with instructions concerning appealing the decision, to the permit holder for information. A deputy police chief had only made a note that an extension had been granted on the original decision sanctioning possession and announced his decision by phone (3716/4/09*).

EXPEDITIOUSNESS OF DEALING WITH A MATTER

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

Questions relating to the expeditiousness of handling matters continually arise in oversight of legality. The attention of authorities has often been drawn, for the purpose of guidance, to the principle of expeditiousness, also when what has been involved in a concrete case is not something that can be branded as an actual breach of official duty. The Ombudsman has tried to find out the reasons for delays and often also to recommend ways of improving the situation or at least to draw the attention of higher authorities to a lack of resources. Of the approximately 300 decisions involving measures on complaints concerning a fair trial and good administration, over 110 related to undue delays in handling.

What can be regarded as a reasonable length of time to deal with a matter depends on the nature of the matter. The demand for expeditiousness is especially accentuated in social assistance matters. Other things that demand especially speedy processing include protection of family life and matters relating to the state of health of an involved party, employment relationships, the right to practise an occupation, holding

an official post, pensions or compensation for damages. Ensuring expeditiousness is particularly important also when the personal circumstances of an involved party mean that he or she is in a weak position.

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

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

Municipal authorities

Under legislation in the autonomous Åland Islands, the Finnish Social Assistance Act has been in force there in its original form since 1997, and the seven-day time limit for processing social assistance applications that was enacted later is not in force there. However, Åland's own Administrative Procedure Act requires that matters be handled without undue delay. A municipality in Åland was found to have acted unlawfully when it took five and six months, respectively, to process two social assistance applications (3537/4/09).

An office holder with a unit caring for handicapped persons should have immediately made a decision concerning changing the location of a patient's temporary care and at the latest before the location factually changed (2005/4/09). A decision to limit contact with a child in foster care was delayed unduly when handling it took over three months (2562/4/09*).

A contributory factor in the length of time taken to deal with a municipal residents' initiative (under 11 months) was that the initiative had originally been referred for handling to a city's physical exercise services, to whose remit it had not belonged. Whether a matter belongs to the area of responsibility of, for example, a certain city authority must be examined as expeditiously as possible in the early stages of handling the matter (1923/4/09).

Referring a rectification demand to a city board was delayed because of an error in the preparatory work on the matter, for which reason handling took a year and 11 months (136/4/08).

Giving a reply to a reminder in the meaning of the Act on the Status and Rights of Social Welfare Clients was delayed for over four months (1275/4/09). The time, over four months, taken by a city's social welfare and health services to process an application for transport services in the meaning of the Act on the Status and Rights of Social Welfare Clients was too long (613/4/10). An administrative court had quashed a decision concerning serviced housing under the Services and Assistance for the Disabled Act and referred it back to be processed again. The more than four months taken to process the matter again was too long in the light of its nature and the individual's protection under the law (1195/4/09).

The Social Insurance Institution (Kela)

Processing of an unemployment security application took over 2 months in a Kela insurance district and was delayed in part without reason (5/4/10). Needless delay was also involved in a case where processing of an unemployment security application in an insurance district took 43 days (596/4/109) as well as 23 and 24 days (596/4/10).

A total time of three months taken to process an application for parental per diem allowance considerably exceeded the average processing time of four weeks in the insurance district (1137/4/09*). A Kela office waited without reason for an appeal board's decision before it issued decisions on applications for compensation for medicine costs with respect to 2007–2008 (636/4/09).

Kela's foreign unit requested explanations from Sweden's pension institution only three months after a complainant's pension application had arrived (2013/4/09). Processing of an application that be-

longed to the sphere of Finland's social security took about a year in a Kela insurance district. Although resolving the matter presupposed additional study, inter alia the complainant's periods of work in Finland and earned income, the district was deemed to have neglected to process the application without undue delay (3829/4/09).

Processing of an application for reimbursement of medicine costs took nearly three months in Kela, when the average processing period at the time in question was 7.2 days (1641/4/09*). The date on which a follow-up application for per diem sickness allowance arrived was marked erroneously and a decision in the matter was issued only two months after the application had arrived (2113/4/09).

A Kela office did not reply to a request to check register data without undue delay when a reply took over 6 months (259/4/09*).

The police

The duration of criminal investigations in a police service was studied arising from observations made on inspection visits. What proved most problematic was investigation of white-collar crimes. The Deputy-Ombudsman stressed the importance of expeditious criminal investigations and urged the police service to continue its efforts to lessen the time that these investigations take to complete (1846/2/09). The times taken to handle applications for firearms certificates by a police service had at times become unreasonably long (96/4/10). Since the time taken to process applications for firearms certificates had become clearly shorter elsewhere, (e.g. 2522/4/10), the Deputy-Ombudsman asked the National Police Board to examine, by the end of the year, what the situation is nationally and what can be done to ensure that permit matters are dealt with within a reasonable time (80/4/10).

A criminal investigation had been unduly delayed when it took nearly two years to deal with the matter and the only measure that had been taken in it was to obtain a preliminary report (3505/4/08). In a case concerning the right to drive and considering the individual features, the matter of a complainant's intoxicant dependence should have been dealt with more expeditiously by ordering him to supply a doctor's statement already during a temporary ban on driving that had been imposed on the ground of suspected drink driving (1571/4/09*).

The protocol of a criminal investigation in a case concerning causing injury was forwarded to a public prosecutor only after the right to prosecute had expired. The right to prosecute had not expired with respect to an assault offence (1797/4/08). The decision not to conduct a criminal investigation had been delayed owing to, inter alia, the work situation in the office, for about a year and a month (2042/4/09). A criminal investigation into an allegation of assault in a detention cell took nearly five years at a police station. Because of the delay, a public prosecutor did not have time to consider charges before the right to bring a prosecution expired (2864/4/08*).

The duration of a criminal investigation, nearly three years, by the Helsinki police service was problematically long from the suspect's point of view. The situation was largely due to the difficult work situation in the economic and property crimes unit (1041/4/10). A criminal investigation conducted by a customs district in a major case of white-collar crime had been ongoing for about three years and had still not been completed. No undue delay was established in the case, but it was obvious that waiting for the results of a tax audit commenced in 2007 had prolonged the investigation. It is not relevant from a suspect's point of view which authority's actions the duration of a criminal investigation depends on (2746/4/09).

Other authorities

The time taken to handle a matter, initiated in June 2008, concerning rehabilitation for a complainant's daughter by the Social Security Appeal Board and the Insurance Court jeopardised the timely implementation of the rehabilitation. With the present processing times, the timeliness of rehabilitation is threatened already in the first instance, i.e. the Social Security Appeal Board, that deals with it. The Deputy-Ombudsman stressed the importance of also Kela's and the public sector's cooperation in rehabilitation matters

(3794/4/08). Handling of an appeal concerning an unemployment security case took about 33 months in the Insurance Court (3836/4/08).

The Insurance Court posted a decision it had issued only 2.5 months after it formulated it. One reason for the delay in the matter was the fact that the examining member was on sick leave on several occasions, in addition to which the referendary taking care of the matter had left the employment of the Insurance Court (1008/4/09).

It took the Employee Pensions Appeal Board over ten months to deal with an appeal against a decision that an employment pension institution had made about an old age pension. What was positive was that the Employee Pensions Appeal Board increased its personnel strength after a backlog manifested itself and the average time taken to process a matter declined clearly in the following year (3699/4/08). The Finnish Centre for Pensions should have transferred a complainant's application for an employment pension payable from Sweden onto an *EU form* and sent it to the Swedish pension institution without delay after receiving the necessary information, i.e. about five months earlier (1798/4/09).

Handling of an appeal made by a complainant against decisions concerning publicity of documents took about 14 months in the Supreme Administrative Court. Although appeal cases concerning publicity of documents are not statutorily required to be dealt with as urgent matters, the Ombudsman considered it important that even more attention is paid to expeditious handling of cases involving publicity of documents (681/4/09). A complainant's request for a document took exactly a month to deal with in a district court, which did not implement the requirement of handling matters without delay (3661/4/10).

The four years that it took to handle an automotive tax appeal in an administrative court was not acceptable. Although a backlog of cases and resources problems are an understandable reason for delay in handling matters, the public authorities have a duty to organise the legal order in such a way that matters can be dealt with without delay (1325/4/08).

Handling of a matter had been in progress for over a year and a half in the Consumer Disputes Board. Because the Board's processing times were already being separately followed by the Ombudsman, the complaint did not provide an additional ground for measures even though the time taken to deal with the matter had been long (1997/4/08). The time taken to deal with a case concerning consensual partition of property, about three years, in a legal aid office demonstrated undue delay (4547/4/09).

A decision associated with a forest-use notification and in accordance with the Nature Conservation Act to designate a site as a breeding and resting area for flying squirrels and regulating the use of the forest in the area took too long, i.e. nearly a year after an administrative court had referred the matter back for re-handling, in an *environment centre* (2127/4/08). Residents of an area had made *a notification to an environment centre* with a view to having the noise caused by quarrying and rock crushing operations limited. Handling of the initiation-related matter had been delayed, because it took nearly 16 months (2502/4/08).

The Deputy-Ombudsman found the nearly three months that it had taken the National Board of Education *to return an examination fee* to have been an unduly long processing time (544/10*). The State Treasury issued a follow-up decision in a compensation matter based on accident insurance legislation only more than two years and three months after payment of an accident pension had ceased (784/4/09*).

Handling of an application for a per diem allowance was prolonged at the Union of Salaried Employees Unemployment Fund as a result of growth in the number of applications in late 2009 and early 2010 (690/4/10). Processing of a complainant's application for per diem benefits was prolonged (it lasted over 8 weeks) for reasons associated with the merger of the TEAM Unemployment Fund and large numbers of applications (1061/4/10). A one-month processing time for per diem benefits at the YTK Unemployment Fund was found to be too long (1464 and 1701/4/09).

YTK should have requested *an additional explanation from a complainant earlier* than was actually done (1646/4/09). Processing of the complainant's application for per diem benefits began a month after it reached YTK, which was too long a time (4323/4/09). Processing of a per diem benefits application by the Sales and Marketing Employees' Unemployment Fund did not take place without undue delay when it took in excess of two months to complete (1788/4/09).

The child psychology clinic at a university central hospital took over nine months to respond to a police request for executive assistance in investigating a suspicion of sexual abuse of two children, which was an unduly long time (1480/4/09).

The forensic science department of the University of Helsinki's Hjelt Institute did not act lawfully when drafting of documents associated with a *forensic examination of the cause of death* took longer than six months (1672/4/10). A State Provincial Office did not act lawfully in cases where drafting of documents associated with a forensic examination of the cause of death had taken over three months (2055/4/09*).

PUBLICITY OF PROCEEDINGS

Questions relating to publicity of proceedings arise mainly in the context of the oral hearings in the courts of law. One of the basic situations, relating to implementation of requests for documents and information, is dealt with under the heading of Section 12 of the Constitution.

The arrangement of a criminal trial in Turku Prison was unsatisfactory from the perspective of the requirement that trials be public. A condition for being able to follow the prison trial was that a reporter presented in advance and announced his name, date of birth and contact particulars. This procedure excluded all other than reporters who wished to witness a public trial. The requirement that dates of birth and contact particulars be announced would have presupposed compelling and stated reasons mainly relating to the security of the prison or the trial, none of which were present in this case. An unregulated advance presentation procedure was additionally conducive to arousing suspicions as to why this information was required, what would be done with it and who would handle it. Associated with it was also the possibility of mistakes, which might unnecessarily prevent a person from being allowed to witness the trial, as had happened with one reporter (305/4/09*).

HEARING AN INTERESTED PARTY

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

A respondent resident abroad had not received information about judicial proceedings in which his paternity had been confirmed and he had been ordered to pay maintenance. An unlawful procedure had been followed in the case (3053/4/08*).

A request for information from an employment office contained an erroneous date and it had not been noticed in the office that *the complainant had replied electronically to a request for information made to him*. As a consequence, the complainant's reply was not available to the labour committee when it was dealing with his case (2411/4/08).

The head of a building office and the architect who handled a permit matter should have *heard the views of the tenants of the garden allotment plots opposite*

and adjacent to the one where the construction site was located, arising from an application to carry out measures there (4257/4/08).

PROVIDING REASONS FOR DECISIONS

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

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

Two *decisions on criminal investigations* by the police had been inadequately reasoned when they did not reveal the legal foundation for the decisions nor the facts on the basis of which the final outcome had been reached. In addition, one of the decisions left the police's powers in the case in an unclear light when it was stated that the police did not have the professional skill to investigate the alleged incidence of neglect of care (3505/4/08). Imprecision of the reasons stated for ending a criminal investigation was likewise involved in case 1954/4/09. The reasons stated for failing to conduct a criminal investigation were problematic when reference had been made in the decision to the prosecutor's opinion and also otherwise the reasons should have been clearer (1955/4/09).

The attention of a deputy police chief was drawn to the principles underlying and clear presentation of the reasons presented in support of decisions concerning *temporary possession of firearms* as well as otherwise to the requirements of the Administrative Procedure Act (709/4/09*).

Something that was not revealed at all in a decision on an *application for a reduction of automotive tax* was that the decision was founded on the fact that the reduction procedure was regarded as secondary relative to the decision that had to be made in the actual taxation procedure. It would have been important from the perspective of the complainant's protection under the law that account would have been taken in the reasons presented for the decision of his demand for tax exemption so that he could when appealing have adequately assessed the need for an appeal (2913/4/08).

The attention of the Housing Finance and Development Centre of Finland (ARA) was drawn to the need for care in drafting *a comparative memorandum on applicants.* A part of the complainant's experience in a supervisory capacity had not been outlined in the memorandum (409/09). If the rent and fees charged by an authority for premises and equipment that it rents to clients are reduced, the reduction and the reason for it must be documented in writing in conjunction with the decision to allow the reduction (1906/4/08*).

No reasons at all had been presented for a decision made in a prison to refuse permission for an *unsupervised meeting* (694/4/09). Several decisions concerning unsupervised meetings were criticised because the only reasons that had been written in them was an expression used in the law (inter alia 1469/4/09* and 2299/4/08). All of the factual reasons for refusals to grant *temporary release* had not been recorded in all decisions, even though such factors as the number of earlier prison terms and the nature of the crime were grounds that have obviously had an influence in the making of every negative decision (2108/4/09).

It emerged when handling complaints concerning *letters being read and phone calls listened to in a prison* that the only reason recorded in the prison informa-

tion system as the ground for a decision to read mail was the wording of a legal guideline "combating a danger threatening order" and nothing had been recorded as the ground for the decision to listen to calls. Problems with the information systems that authorities use are not an acceptable reason for defective recording of decisions (3349/4/08*).

An authority in a social welfare department had founded *a report that it gave to a city* on undocumented information of a kind that could not afterwards be objectively verified in a study of documents (227/4/09). No reasons at all had been presented to support a negative decision on an application for supplementary social assistance (2273/4/10).

APPROPRIATE HANDLING OF MATTERS

The demand for appropriate handling of matters contains a general duty of care. An authority must carefully examine the matters that it is dealing with and comply with the regulations and orders that have been issued. This extensive category includes cases of very different types relating to both court and administrative procedures; during the year under review, about 100, i.e. a third, of observations relating to the fundamental and human rights enshrined in Section 21 of the Constitution belonged in this so-called general category. What was involved in some cases was an individual error due to carelessness, whilst in others the cause lay mainly in the procedural methods that authorities had adopted and in demarcations and assessments to do with factual power of discretion.

For future reference, the Ombudsman drew the attention of a decision panel of a court of appeal to the importance of recording decisions made to hear witnesses, when there was no record of the reason why *a witness had not been heard* in the protocol of the court or any other document drafted in relation to the matter (1513/4/09). An interested party in a civil case had invoked a matter that, according to what is stated in the legal literature, can be of significance from the perspective of a decision in the case. *The reasons presented by a district court for a judgment* were to some extent problematic, because the judgment did not reveal why the district court did not regard this matter as being of significance for the final outcome in the case (2738/4/08).

A justice of a court of appeal who was responsible for recording a main hearing acted carelessly *when recording the main hearing*. Parts of the hearing of two persons failed to be recorded, in addition to which the recording remained on momentarily during an adjournment of the main hearing. The latter error caused a leak of the court's secret consultations to an interested party through copies of the recording of the main hearing that he had requested (945/4/08*).

A district court *erroneously* recorded a *judgment* that it had issued in a criminal case as having acquired the force of law, as a consequence of which a complainant, who had been detained on remand on suspicion of other crimes, was released from remand detention a day late (1079/2/09). The attention of a district court judge was drawn to the care that must be observed when drafting summonses, when *a summons to the main hearing* that the district court had sent in a case involving a fine contained an incorrect mention that in the absence of the defendant the fine would be confirmed unchanged (1374/4/09).

A first-stage *divorce application had been lost in a district court* and the application case had not been recorded as having been initiated on the date the application was filed. The case was initiated only about six months later, when the complainant filed a new application for divorce (2263/4/08). An opinion concerning careful observation of the procedural methods that must be observed with notifications was brought to the attention of a district court *bailiff*. The bailiff had, without resorting to primary means of notification (certificate of acceptance or receipt), used a method that is not known in the law by sending a text message, in which an interested party being summonsed to a main hearing was asked to collect the summons concerning him from a police station (966/4/09*).

Under the legislation in force, information contained in patient records can be sent from a health centre

direct to Kela only on the basis of the patient's written consent (3256/4/09*). A *request* by a complainant to *examine his personal data had vanished* (1392/4/09).

A forensic medicine institute must have clear procedural guidelines also concerning the storage of those deceased persons who are brought there and are not recorded in the police information system for bodies on which forensic obductions have been ordered. The institute must arrange its activities so that bodies are not "forgotten" in the cold storage facilities; instead, the length of time that bodies have been in storage and the reason for their being there must be followed. In addition, the guidelines for filling out the form for testaments in which bodies are donated should be explicated to apply to those situations in which persons die at home (1598/4/09*).

A head physician at a health centre exceeded his authority when he suspended a dentist from duty. *The head physician also made a notification of a crime concerning the dentist,* against whom charges were laid, but dismissed by a court. The head physician had not examined the reasons for the notification of a crime with sufficient care (1299/4/09).

It was problematic from the perspective of the principle of publicity and good administration that accessing the blank application form on the *Valtiolle.fi search service for jobs with the State* web site, i.e. obtaining information from a public document, presupposed signing in using a bank ID or a special verification card, even if no application was made. Likewise not in accordance with good administration was the fact that a person who does not wish to use bank passwords to access the form is required unnecessarily to go to extra trouble to see or obtain a public form (3661/4/08* and 3999/4/08).

Processing by SATO Corporation of applications for dwellings was dimensioned a priori in such a way that not all applications could be handled within the one-month time frame of their validity. The validity of an applicant's application for a dwelling ended unless the application was renewed. Asking applicants to re-initiate their applications at one-month intervals was not founded in law and was contrary to good administration (2299/4/09).

A complainant's notification of an accident was not handled in the manner that good administration requires *in a military barracks* when it was not forwarded to the State Treasury within the time period required under the Defence Forces procedural guidelines. The notification was forwarded only when the complainant enquired about it around a month after the date by which it should have been sent (2095/4/09*).

Complaints made by a teacher who had requested a job certificate should not have influenced the provision of the certificate (1878/4/09). A Consumer Disputes Board acted incorrectly when it failed to adopt a position on all of a complainant's demands (1997/4/08).

In a garnishment order sent by the distraint authorities to the party paying the wages of an indebted person in part-time employment, the amount of income received from Kela had been erroneously stated as the amount corresponding to payment of a full per diem benefit. After the error had been corrected, the distraint office had not immediately returned to the debtor the excess amount paid by the subject of the garnishment order, instead of which it had already been paid to the creditor (1167/4/09). Documents containing contradictory information had been sent to the debtor, and the distrainer had not announced that a future request to pay arriving from the information system would be groundless (2456/4/09).

A sum corresponding to the protected component provided for in the Enforcement Code had not been left in a debtor's bank account as a differential benefit in a distraint action (3252/4/09). The receivable to be collected from a debtor had been recorded in a distraint office as including also the costs of legal proceedings, although the distraint application had applied only to the court-awarded compensation for damage on which the enforcement had been based (3428/4/09).

An application for postponement of enforcement of a prison sentence that a complainant sent to a distraint office was not handled at all. The application had been noticed among enforcement documents sent with impediment certificates to the Criminal Sanctions Agency by the distraint office only when the documents were being sent to a prison for enforcement

(2530 and 2531/4/08). The Criminal Sanctions Agency had not paid without delay a compensation sum that the State had been ordered by a court to pay and a civil servant had not replied to an e-mail message concerning the creditor's demand. After the creditor had begun enforcement proceedings, there were several errors in registration of the distraint case, collection of the receivable and forwarding of the funds (2857/4/09*).

The police detained a person in his hotel room, where seized property that the police promised to collect later was left. However, that did not happen; only when a complaint was made did the police collect the items, a month later, from the cleaner who had taken possession of them. It was impossible to assess whether property belonging to the complainant had disappeared (2945/4/10).

The relatives of a deceased person must receive information on their family member's death without delay. The police did not in conjunction with an investigation of the cause of death try to ascertain the deceased's relatives other than looking in the population data system, although the deceased's wallet contained the telephone numbers of relatives and his mobile phone an ICE (in case of emergency) number (1732/4/09*).

A police sergeant acted unlawfully when he imposed a temporary driving ban on a complainant after having taken him into custody at a bus stop for being intoxicated. A policeman does not have the authority outside of a traffic situation to intervene directly in the right to drive (1894/4/09). A decision not to proceed with a demand for a penalty had not been recorded sufficiently precisely and it remained unclear in the case whether an interested party had made notification of an intention not to proceed. In another case, the right to prosecute had additionally expired already when the notification was made and a decision to end a criminal investigation should have been made at once on this basis (2065/4/09*).

An interested party should have been informed that a criminal investigation into an assault had been suspended (3819/4/09). The protocol of a criminal investigation contained an incorrect entry and material was missing from it (2001/4/09). It was problematic that there appeared to be no records of medicines in a detention facility belonging to a police service; these would have shown more precisely what medicines the complainant had had with him and what he had been given (3321/4/09).

The attention of a deputy prison governor was drawn to his duty to study a matter and exercise care when dealing with matters, when the factor used as the ground on which permission for an *unsupervised meeting* was refused was no longer correct, something that could at least have been suspected from the preparatory documents in the case and could be observed from documents relating to earlier comparable decisions (2299/4/08). A prisoner had on several occasions requested a written decision concerning his cell placement. It would have been in accordance with good administration to provide the reasons for the decision in writing if necessary, although what was involved in the case was a factual administrative action (4244/4/08).

If a *public guardian* becomes, on a case-by-case basis, suspicious about the authenticity of an authorisation to divulge information provided by his principal, the guardian must immediately contact the principal to clear up the matter (2586/4/08). When the time to empty a principal's dwelling is approaching, a guardian should enquire from the principal or, depending on possibilities, the principal's relatives what chattels are wanted to be kept and whether there is possibly property belonging to someone else in the dwelling (3026/4/08*).

A city's head social worker neglected his duty to deal with a complainant's social assistance matter appropriately. An administrative court had in September 2005, for the third time, referred the matter back to be dealt with again. *The official reached a decision in the matter contrary to the administrative court's position.* Protection under the law and the lawful legal order require that a municipal authority comply with a decision of an administrative court and that it can be reviewed only through an appeal or in annulment proceedings. In addition, handling of the matter took too long in the light of its nature and the individual's protection under the law (652/4/08).

Officials working in family services should not in a study of circumstances have adopted a stance on a custody issue by defending the mother as the child's sole custodian. A district court has the right to resolve and bindingly limit the drafters with regard to the matters it wishes them to comment on when they prepare a report on the circumstances in a child custody case. The drafters of a circumstances report had also neglected to hear the views of the complainant and to engage in genuine cooperation with the officials who had drafted a circumstances report for another city. By so acting, they had been partial in the matter and contravened principles of good administration by jeopardising the complainant's protection under the law in a civil case involving where a child would live and visitation rights (913/4/09).

An education and culture department had neglected in a decision concerning teaching arrangements to check the veracity of all information about a child's custody, although it would have been effortless to check the correct situation from the population data system. In addition, the persons mentioned in the decision as the guardians of the party without legal capacity, i.e. in practice also those authorised in the meaning of the Administrative Procedure Act to speak on that party's behalf, were persons who did not have this status. This action was conducive to arousing in the complainant the as such justified concern that confidential information could be passed on to persons who were not entitled to receive it (3951/4/09*).

A municipality's social welfare and health department had not *arranged its document management* in a way that would have enabled it to track the movement through the office of documents sent to it and thereby ensure that, for example, letters, enquiries and applications sent to it as well as appeals would be replied to without undue delay (1089/4/09). A social welfare department must ensure that its personnel have sufficient knowledge of the publicity status of the documents they handle as well as the security procedures to be followed to protect the confidentiality of documents and information systems (4169/4/09*).

The fact that client fees for home care of married persons sharing a household are being invoiced jointly should be revealed on an invoice sent by a municipality. The invoice should also state the amount of service provided at home with respect to each user in the course of the invoicing month and the fee charged for it (2314/4/09). The reservation accounts concerning work premises and equipment rented by an authority as well as ordering of payments had been taken care of so defectively that it was difficult later to obtain a clear picture of rentals of premises and equipment and the charges levied. The Deputy-Ombudsman considered it important that the National Board of Antiquities improve its internal oversight to ensure that rentals of premises and equipment as well as ordering payments are appropriately documented (1906/4/08*).

An employment and economic development office corrected a mobility allowance decision erroneously without the complainant being informed of agreement to correct the decision. Also a lawyer at an employment and economic development centre had incorrectly informed the complainant that the complainant's consent was not needed to correct the mobility allowance decision (3122/4/08).

An employment office had not acted with care when it failed to notice that its registers contained the correct address of a person who had *an administrative court order prohibiting disclosure of address data* and yet sent a training-related decision and other letters to that address (3185/4/08*). An intermunicipal joint authority responsible for basic security acted contrary to Section 54 of the Administrative Procedure Act, when it did not without delay inform a complainant of a decision on transport for his son at the address mentioned in the official's decision (589/4/09).

A city's physical exercise services should have *informed the person proposing a municipal citizens' initiative* of the measures that had been taken on foot of the initiative (1923/4/09). When a city transfers letters concerning the condition of rental dwellings to *a property company constituted under private law,* what is not specifically involved is transferring a document to a competent authority. Nevertheless, giving notification that a letter has been transferred is in accordance with principles of good administration (666/4/08).

In conjunction with a reduction of the basic component of social assistance, a plan as required under Section 10 of the Social Assistance Act had not been drafted (328/4/10). Under the heading "application" in the social assistance decision, there should have been a statement of when the social assistance application had arrived or been handed in at the social welfare office. That way, a social assistance client would receive information on when his application had reached the authority, making it possible for him to evaluate whether the authority had processed the application within the time period required under the Social Assistance Act (1303/4/09).

In conjunction with a legal cadastral survey in a land survey office, letters from interested parties that were intended to be dealt with at a cadastral survey meeting were not forwarded to the engineer in charge of the operation. The engineer received the letter, which had arrived two days before the meeting, only on the same day as the meting and after it had ended (159/4/09). The engineer acted within the parameters of his discretionary powers when he announced that he would draft the final formulation of the *protocol of the initial meeting in the expropriation procedure* only after the second cadastral survey meeting and send the complainant a copy of the protocol he considered to be the final one. Because the legal cadastral survey had not been continued until a year and five months after the initial meeting, there would have been reason to supply the complainant with a copy of the protocol of the initial meeting before the subsequent meeting (881/4/08). The protocol of a cadastral survey associated with the purchase of a reliction area was defective, because it did not include mentions of demands and statements which the owner of a burdened estate presented arising from his request for a transfer of the right of use. In addition, the reasons presented by the engineer in charge of the transaction for transferring the right of use were in part flawed (3201/4/08).

An employment and economic development centre should have assessed *the need for statements on start capital* more precisely before it concluded a framework agreement with a complainant's company. The reasons for which offices subordinate to the centre had not obtained statements from the complainant's company were likewise not considered appropriate (88/4/09). An employment and economic development office had erroneously given a labour policy statement to a complainant on the last day of the time it had reserved for an explanation to be given without its having received the complainant's explanation (113/4/09).

An unemployment fund for the construction sector did not request a complainant's consent to rectify a positive unemployment benefit decision that it had earlier issued or applied for its removal before issuing a decision refusing the benefit (128/4/08).

A letter sent by a Kela office to a complainant had been in part imprecise, and there were also different perceptions within Kela concerning recording of the date of application (278/4/09). When dealing with benefits matters, Kela must pay special attention to ensuring that delay in handling an application does not lead to the application automatically lapsing in the data-processing system (2248/4/09). A Kela insurance district acted incorrectly when it issued a negative decision as a temporary one. The reasons outlined for the decision, which concerned rehabilitation, were also incorrect and the complainant did not receive appropriate advice and an explanation of the position in the matter at the Kela office (2472/4/08).

OTHER PREREQUISITES FOR GOOD ADMINISTRATION

A social worker had not acted in accordance with the *principle of preservation of trust* that belongs to good administration, when afternoon care for a child was ended without advance notice. The attention of a municipality's basic security department was drawn also to the importance of care in providing information to clients of social services (2684/4/08*). Issuing an instruction to move corresponding to a new transfer decision that had been issued with respect to the reasons and announcing this to the complainant would have been desirable from the perspective of preservation of trust (1902/4/08). The fact that legislation on population data permits different kinds of address particulars to be notified to the population data sys-

tem creates a justified expectation on the part of the party making a notification that those who receive the address data will act according to what has been notified (3438/4/08*).

In the opinion of the Deputy-Ombudsman, the *ne bis in idem* prohibition does not apply to the Ombudsman, who can re-examine a complaint case concerning an appointment matter that a State Provincial Office has already examined and assessed. In the factual respect, however, the Deputy-Ombudsman considered the steps taken by the State Provincial Office in the matter to be sufficient (1364/4/09).

GUARANTEES OF PROTECTION UNDER THE LAW IN CRIMINAL TRIALS

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

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

Because the basic idea behind the *final statement procedure* is to ascertain whether there is a need for further study, and also to outline, for the purposes of consideration of charges and a trial, what is undisputed in the matter and what is in dispute, the issuing of a final statement should not be rejected as in those cases where it needlessly delays the completion of a criminal investigation. Among the matters that must be taken into account in consideration is the possibility that the suspected crime in question has become statute-barred. In addition, overall handling of a case is expedited if requests by interested parties for supplementary reports and the kinds of statements that give authorities reason to conduct additional examinations are received before the matter proceeds to consideration of charges compared with a situation in which these things arise only after any prosecution has been initiated (75/4/09).

The police practice of making, after the fact, *promises that are not truthful* to the effect that what is told in the course of an interrogation will not be utilised in another criminal investigation could be criticised from the perspective of the demands relating to a fair trial, because these demands require that a criminal investigation be conducted in accordance with the law and appropriately in all respects (1343/4/09*). A criminal investigation had been delayed for over a year because the police did not receive *the doctor's certificate that it had requested from a hospital*. The command echelon of a police service was directed to discuss this, which the police claimed was a common problem, with the hospital management. A photograph included in the protocol of a criminal investigation should have also borne a marking showing who had taken it and when as well as how it had come into the possession of the police (2496/4/09).

Keeping *pseudo-purchases and undercover operations* secret from their target persons, the public prosecutor and a court as well as this decision-making procedure remaining solely at the discretion of the authorities conducting a criminal investigation prompt questions as to whether the legislation currently in force makes it possible to provide sufficient guarantees of protection under the law in order to ensure that the right of an interested party in a criminal trial to a fair trial is implemented in all situations (571/2/08*).

A bulletin drafted by a detective superintendent was found to be problematic in some respects from the perspective of the presumption of innocence. In it, instances of fraud that were under investigation were spoken of in such a way that it was possible to make the interpretation that it had already been confirmed that crimes had been committed (3534/4/08). An

appropriate entry concerning a prosecutor's decision, according to which a complainant could be regarded as innocent of a deed that had earlier been attributed to him and on the basis of which he had been given a disciplinary punishment, had not been originally recorded in the complainant's *disciplinary documents*. The situation, which was problematic from the perspective of the presumption of innocence, was subsequently corrected as a result of measures taken by the Criminal Sanctions Agency (170/2/08*).

A meeting between a prisoner and his lawyer had been arranged as *a specially supervised visit*, when they were placed in a room where they were separated from each other by a plexiglass partition and the conversation had to take place through telephones. The circumstances were conducive to weakening the prerequisites for the prisoner being able to rely on the trust-based services of a legal counsel that are one of the central fundamental guarantees of a fair trial. The procedure was also harmful from the perspective of protecting the rights of privacy and confidentiality of correspondence (4377/4/09).

IMPARTIALITY AND GENERAL CREDIBILITY OF OFFICIAL ACTIONS

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

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

When a judge decides on his own recusability, he should assess the influence of a complaint on recusability carefully and recuse himself only if the complaint is founded on a special oppositional juxtaposition between himself and the complainants. From this perspective, the interpretation made by a junior district judge could be regarded as narrow and, with the expeditiousness of the trial in mind, undesirable. If, on the other hand, a judge himself takes the view that a complaint will really influence his deliberation, i.e. that he will not be capable of considering the matter objectively, the judge is recusable (948/4/09*).

A detective chief superintendent decided that a criminal investigation would not be conducted on foot of a notification of improper behaviour on the part of a police patrol, although only a prosecutor can make a decision of this kind. The Deputy-Ombudsman drew the serious attention of the detective chief superintendent, for future reference, to this procedure (1176/4/10*).

An authority renting premises to clients as official work is the kind of administrative activity in which the requirements of impartiality and non-recusability must be taken into consideration, although the contract concluded with the client is in and of itself a private law matter in nature. However, it is open to interpretation whether recusability applies to a situation in which an official accepts a premises reservation made by a close relative and confirms it according to pre-determined uniform terms. By contrast, if the rent on the premises is reduced in accordance with discretionary powers or if it is not collected at all from the party that has reserved the premises, what is involved is a decision concerning the interest of the party that has reserved the use of the premises, a decision that assumes concrete form as the economic benefit that the uncollected fee constitutes. In cases like this, the matter can be assessed also in the light of specific regulation concerning recusability and not only that of the general requirement of impartiality in administration (1906/4/08*).

A mayor had acted as a referendary at a municipal board meeting where the board had decided on a statement to be made to the Deputy-Ombudsman in a matter concerning an action by the mayor. The mayor should not have participated in handling of the matter in question (649/4/09).

The Act on holding sessions of lower courts elsewhere than in their actual places (141/1932) allows a lower court to decide that a trial will take place in some location other than the one where the court customarily sits. The Act is *out of date and manifestly contrary to the demand of independence of courts that is safeguarded in the Constitution*. It is, namely, stated in the Act that when the accused or one of the accused is in prison, the Minister of Justice also has the power to order that handling of the case take place in the prison (305/4/09*).

BEHAVIOUR OF OFFICIALS

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

The attention of a judge in the Land Court was drawn to the importance of behaving in the appropriate manner that is expected of a judge. A person being heard in a case involving a private road survey had asked whether it was possible for him to speak Spanish, with his wife interpreting for him. The judge's reply to this was: "We don't want to hear any Spanish course." (4512/4/09).

The task that a duty officer at an emergency response centre performs calls for accentuatedly correct behaviour. Adding to the importance of behaving in a businesslike manner is the fact that the chance of a person making an emergency call receiving help depends on how the duty officer assesses the situation. In a situation of urgent assessment, therefore, the officer must refrain from making light of the caller's situation, even if he assesses it as one that does not call for immediate measures (1799/4/09*).

A deputy prison governor had behaved incorrectly when he called an inmate a clown. The way in which he had tried to influence the inmate's behaviour was in and of itself acceptable. However, the means chosen was not in accordance with the behaviour that is required of an official or with good use of language (480/4/10). A police sergeant was criticised for having called a suspect's account "bullshit" (4705/4/09).

3.3.18 SAFEGUARDING FUNDAMENTAL RIGHTS, SECTION 22

Section 22 of the Constitution enshrines an obligation on all public authorities to safeguard implementation of fundamental and human rights. The obligation to safeguard can also presuppose proactive measures to promote these rights. The general obligation to safeguard extends to all provisions with a bearing on fundamental and human rights.

The Ombudsman investigated, on his own initiative, the matter of *minors in prison* being accommodated separately from other prisoners as well as assessment of the child's interest in this connection. The Ombudsman took the view that the placement of minors in prison is not at present always in accordance with the law and human rights conventions. A shortage of financial resources, staff or space is not an acceptable ground for either separate accommodation of children not being arranged or their opportunities for interaction with other people and participating in various activities being few or nonexistent (879/2/08*).

The established view taken in oversight of legality has been that an authority can not exceed reasonable processing times by invoking a dearth of resources. Correctly focusing resources and using them efficiently are among the key means by which the public au-

thorities must fulfil this obligation. In a case where two policemen were suspected of sex crimes against children, what should have been resolved immediately or at least sooner than actually happened was who ultimately was in charge of the criminal investigation. It took over three months before the case reached the unit that was factually investigating it. About a year and two months elapsed between recording of the notification and completion of the criminal investigation protocol. In the opinion of the Deputy-Ombudsman, taking into consideration the delay in beginning the investigation and the gravity of the suspected crime, a special effort should have been made to take care of the criminal investigation speedily (1739/4/08).

Recommendations concerning good accounting practice published by a private association of certified public accountants, and which have a factually significant role in interpretation of the good accounting practice that is binding on accountants, had not been published in Swedish. The passivity that the Ministry of Employment and the Economy demonstrated in the matter did not meet the obligation that the public authorities have to take action on their own initiative to promote fundamental rights, since it had not taken steps to have the recommendations published also in Swedish, but had instead for a longer time relied on the situation being redressed when EU standards were published at some indeterminate time in the future (930/2/10*).

The opinion adopted in several decisions concerning the times taken to process social assistance applications was that a municipality must ensure that matters in this category are processed within the time frames required by the Social Assistance Act. A specific provision in Section 22 of the Constitution places a general obligation on a municipality to safeguard implementation of human rights (e.g. 2785/4/09).

3.4 SHORTCOMINGS AND IMPROVEMENTS IN IMPLEMENTATION OF FUNDAMENTAL AND HUMAN RIGHTS

The Ombudsman's observations and comments in conjunction with oversight of legality often give rise to proposals and expressions of opinion to authorities as to how they could in their actions promote or improve implementation of fundamental and human rights. In most cases these proposals and expressions of opinion have had an influence on official actions, but measures on the part of the Ombudsman have not always achieved the desired improvement.

On the recommendation of the Constitutional Law Committee (PeVM 10/2009 vp), the 2009 Annual Report contained, for the first time, a section outlining observations of certain typical or persistent shortcomings in implementation of fundamental and human rights. Also outlined were examples of cases in which measures by the Ombudsman had led or are leading to improvements in the authorities' activities or the state of legislation. The Constitutional Law Committee has expressed the wish (PeVM 13/2010 vp) that a section of this kind will become an established feature of the Ombudsman's Annual Report.

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

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

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

3.4.1 DEVELOPMENT HAS NOT ALWAYS BEEN ENOUGH

INTERNATIONAL CONVENTIONS

Ratification of international human rights conventions has not made sufficiently rapid progress in all respects. Examples include the Optional Protocol to the UN Convention against Torture (OPCAT, which Finland signed on 23.9.2003), the 1989 ILO Convention no. 169 on the rights of indigenous peoples and the UN Convention on the Rights of Persons with Disabilities (signed by Finland on 30.3.2007). Ratification of these conventions has been delayed, something that, in addition to causing problems with full implementation of human rights, is unsatisfactory when the matter is looked at from an international perspective.

HEALTH CARE AND SOCIAL WELFARE

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

It emerged from several cases in which decisions were announced during the year under review that the access to treatment that Treatment Guarantee legislation is supposed to ensure has not yet been fully implemented (examples of this are shown in chapter 3.3.15.), although some positive development has occurred.

A problem with health care in the Defence Forces has been that doctor's posts in several units remain vacant. It follows from this, in turn, that there is often a waiting list to see a doctor. There is also a problem if doctors lacking sufficient competence have to be used.

Correspondingly, a problem with health care in prisons has for a longer time been that a regular incumbent has not been found for all doctor's posts. Another problem has been the small number of doctors, as a result of which sufficiently many reception times to see doctors have not been offered in prisons.

Year after year, delays in handling social assistance applications have been observed in various municipalities, as a result of which the constitutional right to indispensable subsistence and care has not been lawfully implemented in all respects. Differences between municipalities with regard to their ability to deal with these applications also leads to people being treated unequally on the basis of where they live.

Delay by the Social Security Appeal Board in handling matters is a persistent problem that, under an agreement between the Chancellor of Justice and the Ombudsman, is being investigated by the Office of the Chancellor of Justice.

TREATMENT OF PERSONS WHO HAVE BEEN DEPRIVED OF THEIR LIBERTY

For years, both the Ombudsman and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have expressed criticism of the so-called slopping-out cells still being used to accommodate inmates in Finnish prisons as violating human dignity. The cell modernisation timetable has been put back from time to time and, despite a partly positive development, there were still 222 of these cells in use at the end of the year under review (cf. 338 the previous year).

It has emerged from time to time during conversations in the course of prison inspections and when investigating complaints that some inmates have to spend as much as 23 hours a day in their cells. In practice, their only activity outside the cell can be the opportunity that they have each day for one hour of outdoor exercise. The reasons for this situation can be the nature of the prison wing, prisoners' fear of other inmates, unwillingness to participate in activities or the prison's inadequate opportunities to arrange activities for inmates outside their cells. Circumstances of this kind can not be considered acceptable. According to the CPT, for example, the time that prisoners spend outside their cells should be 8 hours or more.

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

A constant problem in decisions made on the basis of the Prison Act within the prison service is the inadequate reasons outlined for them. For this reason, a prisoner can often ascertain the factual reasons for a decision only by complaining to the Ombudsman.

Despite strict and precise regulation under the Act, appropriate attention is not paid in prisons to inspecting prisoners' correspondence. Too often, cases arise in which correspondence between a prisoner and his legal adviser or between a prisoner and an oversight authority has been intervened in by opening letters "inadvertently" or "through carelessness".

The principle expressed in the Act that minors must be kept separate from adult prisoners has not been put into practice. However, the starting point should be that of guaranteeing the child's safety and giving it the protection it needs. A dearth of financial resources, staff or space is not an acceptable reason for separate accommodation not being provided.

For years, the Ombudsman has been drawing attention during his prison inspection visits to opportunities for and the circumstances of prisoners receiving visits by their children. A decision concerning the visiting arrangements that are outlined in the chapter dealing with the prison service showed that circumstances suitable for visits by especially small children have not yet been arranged in all institutions.

According to international prison standards, crime suspects should be kept in remand prisons rather than police detention facilities, where conditions are suitable only for short stays and with which the danger of remand prisoners being put under pressure is associated. Excessive use of police prisons to house remand prisoners is a matter that both the Ombudsman and the CPT have been drawing attention to for years, but the problem does not seem to be going away. Although the main rule according to the Detention Act is that a person on remand arising from a crime is to be kept in a prison used to accommodate remand prisoners, last year roughly one remand prisoner in five was held in a police prison. The facility in which a remand prisoner is kept is decided by a court on the representation of the police. Both bear responsibility for ensuring that keeping a remand prisoner in a police prison is viewed, in the manner that is the intent of the Act, only as an exception and that the

intention of the Act that accommodation in a remand prison is the main rule be carried out in practice. During the 2008 periodic visit, the CPT stressed that it is not acceptable that in over 16 years no significant progress has been made in this matter.

COURTS

Trial delays have long been a persistent problem in Finland, something that has been highlighted both in national oversight of legality and in the case law of the European Court of Human Rights. With trial delays in mind, a new Chapter 19 has been added to the Code of Judicial Practice to allow a case to be declared urgent. Legislation providing for recompense for trial delays has also been enacted. These reforms are good and important. However, they do not solve the actual problem – trials can still take unduly long.

As long ago as 2006, the Deputy-Ombudsman recommended to the Ministry of Justice that it take under consideration the need to regulate, on the level of an Act and more precisely than in the current District Court Decree, the preconditions for transferring cases assigned to a district court judge and possibly also the principles underpinning a court's allocation of cases (Ombudsman's Annual report for 2006 pp. 88–89). The Ministry's Department of Judicial Administration stated in 2007 that it concurred with the positions taken by the Deputy-Ombudsman, but since then there has been no progress in the matter. On 5.10.2010 the European Court of Human Rights issued its judgment DMD Group, a.s. v. Slovakia, in which it found that there had been a breach of Article 6, because the legislation was too imprecise in a situation where the head judge of a lower court transfers a case that has been assigned to a judge. The European Court of Human Rights took the view that when a court's administrative and judicial functions are united, the legislation and legal remedies relating to transferring cases must be especially precise.

THE POLICE AND HOME AFFAIRS ADMINISTRATION

House searches in private dwellings have been attracting attention for years: situations in which a search has been conducted without giving the occupant the opportunity to be present during it and invite his or her own witnesses to be there continually arise. Failing to observe the right to be present can have an effect on, for example, implementation of a fair trial.

Often, a search has been conducted, contrary to the main rule enshrined in the Act, without a written warrant. Cases have also come to light in which the police have not considered a measure to be a house search, although a dwelling or other building has been entered to investigate a crime. Inadequate means of ensuring protection under the law for targets of house searches have likewise been seen as a problem.

Various technical systems associated with official activities and intended to make these activities easier and more efficient are often inaugurated without ensuring that the system functions in a way that safeguards fundamental rights and complies with the requirements of the law. One example of this that can be cited is an automatic camera surveillance system for traffic control. The Ombudsman issued a reprimand to the Ministry of the Interior for having approved the inauguration of the system although it did not function in a way that safeguarded the language-related fundamental rights of Swedish-speakers.

Sufficient attention is not always paid to the prerequisites for effective internal oversight of legality in administration. With a revision of the police administrative structure, the police departments of State Provincial Offices were abolished and the oversight of legality for which they had been responsible was included in the tasks of the National Police Board. The area of responsibility of the National Police Board's oversight of legality encompasses numerous other tasks, which considerably limit the work input that can be devoted to oversight of legality.

Delays in family unification under the Aliens Act have manifested themselves over the years. The Finnish Immigration Service has taken measures that relate to better focusing of resources, developing legislation and preventing abuses associated with the family unification procedure. The effect of these measures is not known.

ENTRUSTING PUBLIC POWER TO PRIVATE PARTIES

Entrusting public power to private parties and the problems that stem from this have increased. According to the principle of administration by public servants that is enshrined in Section 124 of the Constitution, a public administrative task may be delegated to others than public authorities only by an Act or by virtue of an Act, if this is necessary for the appropriate performance of the task and if basic rights and liberties, legal remedies and other requirements of good governance are not endangered. However, a task involving significant exercise of public powers can only be delegated to public authorities.

In some cases, public power has been transferred to private parties without the support of an Act. This has happened in, for example, health care, where doctors other than those with the status of public servant have referred patients for observation in accordance with the Mental Health Act and made requests for executive assistance. In psychiatric hospitals, in turn, private security personnel can be used in tasks of a kind to which their powers obviously do not extend. Even if delegation of public power to private parties has been done by virtue of an Act as such, there may be problems relating to the content of their official responsibility, oversight of their activities and their competence requirements.

In 2009, for example, the Deputy-Ombudsman issued a decision according to which using a private security company to guard detention cells is questionable without the support of an Act. However, this practice continued in the North Karelia Police Service, for which reason the matter had to be taken under investigation again during the year under review.

OTHER MATTERS

The Deputy-Ombudsman pointed out already in a decision that he issued in 2008 that accountants who speak Finnish as their mother tongue were factually in a more favourable position than their Swedish-speaking counterparts when it came to interpreting the concept of good accounting practice, because a set of recommendations published by an association of certified public accountants – and which played a significant role in interpretation of the concept of good accounting practice – were available only in Finnish. The Ministry of Employment and the Economy did not undertake measures in the matter, for which reason the Deputy-Ombudsman informed it of his opinion that its passivity in this respect had not in the best possible way met the obligation that Section 22 of the Constitution places on the public authorities to act on their own initiative to promote fundamental rights.

In a decision that he issued in 2005, the Deputy-Ombudsman criticised the functionality of the system of legal safeguards applying to entries in the Trade Register. In 2008 he urged the Ministry of Employment and the Economy to expedite an examination of the system's functionality and measures to improve it. The Ministry appointed a working group, which completed its proposal concerning amendment of the provisions of the Trade Register Act pertaining to appeals in April 2009, but drafting of a Government Bill is still ongoing at the Ministry.

3.4.2 EXAMPLES OF GOOD DEVELOPMENT

During the year under review, the Ombudsman and the Deputy-Ombudsmen issued numerous decisions in which an authority was asked to report what measures it had taken as a result of a stance adopted or a proposal made in a decision. Some examples of cases of this kind in various sectors of administration are shown in digest form in the following. Presented in the digest is first the Ombudsman's or Deputy-Ombudsman's stance or proposal, and after that the

authority's response. The aim with the digest is to give a general picture of the impact of the Ombudsman's work and positive development of the state of law or official actions.

POLICE

The Deputy-Ombudsman expressed criticism of the fact that a foreign citizen kept in detention was not allowed to use his own mobile phone in his cell, something that was explained as being in accordance with a practice based on the regulations of the Turku police prison. A written decision that the mobile phones would be taken away from their owners should also have been made and instructions for appealing against the decision provided. What was likewise incorrect was that a legal counsel's phone had been taken from him when he went to meet his principal (567/4/09*).

The Varsinais-Suomi Police Service announced in May 2010 that it had amended the regulations of its detention facility so as to safeguard the use of a phone by a person taken into custody under the provisions of the Aliens Act, that any restriction would be based on a written decision, complete with instructions for appealing against it, and that the use of a mobile phone by a legal counsel would be safeguarded.

Based on observations made during unannounced visits to police prisons belonging to the North Karelia Police Service, the Deputy-Ombudsman asked the police service to inform him of what measures had resulted from some observations that had prompted criticism (3397, 3398 and 3399/2/10).

The police service announced in February 2011 that the appeal provisions of Chapter 17 of the Police Cells Act were being gone through with guards and police station supervisory personnel, in addition to which forms with appeal instructions had been drafted. Changes have also been made to the regulations of the police prisons on the basis of the inspection report and both the regulations and the day programme can be read in the detention space. Where Lieksa and Nurmes are concerned, negotiations are in progress to design a sheltered yard and outdoor exercise area. In addition, the Lieksa property that was found to be partly in poor condition will be repaired by the end of June – until which time persons detained for longer han 24 hours will be transferred to the police prison in Nurmes.

The Deputy-Ombudsman recommended to the Länsi-Uusimaa Police Service that it consider recompense in a case where the holder of a driving licence was banned from driving for over a month after a DrugWipe test indicated that he had used cocaine and opiates. The crime laboratory's report on his blood test freed him from suspicion and revealed that the test had yielded a false result (2754/4/10).

The Länsi-Uusimaa Police Service announced that it had paid recompense for the financial loss that had been caused in the situation.

In association with the aforementioned case, the Deputy-Ombudsman informed the National Police Board of his opinion that DrugWipe tests could give false results. He pointed out that these quick tests do not give results that are 100% certain, and that this is not what they are supposed to do, either. They are only an auxiliary means. It is very important to be aware of their limits and they should not be accorded too much weight. Other observations, for example of errors in traffic and concerning the driver, are of central importance. They must be precisely recorded and their significance carefully evaluated. Also other alternative explanations for what has been observed must always be taken into consideration (3993/2/09).

Among the matters stressed In a guideline letter sent to all police units by the National Police Board on 24.2.2011 was the importance of filling out an observation form about the driver and that it was not advisable to impose a temporary driving ban on a vehicle driver solely on the basis of a quick drug test. In uncertain cases, a temporary driving ban should not otherwise be imposed, either, without compelling grounds before the result of the blood test has been received.

The police had sold a complainant's weapons in an auction. Also sold in the same conjunction was weapons-related equipment, such as telescopic sights, the possession of which did not require a permit. The

Deputy-Ombudsman recommended that the Itä-Uusimaa Police Service make recompense to the complainant for this (3951/4/08).

The police service reported that it had paid the complainant €600 as compensation in the matter. In addition, the attention of firearms certificate holders will be accentuatedly drawn to the importance of removing at as early a stage as possible those parts of weapons that do not require permits and that they do not want to be sold at auction.

PRISON SERVICE

Reference was made in the 2009 Annual Report to a case in which the Deputy-Ombudsman found it untenable from the perspective of prison safety that nearly all prisons lacked on-call health care personnel at weekends and in the evenings (133/4/08*).

A new notification system for examining the state of prisoners' health was introduced on 1.6.2010. On 15.2.2011 the Eduskunta approved amendments to the Detention Act and the Prison Act to enable the health of persons under observation or in isolation for observation to be checked by professional health care personnel other than those with the status of officials.

Likewise mentioned in the previous year's Annual Report was a case in which the Deputy-Ombudsman took the view that the Criminal Sanctions Agency had not taken measures on foot of decision KKO:2008:110 by the Supreme Court. The Criminal Sanctions Agency bears a responsibility for ensuring that unjustified deprivations of liberty of the kind to which the Supreme Court decision relates no longer happen. The Deputy-Ombudsman recommended that the Ministry of Justice take steps in the matter to carry through any legislative amendments that may be needed (1138/2/08*).

On 13.10.2010 the Criminal Sanctions Agency issued an order titled "Releasing a Prisoner", in which it is emphasised that release must take place without undue delay once the prerequisites are met. On 15.2.2011 the Eduskunta approved an amendment to the Prison Act under which an on-duty official of the criminal sanctions area can outside normal working hours exercise the power of decision that belongs to the governor to release a prisoner conditionally.

DISTRAINT

The 2009 Annual Report contained an outline of a decision by the Deputy-Ombudsman in which he asked the Ministry of Justice to inform him what measures had been taken as a result of the shortcomings identified in the decision as affecting the ULJAS distraint information system when foreign addresses were being handled (3028 and 3029/4/08).

The National Administrative Office for Enforcement announced that registering a debtor's foreign address as a postal address had been part of training within the national ULJAS training programme. In addition, extensive training in operating the information system had been arranged for all district court area bailiffs.

In the view of the Deputy-Ombudsman, the time for sending an advance notice of distraint was problematic, because it was possible that the debtor would receive the advance notice of a distraint action only on the same day as the action was due to be carried out (312/4/09*).

According to information received from the Office for Enforcement, the difference between the advance notice and the distraint action was changed from eight to ten days.

THE DEFENCE FORCES AND THE BORDER GUARD

A complainant believed that an order he had received from the Karelia Brigade to shave off his beard was unlawful. In his view, the Defence Forces should have provided the equipment needed to carry out the order. Because the general service regulations require both haircutting and that beards and moustaches be shaved off, the Defence Forces should, in the Deputy-

Ombudsman's view, make it possible to comply with the order without a conscript incurring extra costs (629/4/08*).

The Defence Forces implemented the measures that the decision called for when on 1.4.2010 the Chief of War Economics issued an authorisation under which a quantity of disposable razors corresponding to several years' requirements were ordered and made available to conscripts arriving from July 2010 onwards.

SOCIAL WELFARE

The Deputy-Ombudsman gave the City of Helsinki Social Welfare Department a reprimand for a case in which a complainant's application for support for a child under her guardianship and care had been undergoing processing for over 13 months. He also recommended that the Department consider the possibility of making recompense to the complainant for the inconvenience that the long waiting time had caused (4165/4/08*).

The Department announced that it had paid the complainant an amount corresponding to the interest payable on arrears.

HEALTH CARE

The Deputy-Ombudsman criticised the upbringing of children and their care in an approved school, because the restrictions on the children's movements that were part of the care had not been implemented in accordance with the Child Welfare Act (433/2/08).

The National Institute for Health and Welfare (THL) and the approved school announced that care in the units in question had been changed after the decision so that the children's freedom of movement was no longer restricted. THL reported that it was in contact with the Ministry of Social Affairs and Health to have legislation enacted to make restrictions on movement possible for longer periods.

The Ombudsman found that a categorical general guideline by the Helsinki University Central Hospital's Eye Clinic to the effect that retinal detachment surgery would not be done on an emergency-duty basis was as such unlawful (4116/4/08*).

The Helsinki and Uusimaa Hospital District announced on 14.9.2010 that it had decided to establish an emergency service point in the clinic to deal with retinal detachment cases, with effect from 17.9.2010.

Arising from the aforementioned case, the Ombudsman decided on his own initiative to examine the arrangement of retinal detachment surgery on an emergency basis throughout the country and asked the Ministry of Social Affairs and Health for a report on what was being done to safeguard the right of these patients to adequate health services and immediate treatment in the Meaning of the Act on Specialised Medical Care when they are in need of urgent medical care (1706/2/10*).

According to information received, the Helsinki University Central Hospital vitreous humour and retina emergency service that has been set up takes care of patients needing emergency treatment who are referred to it from anywhere in Finland. This also increases the efficiency of elective activities carried out at normal times, because acute cases who have arrived at the weekend have already been operated on and there is no need to cancel operations scheduled for Monday to cater for them. Retinal detachments have become more common in recent years due to ageing of the population and growth in the number of cataract operations.

In conjunction with an inspection of the cold storage facilities at the University of Helsinki's Institute of Forensic Science, a body that had been brought there over four months earlier was found. The Ombudsman pointed out that the Institute of Forensic Science had to keep track of the times for which bodies had been kept in the cold storage facilities and why they were there so that deceased persons were not simply forgotten there. It is not enough or appropriate that the facilities are examined only, for example, when they are cleaned. Monitoring must be regular and planned (1598/4/09*).

As a corrective measure, the Hjelt Institute contacts the police if bodies taken to the Institute's facilities for storage have been there for longer than 60 days. The Institute has agreed that in future its forensic medical department will discuss relative responsibilities and division of labour with the National Institute for Health and Welfare and the police to ensure that something like this does not happen again. Likewise, the division of labour with the Institute of Biomedicine will also be examined in situations where a person has made a testament bequeathing his or her body for research.

The Ombudsman found that the Helsinki Health Centre acted incorrectly when it charged a complainant a fee for a so-called B doctor's statement that he had requested for rehabilitation arranged by Kela (1739/4/09*). The Ombudsman asked the Health Centre to inform him what measures it had taken in the matter.

The Helsinki Health Centre announced on 3.11.2010 that it had refunded the money charged the complainant for the B doctor's statement and amended its permanent guidelines to ensure that these statement's would be provided free of charge.

LABOUR AND UNEMPLOYMENT SECURITY

The Deputy-Ombudsman followed, on his own initiative, the development of processing times for appeals at the Unemployment Security Appeal Board. It emerged from a report provided by the Board in early 2010 that for several years it had been receiving more cases than it resolved. As a result, it had a backlog of about 4,500 cases awaiting resolution (4032/2/09).

The Board reported that it had developed its work processes and engaged additional personnel. As a result, it was able during the year under review to resolve about 600 more cases than the number it received and reduce the average time needed to process a complaint, although the number of incoming cases had remained at a rather high level.

GENERAL MUNICIPAL MATTERS

The City of Savonlinna's personnel administration department had had an erroneous conception of the grounds for granting paternity leave (4450/4/09).

Having noticed a factual error that it had made in a decision concerning paternity leave for a complainant, the City had announced that it would correct its decision in an appropriate manner. It also announced that it had corrected wage-payment errors that had occurred when paternity leave was being granted to other of its office-holders and employees. The Deputy-Ombudsman considered it very laudable that once the City had noticed its error, it corrected not only the calculation error in the case of the complainant, but also those that had affected other office-holders and employees.

The invoicing procedure based on the financial information system belonging to the Kainuu joint municipal authority's social welfare and health service did not meet the legal principles of administration, equal treatment of clients of administration and the client's right to preservation of trust that are included in the principles underpinning good administration. As a result of the unlawful procedure that the joint municipal authority had followed, the complainant was groundlessly charged a fee for day-care and incurred extra costs (1362/4/09).

The joint municipal authority announced that it had corrected its financial information system in such a way that all existing municipal residents and also those who had left the region were compiled from population data onto a change list. The collection office had been informed of the Ombudsman's decision and asked to extend the payment period for invoices to a moderate level. The complainant had been paid the compensation she asked for.

EDUCATIONAL MATTERS

The Deputy-Ombudsman recommended that the Ministry of Education and Culture, in its capacity as the authority that directs and sets norms for education, take the measures it considers appropriate to bring uniformity to specialised dental training (3515/4/09*).

The Ministry of Employment and the Economy and the Ministry of Education and Culture have been doing preparatory work to standardise specialised dental training within the Specialist Physicians Working Group appointed by the Ministry of Social Affairs and Health on 2.7.2010.

The former municipality of Hauho had charged the parents of Hauho students attending the Sibelius college excess portions of the fee for tuition in addition to the parents paying the educational institution the statutory course fees. In the view of the Deputy-Ombudsman, there was no basis in an Act for charging the excess portions, for which reason he recommended that recompense be made to the parents (1713/4/09*).

The City of Hämeenlinna decided to stop its collection measures and return the excess portions that it had collected in the course of 10 years.

The regulations of a vocational institute included a ban on body piercing jewellery being worn during work lessons. The Deputy-Ombudsman found the ban to be too general in nature and therefore in violation of the students' fundamental rights. He asked the Ministry of Education and Culture to inform him of what measures his decision had led to in the Ministry, the National Board of Education and various vocational institutes (2948/2/08*).

The Ministry announced that, on its instructions, the National Board had informed the parties organising vocational training of the decision concerning the ban on body piercing jewellery. The Ministry and the National Board have explicated their guidelines with respect to banning this jewellery in a circular sent to organisers of training on behalf of the National Board. Also stated in the circular is that the National Board will highlight the matters mentioned in the circular in its training and guidelines. The National Board has additionally asked the vocational institutes that gave reports for more precise explanations of the steps they have undertaken on foot of the Deputy-Ombudsman's decision.

LANGUAGE MATTERS

The Deputy-Ombudsman found in a decision that he issued in 2009 that the Ministry of the Interior had breached the Language Act when it issued emergency bulletins. In January 2010, arising from the decision, the Ministry appointed a working group to examine the issuance of official bulletins. Its specific task was to draft a report on official bulletins which would include an assessment of possible needs to amend legislation and guidelines (361/2/09*).

In January 2011 the Ministry of the Interior appointed a working group to draft an Act regulating the issuance of official bulletins. Something that was taken into account when launching the project was the aforementioned decision by the Deputy-Ombudsman concerning language rights when providing information on emergencies.

A unit belonging to the Tampere University Central Hospital had only the foreign-language name Stroke Unit, without an equivalent name in a national language. This name appeared as such in information aimed at the public, including signs. In the opinion of the Ombudsman, the name was not compatible with the Constitution, the Language Act or the Administrative Procedure Act. He asked the Pirkanmaa Hospital District joint municipal authority to inform him of what measures his statement of position may have given rise to (4032/4/08*).

The joint municipal authority informed him that it had changed the name of the unit to aivoverenkiertohäiriöyksikkö.

It was thought that the automatic absence messages used in e-mails by the Government Institute for Economic Research (VATT) could be drafted in Finnish only, because it does not exercise public power. In the view of the Ombudsman, however, this aspect is irrel-

evant, because VATT is a State authority in the meaning of the Language Act's provision on the scope of application of the Act. He asked VATT to report on what measures it had taken in the matter (2809/2/08*).

VATT forwarded for information a copy of a guideline on the content of e-mail absence messages that it had drafted arising from the Ombudsman's decision. Guidelines include models for drafting absence messages in both Finnish and Swedish.

As a consequence of a complaint against it triggering an investigation, the Finnish Forest Research Institute (Metla) had on its own initiative issued a guideline to its entire personnel on using absence messages in both national languages (3941/4/09).

Something that the Ombudsman found in breach of the Language Act and the Administrative Procedure Act was that the error message sent in response to e-mails sent to the former addresses of district courts that had been abolished as part of a restructuring of the district courts system was only in English (537/4/10*).

The Ministry of Justice's Department of Judicial Administration reported that with effect from 6.10.2010 the error message had been sent in three languages, i.e. Finnish, Swedish and English.

TAXATION

A complainant reported that in his home region of North Savo it was not possible to pay taxes without additional costs. Although the Decree founded on the Act unambiguously stipulated the Kuopio Customs Office as the place of payment, the Customs announced that they did not have an office in Kuopio (4353/4/09*).

Arising from the complaint, the Eastern Customs District announced that it had on its own initiative taken steps to ensure that a service as required by the Act and Decree on Tax Collection would be available at the Kuopio Customs Office.

TRANSPORT AND COMMUNICATIONS

A complainant criticised the procedure that the Finnish Vehicle Administration (AKE) had followed when inspecting a trailer. He also expressed criticism of AKE on the ground that his demands for compensation had not been appropriately replied to. The complainant's e-mails had likewise not been replied to in the manner that the principle of service enshrined in the Administrative Procedure Act would have presupposed (2752/4/09).

The Finnish Transport Safety Agency (Trafi), which is continuing AKE's activities, announced on 21.6.2010 that it had inaugurated a new case and document management system. The Agency's employees have received guidelines and instructions on the use of the system. Questions arriving by e-mail and relating to vehicle inspections and vehicle-technical matters will be channelled into one mailbox, monitoring of which has been centrally entrusted to one service group.

The Ombudsman gave a reprimand, for future reference, to a company that is engaged in vehicle inspection because it had unlawfully charged a premium rate for its telephone service. He also gave the Finnish Transport Safety Agency (Trafi) a reprimand for having neglected its duty of oversight with respect to the company's telephone advice (3467/4/08).

Trafi instructed the company to undertake the necessary measures to make the advice that it provides in relation to vehicle inspection and registration matters cost free by 31.12.2010 on pain of it possibly initiating sanctions as provided for in Section 21 of the Vehicle Inspections Act and the vehicle registration contract concluded with the company. Trafi reported later that the company had promised that its telephone advisory services in relation to vehicle inspection and registration would be cost free from 1.4.2011 onwards.

OTHER MATTERS

The Deputy-Ombudsman informed the Population Register Centre of his opinion that the guidelines on making notification of a postal address needed to be explicated (3438/4/08*).

The Population Register Centre announced that the guidelines concerning notification of a change of address will be explicated with respect to postal address in that a client will be informed, already when making notification of a change of address, of the principles on which the use of a separate postal address is based. The matter will be taken into account also when developing the Internet service. The guidelines have already been implemented with respect to the change-of-address telephone. Information on the use of a postal address will be added to the instructions for filling out the change-of-address notification form in conjunction with the next printing. To ensure a flow of post that is as uninterrupted as possible, the instructions for filling out the form will additionally recommend making a forwarding agreement with Itella Oy (formerly Finland Post) as well as inform clients of the costs that ordering the service will incur. Also in discussions with the Population Register Centre's information service clients, the importance of using a postal address will be stressed.

Persons who have voted in European Parliament elections while living in another EU country, can not exercise their franchise after moving back to Finland unless they have asked the authorities in the other EU country to remove their name from the electoral register. Only when the electoral register in Finland had been finalised was a complainant informed that he could not vote in Finland. The Deputy-Ombudsman urged the Ministry of Justice and the Population Register Centre to ensure in good time before the 2014 European Parliament elections that EU citizens receive appropriate and adequate information on the principles underlying their franchise and exercising their right to vote as well as the procedure followed in elections conducted in Finland (2018/4/09*).

The Population Register Centre reported on possible modes of information provision in the aforementioned situations. The Ministry of Justice announced that it would examine possibilities of amending the Electoral Act in good time before the next European Parliament elections.

In the opinion of the Deputy-Ombudsman, the publicity principle was not fully implemented on the Ministry of Finance-run Valtiolle.fi web site for searching for jobs with the State. Submitting a job application on a web site run by the State required signing in using a bank user ID or an electronic personal ID. What made the situation problematic was that signing in was required even to view an empty application form. The Deputy-Ombudsman took the view that it would accord with the publicity principle and service principle included in good administration if the empty form published on the web site could be accessed on the open pages without requiring user ID. The present practice could not, in the Deputy-Ombudsman's assessment, be justified without reasons associated with data security. In addition, the Deputy-Ombudsman informed the Ministry of the points that the Data Protection Ombudsman had raised in his report to the Ombudsman (3661* and 3999/4/08*).

The Ministry of Finance announced that with regard to the application form, the matter had been corrected in that models of the application forms had been added to the Valtiolle.fi pages as pdf attachments that all can see. In addition, the Ministry announced that a dialogue had been initiated with the Data Protection Ombudsman with a view to resolving the questions raised in the report mentioned.

3.5 SPECIAL THEME FOR 2010: LANGUAGE RIGHTS AND THE REQUIREMENT OF GOOD USE OF LANGUAGE

3.5.1 INTRODUCTION

Language rights and the requirement of good use of language were, for the first time, the special annual theme chosen by the Office. It was highlighted on all inspection visits and taken into consideration also in other activities, such as when considering own-initiate investigations. The theme was continued in 2011. Earlier themes have been publicity in 2008 and 2009 as well as advisory services and equality in 2006 and 2007.

The starting points in evaluating the language theme were Section 17 of the Constitution, in which the right to one's own language and culture is enshrined, and Section 21, which guarantees the right to good administration. The contents of language rights are explicated in especially the Language Act and the demand for good use of language that belongs to good administration finds expression in Section 9 of the Administrative Procedure Act.

The emphasis in examining language rights depended on whether the subject of examination was a monolingual or bilingual entity. What was of key importance was examination of the status of Swedish, but paying attention to the status of Finnish could just as well arise on inspection visits in municipalities where Swedish was the only or majority language as well as to authorities and other bodies constituted under public law that are monolingually Swedish-speaking. The status of the Sámi language likewise came up on some inspection visits.

Because of Section 26 of the Administrative Procedure Act, which relates to interpretation and translation, the perspective of examination broadened to include languages other than the two national ones. In, for example, criminal investigations, trial procedures, the exercise of administrative law, education and social welfare and health care, the question of using foreign languages can arise. This is separately regulated by legal provisions applicable to various specific sectors.

A background memorandum containing a compilation of questions to be taken up on inspection visits was drafted on the theme. In addition, attention was paid in each category of cases to possible special legislation with a bearing on language rights in that particular category. As a general rule, these questions were supplied to the inspection subject in advance and the answers were gone through during the visit.

The main thrust of the approach to the question of good use of language was likewise that the subject of an inspection was asked beforehand to send material, such as brochures, forms, bulletins and official guidelines as well as various documents (such as requests for supplementary information and decisions) drafted when handling individual matters, to the Office for inspection. If the material supplied in advance did not warrant measures, it was taken up briefly during an inspection without further handling. Alternatively, material could be collected during a visit, in which case the matter was returned to at a later date if necessary.

3.5.2 LANGUAGE RIGHTS

SIGNS, FORMS AND OTHER INFORMATION

The Language Act requires bilingualism to be evident and demonstrated on their own initiative by authorities in their activities; this means that, inter alia, signs, forms, brochures and so on must provide clients with information bilingually. Some shortcomings in these respects were still found at some sites inspected, although the Language Act has been in force since 2004.

On prison inspections, the Ombudsman drew attention to the opportunities available to inmates to obtain information about the prison and guidelines and regulations applying to them as well as to whether this information in common with various forms could

be obtained in different languages. On inspection visits to prisons with a bilingual wing, shortcomings relating to the availability of Swedish-language versions of key documents and forms were revealed. The Ombudsman informed the prisons of his opinion that, under the Language Act, at least the prison regulations and induction guide should be available in Swedish. The various forms and documents used by inmates also had to be in both national languages (2430 and 4010/3/10). The Ombudsman subsequently began, on his own initiative, an investigation of implementation of language rights in all prisons that have a bilingual wing (3459/2/10). This investigation is still ongoing.

Likewise on inspections of police prisons attention was focused on the availability of documents and forms in especially both national languages. Shortcomings manifested themselves in at least the daily programme, although police personnel with a command of Swedish could be used to interpret. The ability to communicate with speakers of foreign languages who had lost their liberty varied considerably. In some police prisons, this had been catered for fairly well in that the daily programmes had been translated into several languages. Staff also had the use of documents containing a set of questions in several languages ("Are you hungry?", "Are you thirsty?", and so on). By showing these to persons who had been deprived of their liberty it was possible to communicate to at least some extent with them (2154, 2155, 3397 and 3398/3/10).

On inspections of Defence Forces units the Sámi language arose in especially the Sodankylä Jaeger Brigade and the Ivalo Border Jaeger Company (3563 and 3564/3/10). Some intakes had included Sámi-speaking conscripts, but no one had demanded to be able to use Sámi during his period of service. This matter had been enquired about already when the conscripts were called up. However, the call-up papers and other documents were, as such available also in Sámi in the Jaeger Brigade. By contrast, forms, even police forms, were not available in Sámi in the Border Jaeger Company. The Deputy-Ombudsman decided to take the matter under investigation on his own initiative (1068/2/11).

The attention of an association constituted under public law and which performs a public administrative task was drawn to the requirements of the Language Act, because it emerged on an inspection visit that not all of the brochures or forms in use were available in both of the national languages, in addition to which the association's name plate was in Finnish only (1922/3/10).

INTERPRETATION AND TRANSLATION

The aspects to which attention was paid when assessing interpretation and translation included how interpretation was carried out in practice, how services are obtained, whether there had been problems in arranging the services and to what extent translations of documents had been requested from the authorities. Generally speaking, problems with these matters were not evident on inspections, although the following individual facts did come to light:

On an inspection of a district court, the Ombudsman's attention was drawn to problems associated with evaluation of the competence of interpreters and translators. The district court stated that, with the legal security of the parties to a trial in mind, it would be advisable to create a national list or register of companies and persons with the competence to perform legal translation and who had presented themselves for the task. The district court had earlier made a recommendation to the Ministry of Justice about this matter, but it had not led to measures (2975/3/10).

On a visit to a prosecutor's office, it was brought to the Deputy-Ombudsman's attention that the Language Act is to some degree unclear as to how much trial proceedings material is to be transferred for the defendant (3765/3/10).

There used to be problems also with respect to the extent to which environmental impact assessments and reports should be translated. It emerged on inspection visits to Centres for Economic Development, Transport and the Environment that a recommendation by the Ministry of Justice on the matter (3/58/2007) had rectified the situation (1982/3/10).

In one police facility inspected there was difficulty in getting translations sufficiently quickly (1335/3/10).

LANGUAGE ABILITY OF PERSONNEL

Another matter that was given attention on inspection visits was how language legislation was being implemented in the personnel policy of the body being inspected. The matters looked at included how language ability was taken into account in recruitment, what kind of language training was available for employees, how language ability was taken into consideration in remuneration and whether job tasks were assigned on the basis of an official's command of languages.

A general observation that could be made was that language ability was taken into account in recruitment situations. At several of the sites inspected, language courses in both Swedish and especially English were on offer. A supplement for ability in a language was paid on the basis of the collective employment agreement. Something that was separately revealed at one site inspected was that learning about the Language Act and its requirements was part of the job-familiarisation training given to new employees (1943/3/10).

A question that arose on an inspection visit to one bilingual (with Swedish as majority language) district court was whether the present requirements relating to judges' command of Swedish were appropriate in a district court where over 80% of all cases dealt with had Finnish as their protocol language. The Ombudsman was told during the inspection that the regulations concerning the language ability that is required of judges had made career advancement more difficult for Finnish-speaking persons, whereas junior district judges or other persons with lesser job experience, but who speak Swedish as their mother tongue, overtake considerably more experienced applicants if these do not have an excellent command of Swedish. In the view of the district court, as a consequence of actions by the public authorities, the situation was not fair from the point of view of an experienced Finnish-speaking judge (3607/3/10). The Ombudsman brought up the matter on an inspection visit to the Vaasa Court of Appeal (3608/3/10).

INFLUENCE OF LANGUAGE ON HANDLING TIMES

Nothing to indicate that language would have affected the length of time taken to handle cases emerged during the inspection visits. By contrast, a positive development of handling times was found in the Vaasa Court of Appeal.

The Deputy-Ombudsman found in a decision issued in 2006 (1538/4/04) that language equality had not been fully realised, because the times taken to deal with cases handled through the medium of Swedish had been longer than those through the medium of Finnish for a longer time, and it was not possible to explain the difference with the number or nature of the cases. By contrast, it emerged during the inspection of the court in 2010 that the average handling times for cases in Finnish and Swedish, respectively, had been converging since 2006 so that in 2009 the average time for a case through the medium of Finnish was 5.7 months and 5.9 months when the language was Swedish (3608/3/10).

The average time taken to handle cases through the medium of Swedish at the Helsinki Court of Appeal, in turn, was considerably shorter than for all cases (2974/3/10).

ASCERTAINING A CLIENT'S LANGUAGE

The Language Act requires the public authorities to ascertain a client's language when they contact him or her on their own initiative. A person can also register the language in which he or she wants to conduct dealings with the authorities, either Finnish or Swedish, in the population data system.

In this respect, the inspections revealed no problems with regard to the authorities' actions. By contrast, it was found in one district court that the language stated in the population data system as the one of preference when conducting business did not correspond in all cases to the person's factual command of the language (2975/3/10).

OTHER OBSERVATIONS

In prisons, the language question was of significance for especially foreign inmates from the perspective of occupational safety. It was noted on the inspection visits that the occupational safety and health aspects of work being done by foreign inmates had been taken into consideration by ensuring before the work began that they understood what equipment they were using and how it had to be used. A prisoner was not allowed to use a piece of equipment unless it had been made sure that he knew how to do it (2430/3/10).

The safety-related significance of language ability also came up on inspections of Defence Forces units. There had been some language problems with expatriate Finns in one garrison. One serious case that came to light was that of a conscript who could not speak Finnish and did not understand an order during firing exercises to put on hearing protectors in time (4306/3/10).

The availability of police services through the medium of Swedish, in turn, continued to be impeded by the fact that it was difficult to get enough native speakers of Swedish to enlist for police training. Of the 24 positions on offer, only nine had been filled (1335/3/10).

3.5.3 THE REQUIREMENT OF GOOD USE OF LANGUAGE

Matters that were looked at on inspection visits included whether the mode of expression used in a document was linguistically clear and its contents understandable, was the use of language neutral, were documents, especially decisions, perspicacious and clear in their visual appearance and did their contents form a consistent and easily understandable totality.

On inspections of distraint offices, the offices themselves expressed criticism of forms, which were found to be defective or difficult to understand. The Deputy-Ombudsman asked the National Administrative Office for Enforcement to inform him of what measures the problems reported with respect to the forms had prompted (4037/3/10).

The National Administrative Office for Enforcement announced that some of the errors and problems that had come up had already been corrected in conjunction with regular maintenance and updating of the distraint information system and the distraint document production application. According to the notification, some of the errors observed would be corrected in the course of spring 2011. The National Administrative Office for Enforcement further announced that the list of shortcomings in forms that the Deputy-Ombudsman had supplied had been forwarded to the chairpersons of the working groups developing the distraint information system and the distraint document production application.

On other inspections, no matters relating to good use of language that were of such a kind that further measures would have been warranted arose.

ANNEX 1

CONSTITUTIONAL PROVISIONS PERTAINING TO PARLIAMENTARY OMBUDSMAN OF FINLAND

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

Section 38 – Parliamentary Ombudsman

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

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

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

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

Section 109 – Duties of the Parliamentary Ombudsman

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

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

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

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

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

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

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

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

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

If the Chancellor of Justice becomes aware that the lawfulness of a decision or measure taken by the Government, a Minister or the President of the Republic gives rise to a comment, the Chancellor shall present the comment, with reasons, on the aforesaid decision

or measure. If the comment is ignored, the Chancellor of Justice shall have the comment entered in the minutes of the Government and, where necessary, undertake other measures. The Ombudsman has the corresponding right to make a comment and to undertake measures.

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

Section 113 – Criminal liability of the President of the Republic

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

Section 114 – Prosecution of Ministers

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

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

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

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

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

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

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

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

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

PARLIAMENTARY OMBUDSMAN ACT

(197/2002)

CHAPTER 1
OVERSIGHT OF LEGALITY

Section 1 – Subjects of the Parliamentary Ombudsman's oversight

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

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

Section 2 – Complaint

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

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

Section 3 – Investigation of a complaint

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

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

Section 4 – Own initiative

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

Section 5 – Inspections

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

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

Section 6 – Executive assistance

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

Section 7 – Right of the Ombudsman to information

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

Section 8 – Ordering a police inquiry or a preliminary investigation

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

Section 9 – Hearing a subject

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

Section 10 – Reprimand and opinion

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

(2) If necessary, the Ombudsman may express to the subject his or her opinion concerning what constitutes proper observance of the law, or draw the 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 (24.8.2007/804)

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

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

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

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

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

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

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

Section 15 – Decision-making by the Ombudsman

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

Section 16 – Substitution (24.8.2007/804)

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

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

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

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

Section 17 – Other duties and leave of absence

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

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

Section 18 – Remuneration

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

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

Section 19 – Annual vacation

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

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

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

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

CHAPTER 4
OFFICE OF THE PARLIAMENTARY OMBUDSMAN AND DETAILED PROVISIONS

Section 20 – Office of the Parliamentary Ombudsman

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

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

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

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

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

CHAPTER 5
ENTRY INTO FORCE AND TRANSITIONAL PROVISION

Section 22 – Entry into force

This Act enters into force on 1 April 2002.

Section 23 – Transitional provision

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

ANNEX 2

STATISTICAL DATA ON THE OMBUDSMAN'S WORK IN 2010

MATTERS UNDER CONSIDERATION

Oversight-of-legality cases under consideration			*6,511*
Cases in initiated in 2010		4,492	
– complaints to the Ombudsman	4,034		
– complaints transferred from the Chancellor of Justice	45		
– taken up on the Ombudsman's own initiative	63		
– submissions and attendances at hearings	60		
– other written communications	290		
Cases held over from 2009		1,633	
Cases held over from 2008		391	
Cases resolved			*4,360*
Complaints		3,960	
Taken up on the Ombudsman's own initiative		52	
Submissions and attendances at hearings		58	
Other written communications		290	
Cases held over to the following year			*2,151*
From 2010		1,694	
From 2009		457	
Other matters under consideration			*155*
Inspections [1]		68	
Administrative matters in the Office		67	
International matters		20	

[1] Number of inspection days 58

MEASURES TAKEN BY THE OMBUDSMAN

Complaints		*3,960*
Decisions leading to measures on the part of the Ombudsman	*746*	
– prosecution	–	
– reprimands	47	
– opinions	646	
– recommendations	11	
– matters redressed in the course of investigation	42	
No action taken, because	*2,223*	
– no incorrect procedure found to have been followed	369	
– no grounds to suspect incorrect procedure	1,854	
Complaint not investigated, because	*991*	
– matter not within Ombudsman's remit	111	
– still pending before a competent authority or possibility of appeal still open	532	
– unspecified	164	
– transferred to Chancellor of Justice	30	
– transferred to Prosecutor-General	13	
– transferred to other authority	10	
– older than five years	56	
– inadmissible on other grounds	75	
Taken up on the Ombudsman's own initiative		*52*
– prosecution	–	
– reprimand	2	
– opinion	21	
– recommendation	19	
– matters redressed in the course of investigation	4	
– no illegal or incorrect procedure established	2	
– no grounds to suspect incorrect procedure	14	
– lapsed on other ground	–	
– still pending before a competent authority or possibility of appeal still open	–	

INCOMING CASES BY AUTHORITY

Ten biggest categories of cases

Social security		800
– social welware	522	
– social insurance	278	
Police		666
Health care		464
Prisons		359
Courts		209
– civil and criminal	176	
– administrative	33	
Labour		203
Municipal affairs		177
Environment		155
Education		146
Enforcement		99

ANNEX 3

INSPECTIONS

Courts

Helsinki Court of Appeal
Helsinki District Court
Ostrobothnia District Court
Vaasa Court of Appeal

Prosecution service

Office of the Prosecutor General
Office of the Prosecutor General (investigation arrangements for police crimes)
Pirkanmaa prosecutor's office

Police administration

Helsinki Police Service (investigation arrangements for work crimes)
Helsinki Police Service, eastern police district
Helsinki Police Service, Pasila police prison (health care)
Helsinki Police Service, Pasila police prison (twice)
Helsinki Police Service, Töölö detention facility (inspection without advance notice)
Itä-Uusimaa Police Service, Porvoo police station's detention facility (inspection without advance notice)
Joensuu main police station detention facility (inspection without advance notice)
Kymenlaakso Police Service's detention facility at the main police station in Kotka (inspection without advance notice)
Lieksa police station detention facility (inspection without advance notice)
Mobile Police
National Bureau of Investigation (3 times)
National Police Board
National Police Board (oversight of legality area of responsibility)
Nurmes police station detention facility (inspection without advance notice)

Prison service

Criminal Sanctions Agency, central administration unit
Juuka Prison (inspection without advance notice)
Kerava Prison (inspection without advance notice)
Pyhäselkä Prison (inspection without advance notice)
Suomenlinna Prison
Training Institute for Prison and Probation Services
Vaasa Prison (inspection without advance notice)

Distraint

Central Ostrobothnia and Ostrobothnia distraint office
National Administrative Office for Enforcement
North karelia distraint office

Defence Forces and Border Guard

Defence Command, legal department
Guard Jaeger Regiment
Jaeger Brigade
Kainuu Brigade
Kainuu Regional Office
Lapland Border Guard's Border Jaeger Company
National Defence Training Association
National Defence University

Foreigners' matters

City of Espoo group home Ingas (reception centre for unaccompanied asylum-seeking minors)
Finnish Red Cross-maintained Siuntio group home and supported dwelling unit, Harjulinna (reception centre for unaccompanied asylum-seeking minors)
Kotka reception centre
Kymenlaakso police service's main police station in Kotka, foreigners' affairs

Social welfare

City of Vantaa Koisoranta service centre
Harviala Approved School
Kårkulla Approved School
Kårkulla municipal joint municipal authority
National Supervisory Authority for Welfare and Health, Valvira (twice)

Health care

Niuvanniemi Hospital
Niuvanniemi Hospital, youth section
Social affairs and health section of the Kuopio office of the East Finland Regional State Administrative Agency

Social insurance

Employee Pensions Appeal Board
Employment Accidents Appeal Board
Finnish Centre for Pensions

Education

City of Helsinki education department's Swedish-language educational line
National Board of Education
North Ostrobothnia Centre for Economic Development, Transport and the Environment (competence and culture operational unit)
North Ostrobothnia Regional State Administrative Agency (protection under the law within the education sector)

Other inspections

Finnish Food Safety Authority Evira
Ministry of Justice's democracy and language affairs unit
Ministry of Social Affairs and Health's occupational safety and health department
Office of the Data Protection Ombudsman
Uusimaa Centre for Economic Development, Transport and the Environment
West and Central Finland Regional State Administrative Agency's occupational safety area of responsibility
Western Customs District

ANNEX 4

PERSONNEL

Secretary General

Kuopus, Jorma, LL.D., LL.M. with court training (1.1.–31.3.)
Romanov, Päivi, LL.M. with court training (since 1.4.)

Principal Legal Advisers

Kuopus, Jorma, LL.D., LL.M. with court training (on leave 1.1.–31.3.)
Kallio, Eero, LL.M. with court training
Marttunen, Raino, LL.M. with court training
Haapkylä, Lea, LL.M. with court training
Länsisyrjä, Riitta, LL.M. with court training

Senior Legal Advisers

Åström, Henrik, LL.M. with court training (part-time till 31.8.)
Ojala, Harri, LL.M. with court training
Hännikäinen, Erkki, LL.M.
Tamminen, Mirja, LL.M. with court training
Tanttinen-Laakkonen, Kaija, LL.M.
Haapamäki, Juha, LL.M. with court training
Linnakangas, Aila, LL.M., M.Pol.Sc. (till 30.5.)
Aantaa, Tuula, LL.M. with court training
Kurki-Suonio, Kirsti, LL.D.
Stoor, Håkan, LL.Lic., LL.M. with court training

Legal Advisers

Muukkonen, Kari, LL.M. with court training
Lindström, Ulla-Maija, LL.M.
Toivola, Jouni, LL.M.
Pölönen, Pasi, LL.D., LL.M. with court training
Verronen, Minna, LL.M. with court training
Pirjola, Jari, LL.Lic., M.A. (on leave 7.1.–31.8.)
Rita, Anu, LL.M. with court training
Niemelä, Juha, LL.M. with court training
Eteläpää, Mikko, LL.M. with court training
Suhonen, Iisa, LL.M. with court training
Sarja, Mikko, LL.Lic., LL.M. with court training
Arjola-Sarja, Terhi, LL.M. with court training
Äijälä-Roudasmaa, Pirkko, LL.M. with court training
Holman, Kristian, M.Sc.(Admin.)
Geisor-Goman, Astrid, LL.M. (till 31.8.)
Räty, Tapio, LL.M. (since 9.8.)

On-duty lawyers

Wirta, Pia, LL.M. with court training
Romakkaniemi, Jaana, LL.M. with court training

Information Officers

Helkama, Ilta, M.A.
Tuomisto, Kaija, M.Soc.Sc.

Investigating Officers

Huttunen, Kari
Laakso, Reima

Notaries

Kerrman, Raili, LL.B.
Rahko, Helena, LL.B.
Koskiniemi, Taru, LL.B.
Tuominen, Eeva-Maria, M.Sc.(Admin.), LL.B. (on leave 6.4.–3.12.)
Suutarinen, Pirkko, LL.B.
Skottman-Kivelä, Piatta, LL.M. with court training

Records Clerk
Pärssinen, Marja-Liisa, LL.B.

Filing Clerks
Kataja, Helena

Assistant Filing Clerks
Karhu, Päivi

Departmental Secretaries
Ahola, Päivi
Stern, Mervi (on leave 1.7.–30.9.)
Forsell, Anu

Office Secretaries
Helin, Leena (till 30.9.)
Raahenmaa, Arja
Salminen, Virpi
Keinänen, Kristiina
Salminen, Sirpa
(on leave since 29.4.)
Kaukolinna, Mikko
Hellgren, Johanna
Hokkanen, Pirjo (till 15.2.)
Mäkelä, Tiina (since 22.2.)
Myllymäki, Helena (since 1.5.)
Kataja, Seija (1.7.–30.9.)

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