Parliamentary

Ombudsman

of Finland

Summary

of the

Annual

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TO THE READER

The Constitution 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 on any shortcomings in legislation.

The report consists of general comments by the office-holders, a review of activities, some observations and individual decisions with a bearing on central sectors of oversight of legality, statistical data as well as an outline of the main relevant provisions of the Constitution and of the Parliamentary Ombudsman Act. It is published in both of Finland's official languages, Finnish and Swedish.

This brief summary in English has been prepared for the benefit of foreign readers. I hope it will provide the reader with a reasonable overview of the Parliamentary Ombudsman's work and the most important issues that arose in 2007.

Helsinki 25.2.2008

Parliamentary Ombudsman *Riitta-Leena Paunio*

Secretary General *Jussi Pajuoja*

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1. General comments

RIITTA-LEENA PAUNIO

THE OBJECTIVE: TO HAVE AN IMPACT

The Parliamentary Ombudsman has been an influence in Finland for nearly 88 years. That the institution was needed at all was called into question in the early years, but it found its place decades ago, demonstrated that it was necessary and has been growing and strengthening ever since. Over that time it has evolved in many ways to keep step with the changing needs of society and citizens.

In all of these decades the institution has had an influence through its very existence: the authorities know that they are being overseen, citizens know that they have the opportunity to turn to an independent overseer of legality. At its best, the legitimacy of a state governed under the rule of law is strengthened.

But, of course, the institution has had other kinds of impacts as well – at different times and in different ways. I shall illustrate this by means of a few examples.

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

Photo: Jussi Aalto

Observations along the decades

The development of the welfare state and a general revision of legal conditions that reached into many sectors of society were powerful trends in the 1970s. The machinery of administration grew, but administrative procedures were unregulated. In those days, the positions adopted by the overseers of legality counted for a lot when official activities were being developed in accordance with the demands of good administrative procedure.

Oversight of prisons, institutions and military units housing conscripts was also extensive in scope in those days and the physical conditions in these places and the treatment of inmates were the focus of intense scrutiny. The Ombudsman made many proposals concerning the development of legislation, administration of justice and governance in these sectors. Those pro-

posals can be characterised as development work with a bearing on legal regulation. The Ombudsman strongly influenced this development.

Development of fundamental and human rights, in turn, did much to shape the Finnish legal order and judicial thinking in the 1980s and 1990s. The Ombudsman made a distinctive contribution to this development. Indeed, the general assessment is that the Ombudsman played a pioneering role in the application of international human rights conventions and encouraging them to take root in the Finnish legal culture. In the 1980s, when an approach of this kind was unusual in Finland, the aim in decisions formulated by the Ombudsman was to evaluate official actions also in the light of the obligations that international human rights conventions impose.

In conjunction with a complete overhaul of the fundamental rights provisions of the Constitution in 1995, the Ombudsman was tasked with overseeing implementation of fundamental and human rights in official actions. This naturally further strengthened the role of the institution as an actor in relation to these rights. This has been reflected in, for example, assessments of implementation of social fundamental rights. In many decisions, the Ombudsman has adopted a position on the content of social rights and obligations to arrange services. In these cases it has also been necessary to assess the adequacy and appropriateness of legislation as well as the importance of resources and oversight in safeguarding these rights.

Thus the importance of the Ombudsman's work and its impact can be outlined from the perspective of a history and culture of law that extends beyond the present day and recent years.

Results of effectiveness study

Beginning in the last decade, follow-up of the Ombudsman's proposals has been developed and there is now more information available than in the past about, especially, the influence that these proposals have on legislation.

But what kinds of impacts do the Ombudsman's decisions have more generally? Can some more general evaluations of the effects that these decisions have be formulated? I believe this ought to be studied, even though the effectiveness of this kind of institution is understandably difficult to gauge and there is hardly any tradition of studying the effectiveness of legal institutions to draw on.

A study of this kind, the first ever conducted, was completed last year. An event at which its results were published took place towards the end of the year. The results have been widely distributed and the full text of the report is also posted on the Ombudsman's web site in Finnish together with short summaries in English and Swedish. The study is interesting in many ways, although financial constraints meant that its scope had to be limited.

The focus in the study was on how the Ombudsman has influenced legal provisions and the actions of authorities mainly in the period since the fundamental rights provisions of the Constitution were revised. In other words, the aim has been to establish how effectively the proposals made and the positions adopted by the Ombudsman have been able to influence, on the one hand, the contents of laws and, on the other, the actions of the authorities. The examination of authorities was limited to how the police and prison authorities as well as officials in the service of the Defence Forces viewed the Ombudsman's oversight of legality. The Ombudsman's visibility profile in the media was also examined.

The conclusion arrived at in the study is that the Ombudsman's work has had an impact, although it has been observed that it takes time to affect legal provisions. The impact of especially the Ombudsman's own initiatives and on-site inspections has been significant. On the basis of the study, the experts who conducted it ask, among other things, whether the Ombudsman should be given greater discretion than at present to decide when a complaint will be investigated. This would make it possible to allocate resources more appropriately, especially to the on-site inspections and own initiatives that have been observed to be so effective.

I believe there is a lot to support this view. Namely, the Ombudsman has a duty to investigate all complaints with respect to which there are grounds to suspect that an unlawful procedure has been followed or neglect has occurred. What this means in practice is that the Ombudsman has only limited powers to determine the emphases in her work programme and take up matters on her own initiative.

In what other ways does the Ombudsman have an impact?

Thus the results of the study provide a lot of information about how effective the Ombudsman's work has been since the revision of the fundamental rights provisions, but the full picture can not be drawn from them.

The authorities chosen for inclusion in the study operate in core areas of the Ombudsman's oversight of legality. Overseeing the conditions in which conscripts, prisoners and persons under arrest are kept and the way they are treated is one of the Ombudsman's key tasks. These authorities are all centrally directed organisations. I do not find it at all surprising that they find oversight of legality effective and that it indeed is in these areas.

On the other hand, there are authorities whose actions are known to be significantly influenced by the Ombudsman's oversight of legality in some matters, but it is difficult or expensive to track the influences. Examples of matters of this kind are to be found in the social welfare and health care sectors. Things that have been accomplished as a result of positions adopted by the Ombudsman include the establishment of clarity with regard to, for example, obligations to implement the subjective right of parents of small children to day care, to arrange non-emergency health care, to provide services for the handicapped and medical aids as well as to expedite processing of applications for income support. It is understandable that questionnaire surveys involving hundreds of municipalities and their great variety of authorities are possible to conduct, but the cost of this kind of research is very high.

The task that I find the most challenging of all is that of tracking the effectiveness of the Ombudsman's activities in relation to overseeing and promoting fundamental and human rights. What is partly involved is, of course, the Ombudsman's core tasks: dealing with complaints and overseeing conditions in institutions and the treatment of their inmates. After all, the actions of the authorities are evaluated from the perspective of respect for fundamental and human rights in every case that has to be investigated. Own-initiative investigations are focused on questions that are sensitive with these same rights in mind. The questions that are brought up in the course of on-site inspections reflect similar choices. The fundamental and human rights perspective guides the way in which explanatory arguments are written.

It is partly a question of the Ombudsman's other activities. The fundamental and human rights section of the Ombudsman's annual report has become especially comprehensive despite the considerable work input that it demands. Many speeches and presentations at events arranged by authorities and NGOs amount to exercise of influence with the aim of promoting fundamental and human rights.

The Ombudsman's efforts to promote respect for fundamental and human rights continue to be developed. The cooperation that has been practised with NGOs in recent years is one example of this. Independent NGOs, which critically monitor the actions of the authorities, are an essential part of a democratic state that is governed under the rule of law and respects fundamental and human rights. These organisations have expertise in relation to legal issues in their sectors of operation and of the problems that exist in the activities of authorities. This knowledge is important for the Ombudsman. It is also important in general to strengthen the role of NGOs in the efforts of the public authorities to promote respect for fundamental and human rights.

To mark the anniversary of the Ombudsman institution in February 2008 we arranged a seminar on the theme of promoting equality in official actions. The issues deliberated were the challenges of equality and the problems of discrimination. The participants were

representatives of NGOs and official bodies as well as independent experts. The gathering provided an opportunity for discussions between NGOs and officials and its aims included exercising influence to promote fundamental and human rights.

A further clear development feature is that the Ombudsman institution, by virtue of its independent status and effective actions to promote fundamental and human rights, is seen as a cooperation partner in international efforts to protect human rights. The international networking in which the Ombudsman engages is, in my view, also work to promote fundamental and human rights. But what are its effects?

What is the aim in striving for effectiveness?

My starting point is that the more effective the actions of the Ombudsman are, the more they will strengthen the principle of the rule of law and promote and safeguard the fundamental and human rights that are enshrined in the Constitution.

I believe that in actions with the goal of promoting fundamental and human rights it is important to make choices. Through properly timed and correctly selected studies and statements of position the Ombudsman can contribute to some problems and shortcomings in the activities of authorities being identified and redressed. What is important is to concentrate on central fundamental and human rights and the official activities that are most important from the perspective of respect for these rights.

Making these choices and balancing them between the Ombudsman's core tasks – dealing with complaints and overseeing conditions in institutions and the treatment that their inmates receive – is naturally a task for the Ombudsman. In this deliberation, the effectiveness of measures has its own significance. Naturally, tracking of effectiveness can be developed through the Ombudsman's own measures, but outside research will be a welcome extra in this respect. Thus there is a clear need for additional research, either by a university or commissioned from some other body, to supplement the effectiveness study conducted during the year under review.

PETRI JÄÄSKELÄINEN

WHAT IS THE IMPORTANCE OF THE OMBUDSMAN'S POWER TO PROSECUTE?

Under the Constitution, the Ombudsman has the right to bring a prosecution or to order that a prosecution be brought in a matter within her oversight-of-legality remit. However, only the Eduskunta can decide to bring a prosecution against the President of the Republic or a member of the Council of State (i.e. the Government).

Whereas before the new Constitution came into force the Ombudsman's power to bring a prosecution extended only to malfeasance, the extent of that power is nowadays determined on the basis of the object of oversight of legality. If the suspect is subject to the Ombudsman's oversight of legality, the Ombudsman can bring a prosecution for an offence committed in an action subject to oversight, irrespective of whether the offence is malfeasance or some other crime. In these cases, public prosecutors also have the right to lay charges.

The Constitution states that a decision to bring a prosecution against a judge for an unlawful action in the performance of official duties can only be made by the Ombudsman or the Chancellor of Justice. Thus public prosecutors, and even the Prosecutor General, do not have power to act in these matters. Correspondingly, only the Ombudsman or the Chancellor of Justice can decide to bring a prosecution against the Prosecutor General or the Deputy Prosecutor General.

The Ombudsman, in turn, has no power in criminal cases involving private individuals, i.e. persons other than public servants, employees of public bodies or persons performing tasks of a public character. For that reason the Ombudsman is described as a special prosecutor.

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

Photo: Jussi Aalto

It is rare internationally for an Ombudsman to have the power to prosecute. What significance in principle and practice has the Ombudsman's power of prosecution in Finland and are there any problems associated with it?

Significance in principle

In cases of malfeasance by judges the sole right of prosecution that the Ombudsman and correspondingly the Chancellor of Justice enjoy has an important significance in principle. In conjunction with an organisational restructuring of the prosecution system in 1996, the Constitutional Law Committee required that the arrangement of the right to prosecute judges meet the requirement of "plausibility in principle". The Ombudsman met this requirement because the prestige of

the institution was founded on the Eduskunta and the Chancellor of Justice thanks to the historical prestige of that office.

This arrangement of the right to prosecute also safeguarded the judiciary's independence of public prosecutors. This independence could be violated if public prosecutors were to make decisions concerning the discharge of the official duty of those judges who decided on charges laid by the prosecutors themselves. The Ombudsman and judges, in turn, do not have any shared everyday work or other mutual connection as a consequence of which the Ombudsman's power to bring a prosecution for malfeasance could jeopardise the independence of the judiciary. The Ombudsman likewise meets the basic demand that must be set for a body that exercises the power to prosecute judges: namely, the Ombudsman him- or herself is independent of all other bodies that exercise public power.

The Prosecutor General and the Deputy Prosecutor General are the superiors of all public prosecutors. Therefore it is important that decisions to prosecute them can be taken only by an overseer of legality who is independent of public prosecutors.

In other matters it is valuable in principle that the supreme overseer of legality has independent power to bring prosecutions in cases within his or her remit. Thus in a case where the Ombudsman finds it necessary to bring a prosecution, laying criminal charges for a court to decide on is not subject to the discretion of any other instance. In those countries where Ombudsmen do not have independent power to prosecute, they can generally recommend to the prosecution authorities that charges be laid. The situation that can then arise is one in which the supreme overseer of legality and the prosecution authority disagree on the issue of prosecution and the matter can not be referred to a court for resolution. If the matter involved was one that had attracted major public attention, an unresolved disagreement could weaken the legitimacy of the system and the public's trust in the administration of justice. This kind of situation can not arise in Finland.

According to the Constitution, the Ombudsman always has the right to bring a prosecution in a case within the scope of his or her power of oversight. This means that it is the Ombudsman who wields the supreme power of prosecution in these cases. The Ombudsman can bring a prosecution in these cases even if a public prosecutor would not have done so. In my view, it is consistent and valuable in principle that the supreme oversight of the legality of official actions and the discharge of public tasks, on the one hand, and the supreme power of prosecution with respect to them, on the other, are vested in the same authority.

The borderline between criminal and other breaches of official duty is not precise. Since the Ombudsman also has the power to prosecute, he or she can evaluate the action under examination comprehensively, not only from the perspective of good administration and compliance with official duty, but also in the light of criminal law. This suits the supreme overseer of legality well.

The effectiveness of the Ombudsman's stances in legal matters depends especially on the acceptability and plausibility of the reasoning behind decisions. These stances gain institutional support from the Ombudsman's constitutionally enshrined status as the supreme overseer of legality and monitor of respect for fundamental and human rights. The Ombudsman institution is deeply rooted in Finnish society – after all, it is nearly as old as the independent Finnish state. It is customary for the Ombudsman's stances to be complied with. Also the knowledge that the Ombudsman can in the final analysis bring a prosecution in the event of action contrary to his or her adopted position can in some cases support the effectiveness of these positions.

Practical significance

Assessed only in terms of the number of charges laid, the practical significance of the Ombudsman's right to bring prosecutions is not great. The right has been exercised on only a small number of occasions each year. What is the reason for this?

In practice, suspicions of criminal matters are channelled right at their inception into a criminal investigation by the police and through that to public prosecutors, who consider whether or not to lay charges. For

that reason, matters in which bringing a prosecution would be a real alternative are only rarely referred to then Ombudsman. That, in my view, is how it should be. Despite having the right to bring prosecutions, it is not appropriate for the Ombudsman to have primary responsibility for ensuring that those who commit crimes are brought to justice for it. That task resides as a general rule with the authorities who have power in the criminal process. The Ombudsman must use his or her powers as a special prosecutor only when these authorities have not acted appropriately or when dealing with the matter directly under the Ombudsman's power to consider a prosecution is justified or appropriate for some reason or other. In my view, it would not be appropriate for the Ombudsman to decide to deal with suspected criminal matters within his or her remit on, for example, the sole ground that an involved party or even some other person has happened to refer that matter to the Ombudsman.

The fact that the Ombudsman only rarely finds it necessary to use his or her independent power of prosecution demonstrates how well the normal system of criminal proceedings works. The prosecution system is nowadays professionally competent and independent. Earlier, the Ombudsman occasionally found it necessary to take, for example, decisions concerning whether or not to prosecute in criminal cases suspected of having happened within the Defence Forces under consideration for the reason that otherwise a military lawyer who was a member of the Defence Forces personnel would have acted as the prosecutor in these cases. Nowadays the prosecutors in also courts martial are persons assigned by the Prosecutor General and independent of the Defence Forces.

In practice, the Ombudsman's right to prosecute is a lot more significant than one might assess merely on the basis of the number of prosecutions brought. The Ombudsman decides whether or not prosecutions should be brought in some other cases as well. Some of these are so-called sanctions-type decisions not to prosecute, in which it is concluded that the suspect has committed an offence, but the Ombudsman finds that suffices to issue a reprimand for future reference. As a special prosecutor, the Ombudsman can also exercise the powers of a prosecutor and, for example, order a criminal investigation or take part in one.

However, what is most significant in practice is that the existence of the right to prosecute affects the contents and orientation of the Ombudsman's investigation of complaint cases or own-initiative matters. Since the Ombudsman has the right to prosecute, in principle also the possibility of measures under criminal law must be assessed in every case. If this right did not exist, an Ombudsman could limit examination to the general level and focus it on only, for example, the actions of an organisation or agency. In Finland, however, the Ombudsman must generally extend the scope of investigation all the way to the officials or performers of public tasks who are suspected of having acted unlawfully. In practice, this can have a general preventive influence where the legality of official actions is concerned. It also suits the Finnish tradition of legality, as expressed in Section 118 of the Constitution, which states that "A civil servant is responsible for the lawfulness of his or her official actions."

Possible problems

The Constitution gives the Ombudsman the right to receive from authorities and others who perform public tasks the information that he or she needs in his or her oversight of legality. This means that a civil servant has an official duty to provide the Ombudsman with truthful information in any case that is under investigation. However, a civil servant's duty of truthfulness can conflict with protection against self-incrimination, which means that everyone has the right not to expose oneself to the danger of prosecution and not to contribute to establishing his or her own guilt. Problems of this kind are not associated with the criminal investigation procedure, because in it civil servants are in the same position as a normal crime suspect without a duty of truthfulness.

A situation that is problematic from the perspective of protection against self-incrimination can arise especially when, after a decision in a matter that has been investigated by the Ombudsman through the complaints procedure, the same matter becomes the subject of a criminal case. This is possible, because in Finland an interested party has a constitutionally guaranteed independent right to demand a prosecu-

tion, i.e. to demand that a civil servant or other person performing a public task be punished. The problem that can arise here is that the explanation that the civil servant, who is bound by a duty of truthfulness, has given to the Ombudsman concerning his or her action can be used by the prosecution in a criminal trial.

In the case *Alzery v. Sweden*, the UN Human Rights Committee established in accordance with the Covenant on Civil and Political Rights criticised the fact that it had not been and was no longer possible for the unlawful actions of the Swedish authorities to be made the subject of criminal proceedings, because the Ombudsman had investigated that matter otherwise than in the light of criminal law and civil servants, as parties under an obligation to be truthful, had given information to the Ombudsman. How can problems of this kind be avoided?

If a case being investigated by the Ombudsman is of such a character that it prima facie calls for assessment in the light of criminal law, it should be referred directly for normal criminal investigation procedure. Even when the complaint investigation procedure is followed, the Ombudsman can issue a reprimand for having acted unlawfully, but I believe that consideration of a prosecution presupposes that a criminal investigation has been conducted or at least that the civil servant under suspicion has been given the opportunity to have the matter referred to a criminal investigation, in which he or she has the legal safeguards that apply in normal criminal proceedings.

In practice, however, the situation is usually such that, on the basis of only a complaint or the other material available, it is too early to assess whether the preconditions or need to initiate a criminal investigation exist. What is, in my view, important then is that both the complainant and the civil servant against whom the complaint is made are if necessary informed of how the Ombudsman intends to proceed in the investigation of the matter. There can be very many different kinds of situations and the mode of procedure to be followed must be assessed on a case-by-case basis. Here, I shall outline only a couple of examples of the possible courses of action.

If the complainant demands that the action to which the complaint relates be investigated as a crime, but the Ombudsman believes that the preconditions or need for a criminal investigation do not exist, it may be appropriate to advise the complainant to make a report of a crime to the authorities responsible for conducting criminal investigations. If in a situation of this kind the matter began to be investigated following the procedure for complaints, the same matter could, at the complainant's instigation, become later the subject of criminal proceedings.

If, on the other hand, the complainant has not demanded that the matter be investigated as a crime, but the Ombudsman believes that there is a possible need for it to be assessed in the light of criminal law, the investigation can begin following the procedure for complaints. It may in this case, however, be necessary to draw the attention of the civil servant against whom the complaint has been made to the possibility that the action in question may also be assessed in the light of criminal law. That way, the civil servant can take protection against self-incrimination into consideration when explaining the action.

Conclusions

The small number of prosecutions brought by the Ombudsman does not give a correct picture of the significance of his or her right to do so. It is of great significance in principle both in matters subject to the exclusive right to prosecute of the supreme overseers of legality and in other matters within the Ombudsman's remit. In addition, the right to prosecute is of great practical significance with, especially, the content of the investigation in mind. Problems associated with the right to prosecute are rare, but is important that there be an awareness of them in the Ombudsman's work.

Despite its international rarity, the Ombudsman's right to prosecute is, I believe, of great significance, one that suits the Finnish justice culture and tradition of legality.

JUKKA LINDSTEDT

RIGHTS AND TREATMENT OF CONSCRIPTS – 1988 AND 2008

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

Photo: Jussi Aalto

The Ombudsman must monitor especially the treatment of conscripts and other persons doing military service as well as of peacekeeping personnel, in addition to conducting inspections in various units of the Defence Forces. Under legislation defining the division of tasks between the Chancellor of Justice and the Ombudsman, matters pertaining to the Defence Forces, the Border Guard and peacekeeping personnel as well as military court proceedings are assigned to the Ombudsman.

Thus the Defence Forces are of greater importance in the Ombudsman's oversight of legality than merely the number of complaints would indicate. The few dozen complaints concerning the Defence Forces and the Border Guard that the Ombudsman receives each year are, namely, only a very small fraction of the total number of complaints. Only some of these concern conscripts and are often made by their parents. In the 1980s, for example, more complaints were made concerning conscript matters than is the case today.

It seems that for conscripts still doing their national service the threshold to making a complaint is high, which indicates a fear that making one will have an adverse consequence for the complainant. Indeed, the right of conscripts to complain does not appear to be self-evident to all personnel in superior positions, either; the Ombudsman has repeatedly reminded one unit of conscripts' right to complain directly to her.

A precise picture of the treatment of conscripts can not be obtained solely on the basis of complaints; inspections of military units have a key role in this respect. These are conducted regularly, with each unit receiving a visit every few years. Unfortunately, growth in the number of complaints has meant that the number of inspection visits has had to be reduced somewhat and the intervals between them have lengthened. Naturally, the Ombudsman also follows media coverage of news with a bearing on conscripts. The media are quite quick to report shortcomings in this respect, which is in itself a good thing.

The Defence Forces' own oversight of legality, which has been made more effective in recent times, is likewise important. The year under review was the first year in which the systematic oversight of legality was conducted within the Defence Forces. The Defence Staff intends during the current year to examine, for example, preliminary investigations of alleged abuses of superior position throughout the Defence Forces.

In 1988, as a part of my then postgraduate studies, I published a monograph entitled *Eduskunnan oikeusasiamies ja varusmiesten oikeudet* ("The Parliamentary Ombudsman and Conscripts' Rights") in the journal *Tiede ja Ase* ("Science and Weapon"). The principal body of material that I used consisted of complaints

concerning the military authorities in which the Ombudsman had issued decisions in the first half of the 1980s and corresponding own initiatives as well as the Ombudsman's own reports on his activities from 1920 to 1986. Thus the monograph was both a review of the state of conscripts' rights in the 1980s and an evaluation of how the Ombudsman institution had promoted the rights of conscripts throughout the entire period of its existence.

It has been 20 years since I wrote that monograph. How have conscripts' rights and the way they are treated developed in that time? And how has the Ombudsman been able to influence that development?

Restrictions on fundamental rights

In my 1988 monograph I highlighted restrictions on conscripts' traditional liberties, such as their freedom of speech and religion. Although these restrictions are not very visible in a conscript's everyday life, they are nevertheless of great importance in principle. In the period 1964–1982 the Ombudsman issued important decisions concerning an order prohibiting a conscript from publishing a certain article, an order prohibiting a conscript from having certain newspaper cuttings in his possession, an order prohibiting distribution of the magazine *Varusmies* ("Conscript") elsewhere than in canteens as well as the obligation imposed on a conscript who was not a member of any religious denomination to attend field services of worship in conjunction with parades.

At that time, Section 16 of the constitutional document the Form of Government Act was in force. It stated: "… what has been said about the general rights of Finnish citizens shall not prevent the enactment of legislation providing for the kinds of restrictions that in time of war or rebellion and with respect to those in military service also at other times are essential". However, there were hardly any restrictions on the level of Acts; instead, restrictions on fundamental rights were mainly founded on other kinds of constructions. Looking at the matter from a researcher's point of view, my assessment then was that just why restrictions enshrined in instruments below the level of an Act would be acceptable was something that had not been satisfactorily justified by the arguments presented in the Ombudsman's decisions. In my view, it appeared that the Ombudsman had in his decisions accepted the doctrine, which had already by then become increasingly controversial, of a special relationship of being subject to power, i.e. so-called institutional power.

Today the situation is different. The doctrine of institutional power is no longer invoked. A central demonstration of this is another decision by the Ombudsman, in 2000, which also concerned the duty of soldiers without religious affiliation to attend parade services of worship and other events that include religious parts. Ombudsman Lauri Lehtimaja referred to the revision of the fundamental rights provisions of the Constitution that had been implemented in 1995 and in which so-called negative freedom of religion had been specifically provided for. In conjunction with the revision of the fundamental rights provisions, the general possibility of restricting these rights with respect to military personnel was also abandoned. In Ombudsman Lehtimaja's view, persons who have no religious affiliation, both career soldiers and conscripts, have the right to abstain from participation in parade services of worship if they so wish.

Of course, the Ombudsman was concerned about restrictions on the fundamental rights of conscripts in the 1980s as well. He stated in 1982 that he had found the legal situation with respect to the fundamental rights of conscripts to contain gaps and be subject to interpretation and urged the Government to take legislative measures to regulate the legal status of soldiers. His proposal was not acted on, but the new Conscription Act that entered into force at the beginning of this year contains quite a lot of provisions regulating the rights and obligations of conscripts.

When I wrote my monograph 20 years ago, I drew attention to the fact that the Finnish Defence Forces General Regulations contain some independent restrictions on fundamental rights; in other words, they were written on such a low statutory level. No great change has taken place in the meantime, because the General Regulations still contain restrictions of this kind. I drew attention to this last year when the Government introduced its new Conscription Bill. Indeed, in its state-

ment on the proposed legislation, the Eduskunta's Constitutional Law Committee urged revision of the General Regulations. The Committee also ordered the authorities to ensure that the General Regulations are not in conflict with the requirements relating to statutory level and precision of regulation.

Administration of justice

In the section of my 1988 monograph in which I examined administration of justice I mentioned problems relating to the conduct of investigations of offences. The Ombudsman had in several decisions tried to guide the manner in which these investigations are conducted. I took the view then that these stances had contributed to a decline in the incidence of the clearest violations of objectivity in investigations. Nevertheless, based on the assessments presented in the Ombudsman's annual and other reports, the standard of investigations still seemed to reveal shortcomings.

Problems can still be identified in the objectivity of investigations. A couple of years ago, Deputy-Ombudsman Petri Jääskeläinen criticised an action in which the direct superior of a conscript being questioned had acted as the interrogator. The same decision also contained criticism of the fact that the conscript had had to stand throughout the interrogation. That is something that the Ombudsman had found inappropriate in a decision as long ago as the 1960s.

In conjunction with inspection visits the Ombudsman nowadays goes through a sample of disciplinary documents and injury decisions. There are certain frequently recurring problems. For example, the descriptions of how offences have been committed do not always indicate where in the General Regulations or an order the imputable behaviour is prohibited. However, the disciplinary and injury decision documents do not usually reveal particularly serious shortcomings, which gives quite a good picture of the present standard of administration of justice. Perhaps the Ombudsman can at some later stage make a broader assessment of the standard of investigations conducted by military personnel.

Back in the 1980s, the Ombudsman – along with other instances – drew attention to the then inadequate possibilities of appealing against disciplinary punishments, especially detention. The situation is now different: detention has been removed from the list of punishments that can be imposed through the disciplinary procedure, and a penalty imposed as a disciplinary measure can be appealed against. In practice, too, not even courts seem to be ordering detention. An indication of how perceptions have changed is the fact that there has already been a discussion of the possibility of making an appeal against disciplinary alignment. Likewise, another matter that was earlier taken more or less for granted, that the panels of judges that deal with military offences have military members, will probably come in for increasingly critical scrutiny in the future.

Bullying

If one examines, say, the entire period since Finland achieved independence, it can be said that the attention paid to bullying has been constantly increasing. However, that does not mean that bullying itself has actually increased over the entire long period. Research results, namely, tells us that before the Second World War, for example, a tradition of bullying that was even brutal obtained. What is involved is that the tolerance level has, due to general democratisation and a rising standard of education among other factors, been constantly lowering. Bullying is regarded as more reprehensible than was earlier the case.

A similar development is likely to continue: as the tolerance limit constantly falls, actions that were earlier regarded as belonging to training will perhaps gradually be seen as bullying. The same applies to when the language used by instructors is regarded as inappropriate. Nevertheless, this does not mean that we would be able to remain passive in the prevention of bullying and just accept that it will always exist. Oversight is needed, and the attitude to bullying and other forms of inappropriate behaviour must be one of condemnation. It is important to put a stop to any traditions of bullying that can be identified. A matter that probably needs to be pondered is whether the traditions

of some military training establishments contain features that are negative from the perspective of combating bullying.

In the period from the 1960s to the 1980s the Ombudsman issued several decisions dealing with what is to be regarded as bullying. Examples included excessively elaborate formation and dressing drills, ordering pushups for unsoldierly behaviour, ordering conscripts to write out a text 100 times, making them grovel indoors, formation drills in muddy conditions on the way to meals, drilling an entire unit as a collective punishment or as some kind of means of investigating an offence as well as making the worst marksmen run to and around a building a kilometre away. In one important decision the Ombudsman took the view that although a drill had not actually been a punishment in character, the conscript who had had to drill alone and those who had witnessed the event could have perceived it as being such. Thus the drill had been inappropriately conducted.

In my view, the most glaring actions of this kind have become clearly less common. The Ombudsman's stances have been of major importance in this respect – also because they have influenced the guidelines issued by the Defence Staff. Nevertheless, some habits seem to die hard: as long ago as 1975 the Ombudsman found it degrading that a conscript had been ordered to carry a stone instead of a piece of equipment that he had been ordered to take along, but forgotten. Only a few years ago a similar action came to light during an inspection visit by a Deputy-Ombudsman to a military contingent; this case led to court proceedings and the imposition of penalties. Inappropriate formation drills likewise still take place from time to time.

Whereas at least as recently as the 1980s extensive cases of bullying were still coming to light, what is nowadays involved is more a matter of individual excesses. Nevertheless, I do not believe that inappropriate conduct happens only rarely. In this respect, I believe, inspection visits to military contingents are enlightening. Quite often, conscripts who have incidents of inappropriate actions to report, attend the receptions that are held in conjunction with these visits. Conscript committees can likewise report incidents of this kind. The matters involved are generally of such a nature that a broader investigation is not necessary and they can be sorted out with the commanding officer at the end of the visit. It is not credible that those who report inappropriate actions are the only ones who have been treated badly and there are certainly cases that go unreported.

Bullying was again discussed in various media last year. The Defence Forces reacted quickly and first drafted a study of the matter and later a set of guidelines to prevent hazing and bullying. The starting point is zero tolerance.

Also new challenges

In my 1988 monograph I examined in what way the Ombudsman had been trying up to then to improve the fundamental rights and legal security of conscripts and I highlighted the success he had achieved in these efforts. The Ombudsman has been able to have a positive influence on the status of conscripts since then as well. However, there are also new challenges to contend with.

The safety of service has always been important and the subject of close monitoring by the Ombudsman. In addition, expectations in this respect have been constantly growing. This is a development also more broadly in society: the State is the focus of growing expectations that it will guarantee the safety of its citizens in all situations. Accidents caused by fatigue, and which can have even fateful consequences during exercises with live ammunition or when motor vehicles are involved, prompt justifiable concern on the part of, for instance, the parents of conscripts.

Health care for conscripts is another matter that the Ombudsman monitors. For example, reminders of the obligation to assign conscripts to lighter duties when necessary have been issued for decades. A new problem has manifested itself as well: a shortage of doctors in the Defence Forces. The Ombudsman has in recent years asked the Defence Staff for a report on the measures it has taken to redress this shortage. Although the situation has eased somewhat in quite recent times, no decisive improvement has been achieved.

During inspection visits, conscripts express their views about leave and free time as well as their daily service routines. Quite often, they draw attention to differences between the basic units within a contingent with respect to the amount of free time. One of the changes taking place in society is reflected in the fact that conscripts now have a lot of expectations with respect to free time. Demands for equitable treatment have likewise grown.

Back in 1988 it was perhaps impossible even to imagine that the option of women volunteering for service in the Defence Forces and training as career soldiers would become a reality as soon as it actually did in 1995. The Ombudsman has tried on inspection visits to examine the appropriateness with which women are treated and respect for gender equality. Some degree of inappropriate treatment has come to the Ombudsman's attention over the years. This is indicated also by a study of the matter as well as in a preliminary exploration conducted to provide background material for the Defence Forces' gender-equality and equitability plans.

The treatment of women in the army will continue to be an important focus of the Ombudsman's monitoring. The same applies to the treatment of conscripts with foreign backgrounds. It is good that work to develop gender equality and equitability in the Defence Forces has begun.

A general assessment of the rights and treatment of conscripts depends on the chronological perspective adopted. An examination against a time frame of even 20 years reveals an improvement, and if the examination is stretched back to the period before the Second World War, the conditions in which conscripts serve today are quite different. However, this does not mean that the work being done by the Ombudsman and other instances to improve the status of conscripts is less important that it used to be. At the same time, namely, the justified expectations of citizens that the State will guarantee that those performing their national service are treated appropriately and equitably and that their safety will be assured are constantly growing.

2. The Ombudsman institution in 2007

The Ombudsman institution originated in Sweden, where the post of Parliamentary Ombudsman was created in 1809. Finland was only the second country in the world to adopt the institution. The Finnish Parliamentary Ombudsman began his work in 1920. The next countries to appoint Ombudsmen were Denmark in 1955 and Norway in 1962. The powers of the Ombudsmen in both of those countries are more limited in scope than in Sweden and Finland.

It was mainly in the form of the Danish model that the Ombudsman institution later spread to other parts of the world. According to the International Ombudsman Institute (IOI) there are currently Ombudsmen in around 140 countries. However, some of these are regional or local. Germany and Italy are examples of countries that do not have parliamentary Ombudsmen. The European Union appointed its first Ombudsman in 1995.

Deputy-Ombudsman Petri Jääskeläinen (left), Ombudsman Riitta-Leena Paunio and Deputy-Ombudsman Jukka Lindstedt.

Photo: Jussi Aalto

2.1 TASKS AND DIVISION OF LABOUR

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

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

In general, the powers of the Ombudsman are the same as those of the Chancellor of Justice. For example, only the Ombudsman or the Chancellor of Justice can decide to lay a charge against a judge for acting illegally in office. In the division of labour between the Ombudsman and the Chancellor of Justice, however,

the former is primarily responsible for matters concerning prisons and other closed institutions where persons are involuntarily confined as well as for cases involving deprivation of freedom as provided for in the Coercive Measures Act. The same applies to the Defence Forces, the Border Guard, peacekeeping personnel and courts martial.

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

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

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

2.2 FORMS OF WORK

Oversight of legality in Finland has changed in many ways over time. The Ombudsman's prosecutorial role has receded to the background, whilst the role of guider and developer of official actions has been accentuated. Nowadays the Ombudsman sets demands for administrative procedure to meet and steers the authorities towards good administrative practice.

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

Investigation of complaints is the Ombudsman's principal task and form of work. The Ombudsman has a duty to investigate all complaints on the basis of which there is ground to suspect that an unlawful action has been taken or a duty neglected. Ombudsmen in many other countries have greater power of discretion in this respect. In addition to those matters arising from complaints, the Ombudsman can also decide on her own initiative to investigate shortcomings that have come to light.

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

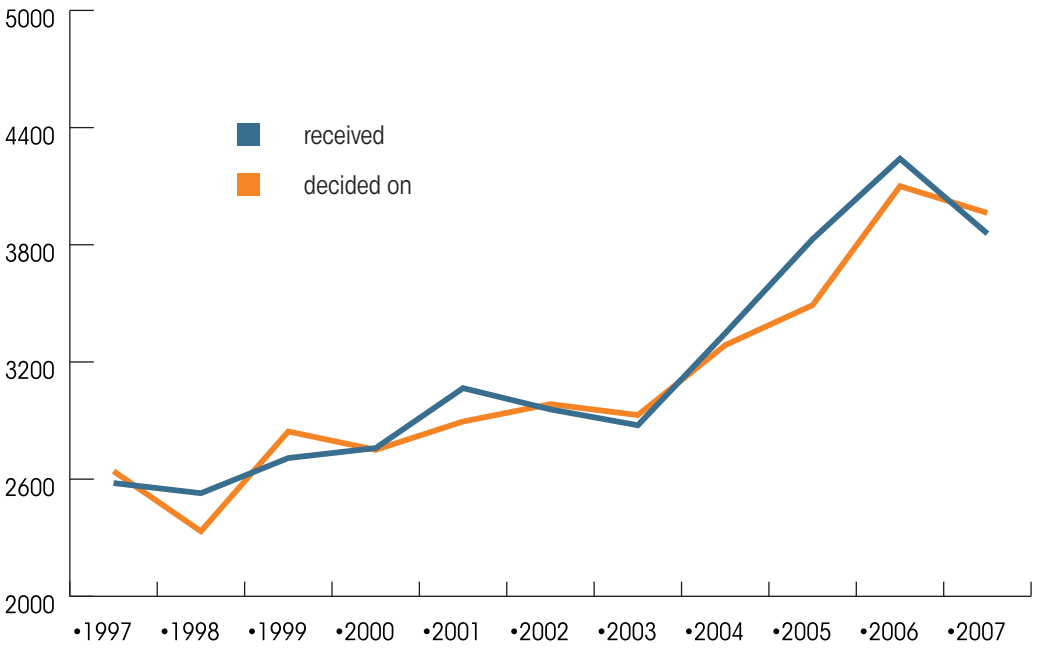
Fundamental and human rights come up in oversight of legality both when individual cases are being decided on and *inter alia* in conjunction with inspections and when deciding the focuses of own-initiative investigations. This report contains a separate section showing what kinds of issues relating to fundamental and human rights came up in 2007 and what positions were adopted in relation to them (see pp. 33–35).

The Ombudsman is additionally required to oversee the use of so-called coercive measures affecting telecommunications – monitoring telecommunications,

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

Under the law, the police additionally have the right, subject to certain preconditions, to engage in undercover activities to combat serious and organised crime. In the course of undercover operations, the police obtain information on criminal activities by, for example, infiltrating a gang. The Ministry of the Interior must give the Ombudsman an annual report on also undercover operations. Oversight of coercive measures affecting telecommunications and undercover operations is dealt with in the fundamental and human rights section (see p. 35).

The emphasis on fundamental rights is reflected in also other ways in the orientation of the Ombudsman's activities. The Ombudsman is regarded as being responsible both for oversight of fundamental and human rights and also for actively promoting them. In association with this, the Ombudsman has discussions with, among other bodies, the main NGOs. During inspection visits and in connection with own-initiative investigations, she takes up issues that are sensitive from the perspective of fundamental rights and of more general significance than an individual case. The special themes in oversight of fundamental and human rights in 2007 were advisory services and equality. The contents of the themes in question are outlined in the section on fundamental and human rights.



Oversight-of-legality matters received and decided on 1997–2007

2.3 THE WORK SITUATION AND ITS CHALLENGES

The number of complaints and other oversight-of-legality matters has increased strongly in recent years. The largest number of incoming oversight-of-legality cases to date was achieved in 2006, when 4,241 were recorded. This total turned downwards last year. The number of new oversight-of-legality cases received was 3,857. Although this was slightly less than the previous year, it was still the second highest total ever (see table on opposite page).

In addition to complaints, own initiatives and other written communications are counted as oversight-of-legality matters. The latter are in the nature of enquiries or other clearly unfounded complaints, matters that do not fall within the scope of the Ombudsman's oversight or other non-specific communications from citizens. These are not registered as complaints; instead, the lawyers at the Office of the Ombudsman who are tasked with advising members of the public reply to these communications immediately and give guidance and advice. In addition, submissions and attendances at events such as hearings by various Eduskunta committees are included in the oversight-of-legality total.

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

Growth in the volume of electronic transactions has increased the number of complaint cases in recent years. The number of matters that arrived by traditional routes – by letter, delivered in person or faxed – declined somewhat in the period 1997–2007. By contrast, the number of oversight-of-legality matters arriving by e-mail grew strongly. In 2007 some 40% of all matters arrived through electronic channels. Electronic transactions have already influenced work methods at our office and will continue to do so. For example, over 60 complaints relating to events associated with the Smash Asem demonstration on 9.9.2006 were received by e-mail and dealt with in the course of 2007.

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

Changes in working methods include the development of an electronic document information system. Laying the groundwork for its introduction continued in 2007. From the point of view of the Office, one of the things that the electronic desk will mean is that in future it will be possible for initiation, preliminary investigation (obtaining reports and statements), resolution and publication of cases to be done very largely by using one single electronic information management system.

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

In 2005 the Eduskunta approved amendments to the Constitution and the Parliamentary Ombudsman Act. This allows the Ombudsman to choose a substitute for a Deputy-Ombudsman for a term of up to four years, having first received an opinion on the matter from the Constitutional Law Committee. That would ensure continuity in the work of formulating decisions in exceptional situations, such as when a Deputy-Ombudsman is prevented from discharging his or her task for a long period. The constitutional amendment was approved by the Eduskunta during the 2007 annual session.

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

The establishment of the oversight system that the Optional Protocol to the UN Convention Against Torture presupposes is currently being prepared at the Ministry for Foreign Affairs. The working party has until April 2008 to report. The purpose of the oversight system is to inspect institutions and other places where people who have been deprived of their liberty are confined. The Optional Protocol requires the establishment of a national oversight body to issue recommendations to the competent authorities and act as a liaison body for the international oversight system. One possible alternative is to entrust the task to the Ombudsman.

Cases received and decided on

A total of 3,857 oversight-of-legality matters to be dealt with by the Ombudsman were received in 2007. Decisions in a total of 3,963 oversight-of-legality cases were announced during the year.

▮ received ▮ decided on	2006	2007
Complaints	3 620 3 529	3 397 3 544
Transferred from Chancellor of Justice	42	39
Own initiatives	49 52	49 44
Requests for reports, statements and to hearings	47 45	39 38
Other written communications	483 474	333 337
Total	4 241 4 100	3 857 3 963

The number of cases in which decisions were reached, 3,544, was an all-time record. It is also significant that the number of cases in which decisions were reached in 2007 was about a hundred greater than the number arriving.

The average time taken to reach a decision in an oversight-of-legality case was 7 months at the end of the year. That was slightly longer than it had been in 2006 (6.1 months).

Categories of cases and measures taken

The social security sector accounted for the greatest proportion (20%) of cases arising from complaints or own-initiative investigations in which decisions were announced. Other large categories of cases related to the police (16%), health care (11%), the prison service (10%) and courts (7%). The numbers of cases resolved in the large categories were generally on the same level as the previous year. The most significant growth was in the prisons category, in which the number of decisions increased by about 24%. (see table on next page)

Detailed data on decisions by category of case as well as other statistical data are presented in Annex 2.

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

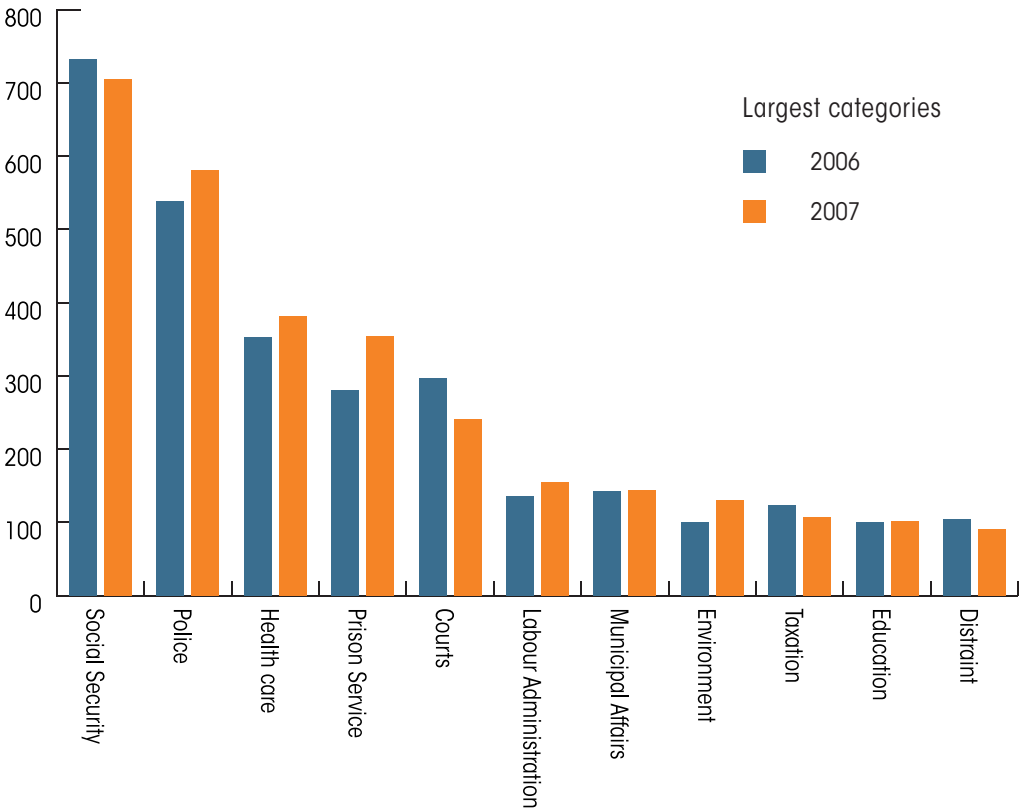
A prosecution is the most severe means of reaction. The Ombudsman may decide not to prosecute even if the subject of oversight has acted unlawfully or neglected a duty if she takes the view that a reprimand will suffice. The Ombudsman can also express an opinion as to what procedure would have been lawful, or draw the attention of the subject of oversight to the re-

quirements of good administrative practice or to aspects that promote the implementation of fundamental and human rights. An opinion expressed can have the character of a rebuke or be intended for future guidance.

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

A total of 619 decisions led to measures in 2007. This represented about 17% of all 3,588 decisions relating to complaints and own-initiative investigations. It was found in 15% of cases that no erroneous action had taken place, there was no reason to suspect it in 45% of cases and complaints were not investigated in 23% of cases. The number of cases in which decisions involved measures being taken represented 22% of the total number investigated.

A prosecution for malfeasance was ordered in one case. 41 reprimands were issued and 519 opinions expressed. Rectifications were made in 32 cases that were being investigated. The decisions categorised as proposals totalled 26, although expressions of opinion relating to development of administration and which can be regarded as constituting proposals were included in other decisions as well. One decision can involve several measures.



MEASURES TAKEN BY PUBLIC AUTHORITIES

Public authority	Measure						Total number of decisions	Percentages*
	Prosecution	Reprimand	Opinion	Recommen-dation	Rectification	Total		
Social welfare authorities - social welfare - social insurance		10 7 3	107 77 30		7 3 4	124 87 37	705 427 278	17,6
Police	1	6	92	2	1	102	581	17,5
Health authorities		9	64	3	4	80	381	21,0
Prison authorities		1	69	4	5	79	354	22,3
Environment authorities		3	29			32	130	24,6
Labour authorities			26		2	28	155	18,1
Education authorities			19	3	3	25	102	24,5
Local-government authorities		5	15	1	1	22	144	15,3
Other subjects of oversight		1	14	4		19	130	14,6
Enforcement authorities			16	2		18	91	19,8
Guardianship authorities		1	15			16	52	30,8
Courts - civil and criminal - special - administrative		3 3	8 6 2	2 2		13 11 2	241 201 3 37	5,4
Military authorities			10		2	12	34	35,3
Agriculture and forestry		1	7	2	1	11	79	13,9
Transport and communications authorities			7		2	9	85	10,6
Tax authorities			3	2	1	6	107	5,6
Immigration authorities			5		1	6	57	10,5
Prosecutors			5		1	6	62	9,7
Customs authorities			5			5	13	38,5
Municipal counsels		1	1		1	3	10	30,0
Highest organs of state			1	1		2	36	5,5
Church authorities			1			1	19	5,3
Private parties not subject to oversight							20	–
Total	1	41	519	26	32	619	3 588	17,2

* Percentages of decisions involving measures

2.4 INSPECTIONS

Inspection visits were made to 69 places during the year under review (70 the previous year). The visits are described in more detail in the sections dealing with various sectors of administration.

Persons confined in closed institutions and conscripts are always given the opportunity for a confidential conversation with the Ombudsman or her representative during an inspection visit. Other places where inspection visits take place include reform schools, institutions for the mentally handicapped as well as social welfare and health care institutions. Shortcomings are often observed in the course of inspections and are subsequently investigated on the Ombudsman's own initiative. Inspections also fulfil a preventive function.

2.5 SERVICE TO THE PUBLIC

We have tried to make it as easy as possible for people to turn to the Ombudsman. A printed brochure intended for complainants is available in Finnish, Swedish, Sámi, English, German, French, Estonian and Russian. The brochure is also posted on the web site in these languages as well as in Finnish and Swedish sign language versions. A complaint can be sent in by post or fax, or by filling in and e-mailing the electronic form on the Internet.

Two lawyers at the Office of the Ombudsman are tasked with advising members of the public on how to make a complaint and responding to communications that are not registered as complaints. This category contains enquiries and a variety of communications expressing non-specific grievances. The number of replies recorded last year was 337. About 2,500 telephone calls were received from members of the public and about 150 persons visited the office in person.

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

2.6 COMMUNICATIONS

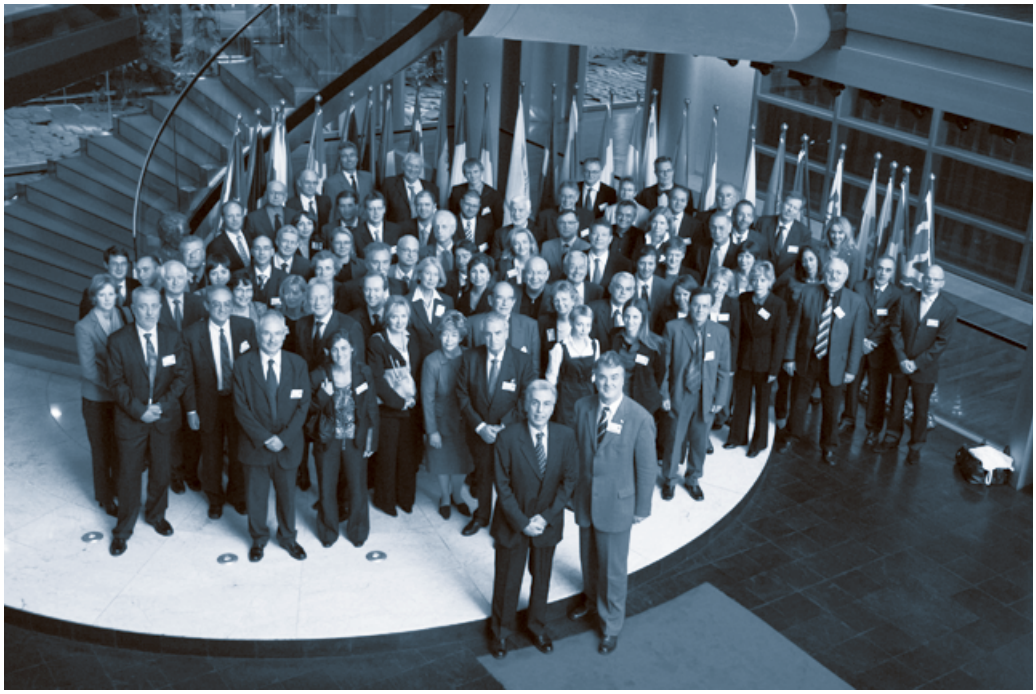
The Ombudsman gives the Eduskunta an annual report on her activities and observations concerning the state of administration of justice and any deficiencies she had identified in legislation. The Ombudsman gave her annual report for 2006 to the Speaker of the Eduskunta on 19.6.2007.

The media are informed of those decisions by the Ombudsman that are of special general interest. About 40 bulletins outlining decisions made by the Ombudsman or a Deputy-Ombudsman were issued in 2007. Decisions of considerable legal significance are also posted on the Internet. About 300 decisions, which is nearly half of the total number of decisions involving measures, were posted online. Publications, such as annual reports and brochures, are likewise posted on our web site. The Ombudsman's web pages in English are at the address: www.ombudsman.fi/english, in Finnish at www.oikeusasiamies.fi and in Swedish at: www.ombudsman.fi. At the Office, information needs are the responsibility of the Registry and the referendaries in addition to an Information Officer.

2.7 THE OFFICE

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

The regular staff totalled 54 at the end of 2007. They were, in addition to the Ombudsman and the Deputy-Ombudsmen, the Secretary General, five principal legal advisers and ten senior legal advisers and fourteen legal advisers, two lawyers with advisory functions as well as an information officer and an online information officer, two investigating officers, four notaries, a records clerk, two filing clerks and eight office secretaries.



Ombudsman Riitta-Leena Paunio and Deputy-Ombudsman Petri Jääskeläinen attended a European Union seminar for national and regional Ombudsmen and comparable institutions in Strasbourg on 14–16.10.2007. A statement, to be published in all of the EU languages, was approved at the gathering. It is intended to increase awareness of the Ombudsman's work when dealing with complaints that fall within the area of application of EU legislation.

Photo: European Ombudsman

A job satisfaction survey was conducted at the Office in November 2007 and the results will be processed in 2008.

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 15 times during the year under review.

On job rotation for part of the year in 2007 were Senior Legal Advisers Kirsti Kurki-Suonio and Håkan Stoor, both at the Ministry of Justice. In addition, Notary Helena Rahko was on international job rotation at the Office of the Ombudsman for New South Wales in Sydney, Australia.

2.8 INTERNATIONAL COOPERATION

Ombudsman Paunio is a member of the board of the International Ombudsman Institute (IOI). She attended a meeting of the IOI board in Sydney on 5–11.11.2007.

Ombudsman Paunio also attended a conference between the Council of Europe Commissioner for Human Rights and Ombudsmen from the Member States in Athens on 12–13.4.2007. Ombudsman Paunio and Depu-

The Chinese Vice-Minister Du Qiwen (Central Foreign Affairs Office) and his party visited the Eduskunta on 20–24.11.2007. The host for his visit to the Office of the Parliamentary Ombudsman was Deputy-Ombudsman Petri Jääskeläinen.

Photo: Vesa Lindqvist, Eduskunta

ty-Ombudsman Jääskeläinen participated in a seminar for Ombudsmen from the EU countries in Strasbourg on 14–16.10.2007. Deputy-Ombudsman Lindstedt attended a conference arranged by the Polish Ombudsman in Warsaw on 24–25.9.2007. In addition, several other persons from the Office attended a variety of other international meetings and seminars.

The Polish Ombudsman Janusz Kochanowski and the Peruvian Ombudsman Beatriz Merino visited the Office. Other visitors included delegations from the Czech parliament and the Russian Ministry of the Interior as well as one led by the Chinese Vice-Minister Du Qiwen. There were also visitors from South Korea, Japan and Taiwan.

2.9 COOPERATION IN FINLAND

Celebrations marking the centenary of the Eduskunta continued during the year under review. The Office of the Ombudsman took part in the open doors event arranged by the Eduskunta on 20–21.8.2006.

The Eduskunta's Constitutional Law Committee makes annual visits to the Office. The meeting during the year under review took place on 25.10.2007.

The Ombudsman, the Deputy-Ombudsmen and other persons from the Office attended dozens of events and meetings in Finland. Training events were arranged on the themes of managing change, fair trials, a compre-

hensive overhaul of the prison service and the impact of the Ombudsman institution.

Visits to the office were paid by, among others, key malfeasance prosecutors, representatives of the Office of the Ombudsman for Children and the Data Ombudsman, administrative lawyers and representatives of the Ministry for Foreign Affairs, the City of Tampere, the Helsinki Court of Appeal, *Varusmiesliitto* (the association which represents conscripts) and the Border Guard.

The most important of the presentations given by Ombudsman Paunio were: one at the *Citizens' Perspective* seminar at the Eduskunta on the theme of living bilingualism, another on *the Right to a Secure Childhood* at the centenary jubilee of the organisation *Nuorten Ystävät* ("Friends of Children") as well as one on *the Parliamentary Ombudsman's Observations on Safeguarding Good Administration as a Fundamental Right* at the Feedback Days for senior civil servants. The themes of her other presentations included implementation of fundamental rights as well as respect for the inviolability and right to self-determination of patients.

Deputy-Ombudsman Jääskeläinen attended the seminar *Revision of Finnish Equality Legislation* in an expert capacity. At a training event on the theme of administration of military justice Deputy-Ombudsman Lindstedt made a keynote speech on the theme *Oversight-of-Legality Observations Concerning the Defence Forces*. At a meeting of the *Folktinget* (The Swedish Assembly of Finland) Deputy-Ombudsman Lindstedt made a keynote speech on the theme *Hur fungerar övervakning av de språkliga rättigheterna?* (How does oversight of language rights works?).

In addition, lawyers from the Office gave presentations on such themes as implementing the guarantee of medical treatment within specific time limits, involuntary treatment, safeguarding interests, complaints from prisoners, oversight of legality in criminal investigations and the use of coercive measures as well as complaints against the police.

2.10 WHAT IMPACT DOES THE OMBUDSMAN'S WORK HAVE?

A study of the impact of the Ombudsman institution was published on 29.11.2007. It was conducted by Professor of Law and Economics Kalle Määttä and Lecturer in Law and Economics Anssi Keinänen from the University of Joensuu.

The matters examined in the study were the degree to which the Ombudsman has been able to influence the contents of laws and other provisions and the actions of the authorities. The Ombudsman's media visibility was also analysed in the study, which was the first in Finland to focus on the impact of a single legal institution.

The researchers found that the instances responsible for drafting laws and other provisions have reacted positively to the Ombudsman's proposals concerning explication or amendment of laws. However, it has occasionally taken time for the proposals to be put into practice.

The research revealed that the Ombudsman's impact has not been confined to the details of legislation, but has in some cases also extended to broader legislative totalities. Nevertheless, the researchers do not recommend that the Ombudsman begin making more recommendations for amendments than earlier – neither the time nor the resources for this are available.

How personnel in the police, prison service and Defence Forces reacted to the Ombudsman's recommendations for measures was explored in the study. The impact of decisions was found to reach a high level in individual cases. Often, authorities have taken concrete measures to redress observed shortcomings as soon as the Ombudsman has intervened. In the researchers' assessment, decisions also have a more general impact.

The impact of investigations conducted on the Ombudsman's own initiative and *in situ* inspections was found to be very significant. The authorities regarded them as important from the perspective of developing

A report on the impact of the Ombudsman's work was published in the auditorium of the Eduskunta on 29.11.2007. Here, Ombudsman Riitta-Leena Paunio is shown with the authors of the report: Professor of Law and Economics Kalle Määttä (right) and Lecturer in Law and Economics Anssi Keinänen from the University of Joensuu.

Photo: Jakke Nikkarinen, STT Info Kuva

their own activities. In addition, investigations launched on the Ombudsman's own initiative led to measures more frequently than did complaints and their consequences were more severe than those to which complaints led.

The researchers found that constant growth in the number of complaints can have an adverse effect on the Ombudsman's active measures. It was observed that in years when the number of complaints grew, fewer inspection visits were conducted.

The number of complaints has been constantly growing in recent years. Although there has been success in reducing the average time taken to process complaints, this has not sufficiently compensated for growth in their number, with the result that many cases have to be deferred until the following year. On the other hand, the researchers found that efficiency had improved in the Office in recent years; i.e. decisions were being reached in more cases than earlier.

The impact of the institution was examined also in the light of growth in the number of measures taken. The number of decisions involving measures grew fairly steadily over the period of the study, 1990–2006.

The Ombudsman's media visibility was analysed in the study by examining articles and editorials in the newspapers Helsingin Sanomat and Karjalainen. The newspapers most frequently publish bulletins from the Ombudsman that concern the police and health care authorities. Especially Helsingin Sanomat has devoted space to the Ombudsman's bulletins. In the three years

2004–06 it published articles covering around 70% of the Ombudsman's bulletins, whilst the corresponding figure for Karjalainen was about 34%. The researchers found a clear correlation between the number of newspaper articles and the number of bulletins.

On the basis of their study, the researchers recommended that the Ombudsman be given greater power of discretion with respect to when a complaint is taken under investigation. A threshold to initiating an investigation would allow resources to be allocated more purposefully.

The researchers regarded it as important that time for inspection visits and own-initiative investigations remain in the Ombudsman's work. They recognised also that growth in the number of complaints and a bigger backlog could lengthen processing times and jeopardise the opportunity to recommend amendments to legislative provisions.

3. Special tasks of the Ombudsman

3.1 FUNDAMENTAL AND HUMAN RIGHTS

The principles underpinning Finland's human rights policy and the goals to which it aspires are set forth in the reports on human rights policy that the Minister for Foreign Affairs submits to the Eduskunta. The most recent of these reports (VNS 2/2004 vp) was submitted in early 2004. In it, both Finland's international activities in the field of human rights and implementation of key human rights in Finland are examined.

Drafting of a new Government report on human rights policy began in December 2007. In accordance with the expressed wish of the Eduskunta, an effort is being made in the report now being drafted to deal more comprehensively with the situation regarding observance of fundamental and human rights in Finland. The Ombudsman attended a formal hearing arranged in conjunction with the drafting work on 25.1.2008. The intention is to submit the report to the Eduskunta not later than the beginning of 2009. A national action plan for safeguarding fundamental and human rights will be drafted on the basis of the report. In her comment article in the 2006 annual report, the Ombudsman expressed the opinion that a plan of this kind was necessary.

3.1.1 OVERSIGHT OF FUNDAMENTAL AND HUMAN RIGHTS

As in the previous year, the authorities' duty to advise and serve was the special theme in oversight of legality. Complaints and inspection visits continued to reveal shortcomings relating to individual cases and systems. As a result of several decisions issued by one of the Deputy-Ombudsmen concerning the matter in 2005 and 2006 (see the 2005 annual report pp. 42–43 and the 2006 report p. 30) a changeover to cost-free arrangements had mainly been effected in the telephone advice services provided by the authorities. However, it emerged that there had still been delays in arranging the provision of cost-free advice in the administration-of-justice sector.

In oversight of legality, observations with a bearing on fundamental rights were, generally speaking, mainly made in cases concerning the good administration that is guaranteed in Section 21 of the Constitution. Dilatoriness on the part of the authorities was brought up in many oversight-of-legality cases and it was also established in several cases before the European Court of Human Rights that rights had been breached because trials had lasted unduly long. Expeditious handling of matters is of accentuated importance in, for example, the social insurance sector and cases connected with children's rights. Nevertheless, these matters' share of oversight-of-legality cases in which decisions involving measures are reached was again considerable.

Income support is a key financial benefit which safeguards the right to indispensable subsistence. The final-resort status of income support and the fact that it safeguards a fundamental right require a municipality to ensure that sufficient financial resources are allocated to handling cases relating to it. A municipality must ensure that income support applications are processed without delay through effective work arrangements and employing sufficient personnel to cope with the workload. In order for a fundamental right to be implemented, applications must be processed without delay. Indeed, the view that has become the established one in the Ombudsman's decisions is that one week can be regarded as a priori the maximum time

within which an application for income support is taken under processing so that the requirement of handling the matter without delay is satisfied.

In matters involving the administration of law, specifically the court system must provide effective legal remedies to prevent delays in handling cases. In early 2007 a Ministry of Justice working group recommended (working group submission 2006:21) the adoption of a so-called delay complaint as a means of preventing delays in trials. As a retroactive means of compensating for delay, the working group recommended the establishment of an independent compensation committee separate from the court system and the option of mitigating administrative sanctions on the ground of unjustifiable delay. Means of reducing the overall duration of trials are also examined in another Ministry of Justice working group report (2007:2). So far, the proposals have not led to legislative changes.

Despite the regulation in Section 34 of the Administrative Procedure Act, shortcomings with respect to interested parties being heard were still in evidence in several sectors of administration. Quite many shortcomings with respect to appropriate reasoning of decisions as well as a variety of errors arising from carelessness in official actions also came to light. In addition, problems relating to personal integrity were found to have occurred in, for example, health care and police actions. The principle of publicity and language rights had not always been appropriately ob-served by several authorities, either.

One of the Ombudsman institution's key goals has been to safeguard people's equality in official actions. People's equal right to social welfare and health services applies to everyone. A matter that has often had to be addressed in oversight of legality in recent years is unequal access to non-urgent treatment. A proposal concerning a need to amend legislation was a contributory factor in the enactment of the so-called treatment guarantee, which entered into force three years ago and has led to more equitable access to treatment than was earlier the situation. However, the treatment for which the guarantee provides has not yet been implemented in full, as was revealed in several cases in 2007 that provided grounds to issue reprimands. On the basis of reports received, it emerged that the treatment guarantee was not implemented because of, for example, an intermunicipal joint authority's excessively long waiting list for operations, shortage of personnel resources, demand for municipal health services, shortage of staff and the rigid regional organisation of a municipal health department. If a municipality can not itself provide treatment within the statutorily required period, it must without delay and within the maximum time period arrange for the patient to receive the treatment he or she requires from another service provider.

The ombudsman has over the past several years repeatedly drawn attention to shortcomings in the entries made in patient records by health care operational units and personnel. The purpose of patient records is to aid in advising patients as well as in the planning, implementation and follow-up of their care. They also serve to improve the continuity of treatment and facilitate the mediation of information about the patient's state of health and treatment for use both in later treatment in the same unit or when the patient is transferred to another unit. Adequate, appropriate and error-free entries clarify and strengthen the patient's and the personnel's legal security and promote the development of treatment relationships that are founded on trust. Medical records are important also from the perspective of the patient's right of access to information.

It is on the basis of these records that the appropriateness of the actions of the health care personnel who have participated in treatment is evaluated and also whether any personal injury that treatment may have caused a patient is to be compensated for as damage resulting from malpractice is determined. In addition, entries in patient records are important in research, administration, planning and teaching in the field of health care. Observing the regulations concerning the drafting of patient records ensures that the adequate health services that are a fundamental right are safeguarded.

During the year under review, rights relating to demonstration and the authorities' obligations arose especially in association with reports concerning the Smash Asem demonstration. The right of assembly and the right to demonstrate are not unlimited, because the Constitution and international human rights conven-

tions guarantee only the right to demonstrate peaceably. In this case, restricting the area of the demonstration and ending the demonstration were justified on the basis of advance intelligence and observations made at the scene, especially since the organisers of the demonstration had been, to say the least, indifferent as to whether or not order would be preserved or crimes committed in conjunction with the demonstration.

Some teething troubles in the capability of prisons to make decisions supported by the appropriate legal demands that the Prison Act imposes have manifested themselves. There have also been numerous complaints concerning inspection of prisoners' correspondence. In accordance with the so-called principle of normality that is supposed to be observed in the Prison Service, conditions in correctional facilities must be, to the extent possible, arranged so that they correspond to the prevailing conditions in society in general. Several problems with regard to observance of this principle were observed during the year under review. Shortcomings were revealed with respect to, for example, placement in open prisons of persons incarcerated together with a child and implementation of protection of private and family life when deciding to grant prison visits, shortcomings in cell conditions, unsatisfactory practices with respect to rights of possession as well as inadequacies in the arrangement of health care.

Shortcomings have also been found in criminal trial procedures and the regulations concerning them. The European Court of Human Rights found in several cases that the human rights to which accused persons are entitled had been breached because the accused person's right to be heard and participate in a criminal trial had not been realised. In oversight of legality, problems relating to prolongation of trials featured prominently in decisions concerning investigation of sexual offences against children; these problems were associated with the provision by the social welfare and health authorities of reports to the authorities conducting criminal investigations.

3.2 OVERSIGHT OF COVERT MEANS OF INTELLIGENCE GATHERING

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

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

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

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

4. Central sectors of oversight of legality

4.1 COURTS OF LAW AND JUDICIAL ADMINISTRATION

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

Clients of the judicial system who turn to the Ombudsman often have excessive expectations with regard to the Ombudsman's possibilities of helping them in their cases. The Ombudsman can not, in her role as an overseer of legality, influence the handling of a matter that is still pending before a court or alter a decision that a court has made. She can only adopt a position on whether a party administering the law has done so within the limits of the discretionary powers statutorily vested in him or her. Any attempt to have a decision reversed must be done through the normal appeal process, usually in a higher court.

Oversight of legality with courts as its focus is concentrated on procedural guarantees of legal security. The special foci of oversight of legality are those areas that remain beyond the reach of other legal means. Typical examples include the judge's behaviour, the treatment of clients and the guidance and advice they are given. Attention has also been paid to compliance with legislation on publicity. The Ombudsman has made a special effort in her stances to develop so-called good court practice.

4.1.1 DECISIONS

District court judge neglected to archive documents

The Deputy-Ombudsman issued a reprimand to a judge at the Helsinki District Court for having acted in contravention of the Archives Act and the district court archiving regulations in a manner that violated the principle of publicity enshrined in the Constitution, the right to receive information as provided for in the Act on the Openness of Government Activities and opportunities to check this information. The district court judge had returned all of the documents relating to a tort case to the plaintiff after he had withdrawn the suit. All that was archived in the district court was the decision not to proceed with the case and an earlier decision by a district court judge to keep the court proceedings secret.

The matter came to light in an article in the *Sunnuntaidebatti* ("Sunday Debate") section of the daily Helsingin Sanomat on 22.10.2006. The article was headed *Nokia surrounded by a wall of silence* and claimed that a reporter from the newspaper had not received a copy of an application for a request for a writ of summons that he had made to the district court, because the district court was no longer in possession of it. The article expressed curiosity as to how a district court could, in contravention of its archiving regulations, remove documents from the archive. The Deputy-Ombudsman took the matter under investigation on his own initiative.

Under Section 5 of the Act on the Openness of Government Activities, a document sent to a court, as to any other authority, for a matter to be dealt with is an official document. The application for a writ of summons in this tort case became an official document when it

arrived at the registry of the district court. At the same moment, the matter became a pending case before the court and, further, the application for the writ *a priori* entered the public domain under Section 7 of the Act on the Openness of Government Activities.

A court has an obligation to preserve documents in the manner required and regulated in the provisions of the Archives Act and the filing plan which are explained in greater detail in the Deputy-Ombudsman's decision. In this case, the application for a writ of summons and the appended documents supplementing it were required under the district court's filing plan to be permanently preserved. Thus they should have been archived at the District Court.

The purpose of archiving functions is to ensure the implementation of, *inter alia*, rights to access to information as well as data protection and research-related interests. In addition, preservation of official documents makes it possible to implement the principle of publicity, and through this archiving protects the individual's rights vis-à-vis the State. In this respect, what is involved is promoting the individual's access to legal remedies. Publicity serves the ends of objectivity in the administration of the law, democratic control of the exercise of public power and thereby also trust in the judicial system and official actions more generally as well. Publicity of the administration of law facilitates oversight of implementation of equality.

The Deputy-Ombudsman did not accept the district court judge's view that there had been no legal need to preserve the documents, because the application for a writ of summons had been withdrawn before the respondent had been informed that it had been made. An official document that is required, under the provisions of Section 5.2 of the Act on the Openness of Government Activities, to be archived is not, in the sense represented by the district court judge, at the "disposition" of a party to the case so that it can be returned to its sender. The manner in which handling of the matter by an authority proceeds and ends has no influence on this. Nor is it of any relevance in a case whether or not a decision in the matter attains the force of law. An authority may not hand over an archived document or one that is required to be archived in such a way that it passes out of the authority's possession for good.

When the documents had been returned to the plaintiff, the publicity of an official document and the interests that publicity safeguards could no longer be implemented. Therefore the correctness of the content of a decision that a district court judge had made to keep documents secret became impossible to check in practice, from the perspectives of both the access to information to which everyone is entitled and the associated right of appeal and oversight of legality in general. The district court judge had completely ignored the Act on the Openness of Government Activities and in his decision neglected the obligation that Section 17 of the Act imposes to take rights of access to information into consideration.

The Deputy-Ombudsman deemed the district court judge's action as described in the foregoing to be serious from the point of view of principle.

A further aspect of the case was that, at the time of the event and under the Act on the Publicity of Trials then in force, the district court did not have the power to issue an order that the materials relating to the court proceedings be kept secret in the chancellery of the court. The judge could only have issued an order of this kind in an oral session of the district court if such a session had been arranged.

Case no. 4111/2/06

Charging a fee for the judicial administration's telephone service

The Deputy-Ombudsman issued a reprimand to the Ministry of Justice for its dilatoriness in bringing the telephone service of its branch of administration into line with the requirement that its telephone service be provided free of extra charge, something that is an aspect of the good administration that is a fundamental right and belongs in the category of the free-of-charge advisory services that are specifically required by the Administrative Procedure Act, insofar as clients are charged for calls at a rate higher than the normal charge for telephone calls.

Contents of advisory services that belong to the fundamentals of good administration

It is stated in the precursor documents (HE 72/2002 vp) of the Administrative Procedure Act that, in addition to legal factors, factual advice can be associated with the provision of advice concerning the handling of administrative matters. This can involve information concerning, for example, who is taking care of a matter and when that person will be reachable, or how long processing of a matter is likely to take. The general obligation that authorities have to reply to questions and enquiries concerning dealings with them belongs to their duty to provide advice. "Dealings", in turn, means not only conducting the measures necessary to take care of administrative matters, but also actual transactions relating to administrative matters at the authority.

The Eduskunta's Administration Committee pointed out in its report (HaVM 29/2002) that the concept of an administrative matter is not defined in the Act and that definition is difficult on the whole. In the view of the Committee, the need for a definition of the concept of an administrative matter is lessened by the fact that the Administrative Procedure Act applies also to administrative actions. The key consideration from the perspective of implementing the client's rights and legal protection is not that of recognising an administrative matter, but rather the ability to ensure that the authority or other instance that is performing an administrative function is fulfilling its obligations appropriately.

On the basis of the precursor documents of the Act, the obligation on the authorities to provide advice is a totality which requires them both to provide advice on procedures and to respond to questions concerning dealings with them. Thus an authority's telephone service must be arranged in such a way that persons who have dealings with the authorities can, without having to pay extra charge, contact the public servant who is taking care of or handling their matter and, likewise free of extra charge, obtain advice on procedures and answers to questions and enquiries. Thus the appropriate arrangement of telephone advisory services presupposes also that calls to the authorities' contact numbers, such as switchboards and registry services, be free of extra charge.

Contents of telephone advisory services in the Ministry of Justice's administrative sector

The Administrative Procedure Act states that it is not applicable to the administration of justice, criminal investigations, police investigations or distraint. Telephone calls by clients to, for example, courts do not, at least usually, involve the administration of justice, but are normal dealings with an authority. Clients can enquire what stage of handling a pending matter of theirs has reached, they can order copies of a court decision or request advice on other factual or procedural matters. On these occasions, clients are often dealing with persons other than civil servants who participate in administration-of-justice functions or judges. Thus what is involved in these ordinary client contacts with a court is not administration of justice, but rather an obligation to advise, which relates to an administrative matter (e.g. ordering a document) or an actual administrative activity and which belongs to the fundamentals of good administration on the part of an authority and is a part of the authority's general obligation to reply to questions and enquiries concerning dealings with them.

Although telephone advice that belongs also to the sphere of judicial administration or distraint can be part of the advice provided by authorities within the Ministry's sector of administration, this is not an acceptable ground for levying extra charge for calls to these authorities' telephone numbers, because advice within the area of application of the Administrative Procedure Act is provided from the same numbers and because, the demand that all advice be free of extra charge is founded in the final analysis on the good administration that all officials are obliged to respect and which is guaranteed in Section 21 of the Constitution as a fundamental right. The Ministry of Justice's sector of administration includes also authorities whose activities are entirely within the area of application of the Administrative Procedure Act.

Pricing of telephone services

The Deputy-Ombudsman noted that the telephone service in the Ministry of Justice's administrative sector had mainly been arranged in such a way that cli-

ents could obtain legal or factual advice or replies to questions and enquiries only by calling the universal access numbers of courts, public prosecutors' offices, legal aid offices, distraint offices and other offices. Calling these numbers causes clients substantial additional costs, especially if they use mobile phones to transact their business with the authorities.

Also in the respect that a special customer service number was in use in a few offices within the Ministry's sector of administration, the prices charged for this service were not in compliance with the demands of good administration and cost-free provision of advice insofar as clients were charged for calls at a higher rate than they would have paid, in accordance with their mobile or fixed-line connection contract, when calling a normal number. The Deputy-Ombudsman had already emphasised in an earlier decision, concerning the Social Insurance Institution (Kela) and issued in 2006, that no call charge exceeding that levied for a normal call could be shown to be legally justifiable.

The decisions issued by the Deputy-Ombudsman in 2005 concerning the charges levied by the Tax Administration and the Vehicle Administration for telephone advisory services were the first stances ever adopted by an overseer of legality on this matter. Therefore the Deputy-Ombudsman was content in those decisions to bring the requirement that telephone advisory services be provided free of extra charge to the attention of the Tax Administration and the Vehicle Administration. In the spring of 2006 the Deputy-Ombudsman issued a reprimand to the Social Insurance Institution for having failed to take adequate measures to bring its telephone advisory services into compliance with the law.

Universal access numbers comparable to those that the Tax Administration had been using in 2005 were still mainly being used in the administrative sector of the Ministry of Justice at the end of 2007. Official telephone numbers for which such prices apply were no longer acceptable at this stage, although the Ministry of Justice has announced that its aim is to make calls to the numbers free of extra charge.

Case nos. 483 and 510/4/07

The Ministry of Justice announced on 17.3.2008 that in telephone advisory services throughout its sector of administration a service numbering system would be adopted in conjunction. with switchboard operations and the service numbers of various offices. The way in which calls to these numbers would be charged for is that clients would have to pay only the charge provided for in their mobile phone or fixed-line connection contracts. The Ministry will pay the other communication costs. The adoption of a service number system will depend on the outcome of a round of tendering. When this process has been completed in August 2008, the Ministry will be able to change over to using service numbers more extensively.

4.2 THE PROSECUTION SERVICE

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

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

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

Decisions on 60 complaints concerning prosecutors were made during the year under review. Most complaints concerning prosecutors related to consideration of charges, and especially its outcome, but there have also been complaints about procedures followed, attitudes to requests for additional investigations, delay in reaching decisions and the reasoning presented in support of them.

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

4.3 POLICE

Complaints concerning the police are one of the biggest categories. During the year under review 572 complaints relating to police actions were resolved. This was more than ever in the past (532 the previous year).

About 18% of the decisions made during the year under review led to measures being taken. In six cases the measure was a reprimand.

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

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

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

4.3.1 OWN INITIATIVES AND INSPECTIONS

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

During the year under review, Deputy-Ombudsman Lindstedt inspected the lottery and firearms management unit of the Ministry of the Interior's Police Department, the Police Department of the State Provincial Office in Lapland and three police stations. He also visited the National Bureau of Investigation on two occasions. The matters brought up during these visits included coercive measures affecting telecommunications, undercover operations and pseudo-purchases as well as the use of informants. A report on the National Bureau of Investigation's internal oversight of legality was also obtained. In addition to these inspections, legal advisors from the Office of the Ombudsman visited the National Bureau of Investigation on three occasions.

Inspections are not of a surprise nature, but are instead prepared for in advance by obtaining documentary material from the police stations. On the basis of this ma-

terial, cases are if necessary examined in greater detail during inspection visits. Observations made in the course of inspections can lead, for example, to a case being taken up for examination on the Deputy-Ombudsman's own initiative. Inspections and investigation of complaints support each other: inspections can be planned on the basis of complaints and also provide information on police activities which proves useful in deciding on complaints as well as more generally from the perspective of oversight of legality.

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

4.3.2 DECISION

Actions of the police in conjunction with "Smash Asem" demonstration

The ASEM (Asia-Europe Meeting) summit was arranged in Helsinki in September 2006. Arising from the actions of the police in conjunction with the "Smash ASEM" demonstration arranged in protest, more than 60 complaints were made to the Ombudsman.

In the view of Deputy-Ombudsman Jukka Lindstedt, the actions of the police were in part unlawful. Although there were no glaring examples involved, he emphasised that the Constitution requires that the law be scrupulously complied with in all official actions. The police had placed considerable emphasis on the efficiency of their actions, i.e. maintaining order and solving crimes, whereby the personal liberty of those present was in part accorded quite little weight. Interpretative one-sidedness of this kind is problematic from the perspective of respect for fundamental and human rights. Protection of the fundamental rights that the Constitution guarantees is watered down if these rights are not taken into consideration with appropriate emphasis when regulations are interpreted in practice.

A factor that, in the Deputy-Ombudsman's view, had to be taken into consideration in making an overall assessment is that the situation had been demanding and, in view of the scope of the operation, it was not as such unexpected that not everything went according to plan. In addition, the Deputy-Ombudsman noted that the final outcome was good insofar as serious injury and damage to property was avoided.

Ending the demonstration was lawful

The police had first ordered that the demonstration could be held only in front of the Kiasma museum building, and a short time afterwards ended it. In the view of the Deputy-Ombudsman, the police had sufficient grounds for these decisions on the basis of advance intelligence that they had received concerning the demonstration and the observations they made at the scene, especially given that the organisers of the demonstration had been, to say the least, indifferent as to whether order would be preserved at the event or crimes committed in conjunction with it. Freedom of assembly and the right to demonstrate are not unlimited. The Constitution and international human rights conventions safeguard only the right to demonstrate peaceably.

Nevertheless, the Deputy-Ombudsman stressed that the police must exercise their powers that make it possible for them to limit the right to demonstrate with especially careful consideration. What is involved is one of the cornerstones of a democratic society. The right to demonstrate can be intervened in only on weighty concrete grounds that can be verified after the fact and careful weighing up of realisation of different fundamental rights.

Extent and duration of confinement problematic

Thus the decision to end the demonstration was lawful. In the opinion of the Deputy-Ombudsman, however, the subsequent actions of the police – among other things, the cordon at Kiasma and in part the events associated with clearing the street Mannerheimintie – raised the question of whether measures that interfered so forcefully and for so long with the rights of so many persons had been inescapable.

For example, as a result of the method of operation chosen by the police, a lot of people who had apparently been behaving peaceably, and a large part of whom had come only to watch the demonstration, remained confined within a police cordon outside the Kiasma building for several hours. The task of the police is to safeguard legal and social order, maintain public order and safety as well as to prevent and investigate crimes and submit their findings to the public prosecution authorities for consideration of charges, and this applies also to demonstrations. However, the police may not perform their task through any means or at any price. The powers of the police and the prerequisites for exercising these powers are precisely defined in law, in addition to which the principle of proportionality applies to all policing.

Although the Deputy-Ombudsman did not regard the police as having acted unlawfully, he drew the attention of the Helsinki court district police service to the aspects of the principle of proportionality that he had outlined. In addition, he criticised the police for having interpreted the Police Act too expansively when they gave their reason for searching people as they were released from inside the cordon.

Arrests provided strongest ground for criticism

The Deputy-Ombudsman issued a reprimand to one senior constable for having decided to take two persons into custody solely on the ground that they had consumed alcohol and had been taking part in the demonstration. In the view of the Deputy-Ombudsman, these facts do not constitute sufficient grounds under the law to take someone into custody. In addition, due either to a misunderstanding or a breakdown in communications, it had been assumed while these detained persons were in custody that they were crime suspects, for which reason they had not been released until the following afternoon. A reprimand was issued to the police service because of this.

Two other persons had been detained in front of the Kiasma building, but who had actually ordered this remained indeterminate and the police were unable to demonstrate that the legal prerequisites for an arrest had been met. In addition, the Deputy-Ombudsman expressed doubts as to whether there had been sufficient grounds for the arrest of three complainants who had been taken into custody in the Kaivopiha alleyway in the final stage of the incident.

More generally, something that the Deputy-Ombudsman considered problematic was the policy line that the field commander had formulated to the effect that "after an order to disperse has been given, the crime designation for those who fail to comply is riotous behaviour". Namely, the hallmarks of the offence of riotous behaviour include also participating through deeds in the actions of the mob, and even when the offence of riotous behaviour is committed, suspicion of the offence must be focused on an individual. There must be concrete reasons for suspecting that specifically he or she has participated through deeds in the actions of the mob. In this case, the arrests had also been so scantily recorded that when the persons were in custody on police premises, it was hardly possible at all to genuinely assess whether there had been grounds for the arrests. In any event, the likelihood that rioting would continue in the morning was very slight.

In the view of the Deputy-Ombudsman, the officer in overall charge of the investigation had emphasised the interest of solving crimes quite much when he decided that all suspects would be interrogated before they were released. However, the Deputy-Ombudsman did not take the view that the officer had acted unlawfully and also pointed out that for reasons of moderation nearly all of the under-18s detained had been released after a few hours.

The Ombudsman received over sixty complaints relating to the actions of the police in conjunction with the Smash Asem demonstration. Deputy-Ombudsman Jukka Lindstedt issued his decision on them on 28.11.2007.

Photo: Lehtikuva Oy

Another noteworthy aspect of the incident was that over 120 people had been detained on suspicion of riotous behaviour, and it was found after a preliminary investigation that there was not even the suspicion of any crime against nearly 40 of them. Even of the other persons detained, only 33 were charged with riotous behaviour, violent riotous behaviour or violently resisting the authorities. In the opinion of the Deputy-Ombudsman, the ratio between these figures can be regarded as indicative that the threshold to deciding to detain people and suspecting them of rioting was in part very low indeed.

With similar situations in the future in mind, the Deputy-Ombudsman believes it will be necessary to create a system that ensures that matters that the law requires to be recorded, are in fact recorded correctly and comprehensively, in real time. In addition, how to keep records appropriately should be includes in practicing crowd-control tactics.

Also shortcomings in treatment of detainees

The detainees were transported to police premises in buses, to the seats of which they had been shackled with cable ties. Some of them had had to wait in the buses for over two hours before being taken away to the detention cells.

The Deputy-Ombudsman expressed criticism of, first of all, the fact that some of the detainees had had to relieve themselves on the floor of the bus while their hands were fastened to the benches, assisted by members of the Border Guard and with numerous other persons present. A procedure of this kind must be regarded as humiliating and is not acceptable.

The arrestees had additionally, and contrary to a Ministry of the Interior Decree, been shackled to structures in the bus also during transport. At the police premises

in Töölö, it was not possible to give all of the persons suspected of a crime a mattress and bedclothes, as the regulations would have required. The Deputy-Ombudsman likewise concurred with opinion expressed by the official in overall charge of the investigation that in future crime suspects should not be kept at the Töölö detention facility, but instead police prisons in neighbouring court districts should be used.

Individual identifying insignia for police officers belonging to crowd-control unit

The men who took part in the crowd control operation bore insignia identifying them only by unit or group. The Deputy-Ombudsman considered it important that a police project to provide every member of a crowd control force with individual identifying insignia be rapidly completed. What is fundamentally involved here is that the Constitution guarantees everyone the right to demand punishment for and compensation from a public servant for an official action. In order for this right to be implementable, everyone must have the opportunity to find out the names of those public servants who are responsible for official actions affecting them. Besides, this way trust in the police can be maintained.

Need to develop legislation

In the view of the Deputy-Ombudsman, the Act on Compensation from State Funds for the Arrest or Detention of an Innocent Person should be reviewed. He found it unreasonable that a person whose innocence is later established does not receive compensation under this Act if he or she has been in detention for less than 24 hours. At the same time, the legislation providing for compensation to be paid as a consequence of the use of coercive measures should be reassessed as a totality. In addition, the regulations concerning arrests would need to be clarified and legislation on the status of the officer in overall charge of an investigation enacted.

The Deputy-Ombudsman's investigation was constrained by especially the fact that a trial arising out of events associated with the demonstration was pending before the Helsinki District Court. For that reason, he could not assess, for example, the grounds for the detention of the complainants who had been charged, because this could have been regarded as inappropriate interference with the exercise of independent judicial power.

Case no. 1836/2/07

In December 2007 the District Court imposed suspended prison sentences on 16 persons for a range of offences that included violent riotous behaviour. About 40 persons were fined and the charges against a further 14 were dismissed. Four persons have appealed their sentences to the Court of Appeals.

4.4 THE PRISON SERVICE

The number of prisoners in 2007 declined compared with the previous year. The total at the end of 2006 was about 3,600 and a year later around 3,400. Among the factors that contributed to the decline in the prison population were amendments to the Penal Code concerning conversion imprisonment, i.e. for non-payment of fines and release on parole.

The Ombudsman received about 400 complaints during the year and decisions were issued in relation to about 370 complaints. The complaints in relation to which decisions were announced concerned a very wide variety of matters. Nevertheless, the range of themes remains quite stable from year to year. The complaints made by prisoners during the year under review concerned *inter alia* the procedures followed in employing coercive measures and security measures or enforcing discipline, the behaviour of staff, inmates' conditions in prisons, such as living conditions, clothing and possession of property, prisoners' opportunities to maintain contact with the world outside the penal institutions, such as leave passes, correspondence, the use of the telephone and so on, as well as opportunities to have a family meeting.

4.4.1 INSPECTIONS

The Ombudsman is required by law to conduct inspections in especially prisons and other closed institutions. Indeed, oversight of the Prison Service has traditionally been one of the main areas of emphasis in the Ombudsman's work.

The Deputy-Ombudsman Petri Jääskeläinen inspected 12 prisons in 2007 and also visited the Lappeenranta unit of the Probation Service's South-East Finland Regional Office. In addition, Ombudsman Paunio inspected the mother-and-child sections of the Hämeenlinna and Vanaja prisons.

Special attention was paid on inspection visits to spaces within prisons and their condition, prisoners' living conditions as well as conditions in closed and isolation sections, the areas used for family visits, prisoners' contacts with the outside world, opportunities for leisure activities as well as disciplinary practices and any discrimination. Counselling services for prisoners were also looked at. Other themes that came up in discussions with prison managements were investigation of offences and breaches of regulations which prisoners were suspected of having committed, application of power to use coercive measures and recording the reasons on which decisions are based.

A matter of central importance during prison inspections is the opportunity that prisoners are given to have a personal discussion with the Deputy-Ombudsman. A total of 78 prisoners availed themselves of this opportunity. In general, any issues that arise can be dealt with in the course of the inspection visit. However, prisoners also submit written complaints. Additional matters that the Deputy-Ombudsman decided on his own initiative to examine on prison inspection visits were hand hygiene in so-called slopping-out cells, alarm systems in closed prisons, the provisions relating to telephone calls in the regulations of Riihimäki Prison, the conditions of female prisoners in Pyhäselkä Prison as well as male and female prisoners working together and the imposition of a disciplinary penalty and the way in which personal searches are conducted (3646/2/07) in Jokela Prison.

On her inspection visit to Hämeenlinna Prison the Ombudsman decided on her own initiative to investigate two cases, which concerned a child being admitted to prison with its parent and the status of mothers incarcerated with their children.

4.4.2 DECISIONS

Legislation concerning release of a remand prisoner flawed

When a court orders that a person remanded in custody during a pre-trial investigation be released, the prevailing practice is that the person concerned can be released directly in the locality where the court is or sent back to prison to be released from there. In both cases, the Deputy-Ombudsman found the regulations concerning the release of a remand prisoner to be flawed in the light of the personal liberty that Section 7 of the Constitution guarantees. He recommended to the Ministry of Justice that the regulations concerning the release of a remand prisoner be immediately brought into line with the requirements of the Constitution with regard to their contents, precision and hierarchy of norms.

Release via a prison

The Constitution requires that a ground for depriving a person of liberty must be enshrined in an Act. However, there is no direct foundation in law for a person whose release has been ordered by a court to continue to be deprived of liberty from that point until his or her release has been recorded in the prison's register and he or she has factually been set free. The procedure is based on established practice and an explicatory regulation issued by the Criminal Sanctions Agency.

In the view of the Deputy-Ombudsman, releasing a person via a prison does not satisfy the requirement of the Constitution that a person may not be deprived of liberty without a reason enshrined in an Act. The legislation concerning deprivation of liberty must be precise and comprehensive. The Deputy-Ombudsman does

not believe that it can be ruled out that as long as the current legislation remains in force, also situations contrary to the rights safeguarded in Article 5 of the European Convention on Human Rights could arise.

Release from the locality of the court

According to the Deputy-Ombudsman, the requirement of the Constitution that the rights of a person who has been deprived of liberty be safeguarded in an Act must be applied also to safeguarding the rights of a person who is released from the locality of the court. Although loss of liberty has then ended, the position of the released person remains insecure precisely for reasons associated with loss of liberty. This is due to, for example, the fact that remand prisoners do not have the right to have money or other means of payment in their possession and their other personal property is still in the prison.

The need for the rights of the released person to be protected by means of an Act is especially accentuated in situations where the release takes place in a locality other than the one where the released person lives or in a situation where a person, having been deprived of liberty, is transported penniless to a locality from which, for example, independently travelling home, finding accommodation or having a meal is not possible without cash resources.

Procedural obligations

The Deputy-Ombudsman likewise takes the view that a need for statutory regulation of the procedural obligations on the court should also be considered. A report on regional prisons received by the Deputy-Ombudsman revealed problems in the flow of information between court and prison. For example, information concerning the release of a remand prisoner can take a couple of days or even longer to reach a prison from the court where the release had been ordered.

Case no. 1987/2/06

The Criminal Policy Department of the Ministry of Justice announced on 11.1.2008 that they intend to draft a revision of the regulations on releasing remand prisoners in conjunction with drafting of an explication of imprisonment legislation in the course of spring 2008.

Visiting areas in prisons

On the basis of observations he had made on an inspection visit to Riihimäki Prison, the Deputy-Ombudsman decided on his own initiative to examine the arrangements in areas used for supervised visits.

The Deputy-Ombudsman found that the visiting areas in Riihimäki Prison did not in his view correspond in all respects to the idea contained in the Act and its precursor documents regarding different levels of supervision and proportionality of supervision to the situation. The arrangement of the visiting areas was also in conflict with international recommendations and what human rights oversight organisations had proposed. On the other hand, there is apparently a perception in prisons that visiting arrangements of this kind are necessary.

The Deputy-Ombudsman informed Riihimäki Prison, the Criminal Sanctions Agency and the Criminal Policy Department of the Ministry of Justice of his view concerning the arrangement of visiting areas in Riihimäki Prison. He asked the Criminal Sanctions Agency also to inform the regional prisons of his decision.

The Deputy-Ombudsman asked the Criminal Policy Department of the Ministry of Justice and the Criminal Sanctions Agency to deliberate the matter together and inform him of what measures his decision had given rise to.

The Deputy-Ombudsman pointed out that in the general visiting area in Riihimäki Prison prisoners and visitors are completely separated from each other by a physical barrier in a way that in the legislative drafting documents and earlier also in the regulations of the Prison Service was described as specially supervised conditions.

According to the report, the structural arrangements in the general visiting area also have the same aim as that aspired to in conditions of special supervision – to prevent physical contact and through it exchanges of objects and substances. The general visiting area likewise fails to meet the requirements of the structural design guidelines issued by the Prison Service for a supervised visiting room, according to which the table is divided by a low pane of plexiglass.

Even if the view were to be taken that the "necessary supervision" generally associated with visits in the Act makes it possible to use some degree of structural supervisory arrangements in conjunction with also visits other than specially supervised ones, the Deputy-Ombudsman did not regard as lawful a situation in which a prison's general visiting areas corresponded in practice to areas where visits take place under special supervision. The purpose of the Prison Act was to regulate the rights and obligations of prisoners as well as restrictions of the fundamental rights of prisoners precisely on the level of an Act.

There are no regulations on the outfitting of visiting areas, but the Prison Act contains provisions dealing specifically with situations in which conditions of special supervision can be imposed. What special supervision means in terms of technical arrangements is, in turn, set forth in the precursor documents of the Act. Specially supervised visits must be subject to individual, case-by-case consideration and decision. The Act requires that a decision to have a visit take place under special supervision be made by a civil servant who is the superior officer of the personnel who supervise visits. However, the arrangements in the general visiting area in Riihimäki Prison, where prisoners and visitors are in practice completely separated from each other, apply to all of the inmates there.

The point of departure in the legislation is that the enforcement of a prison sentence may not cause any restrictions of the rights or circumstances of the prisoner other than those that are provided for in the Act and which necessarily follow from the penalty itself. Under the Act, a prisoner's visits must be supervised in the way that is necessary. It is an aspect of the legal principles that underpin administration that official actions must be correctly proportionate to the desired objective. The spatial arrangements in Riihimäki Prison are not justifiable in all (supervised) visiting situations even though it is a high-security prison. A justifiable balance between, on the one hand, the security of the institution and, on the other, protection of prisoners' privacy should be struck in the supervision of visits.

The spatial arrangements can also be criticised on the ground that the purpose of visits is to help, in accordance with the goal of enforcing penalties, promote prisoners' re-entry into society by helping them to maintain their close human relations. In the light of this goal, the prison authorities should try to increase more open (supervised) visiting circumstances.

The Deputy-Ombudsman also pointed out that the Act requires that spaces suitable for visits be provided in prisons. This obligation is not met in all respects in Riihimäki Prison.

Case no. 3870/2/05

Protection of a prisoner's privacy at a doctor's reception

The complainants criticised the practice, followed in various prisons, of a warder being present when prisoners received medical treatment. According to the complainants, this was done either because it was the established practice in the prison or because the doctor refused to receive prisoner patients without a warder being present.

The Deputy-Ombudsman pointed out that, under the Act on the Status and Rights of Patients, treatment of patients must be arranged and they must be treated in such a way that their human dignity is not violated and their convictions and privacy are respected. To the extent that this is possible, patients' individual needs must be taken into consideration in the treatment they receive.

Under the Act, any persons other than those participating in treating a patient or performing a task associated with this are to be regarded as outsiders. Thus a patient's privacy must be protected vis-à-vis all outsid-

ers irrespective of whether they are bound to secrecy or not. Although prison warders are bound to secrecy, they are outsiders in a medical treatment relationship and their presence when treatment is being given can violate the privacy of the person receiving treatment.

What must be regarded as being the point of departure is that prisoners, like all other patients, have a right to receive treatment without outsiders being present. A warder's presence can be countenanced only in an exceptional case when guarding the prisoner can not be appropriately done in any other way. A request by a doctor that a warder be present or a perceived threat of any other kind to the safety of the medical staff can be regarded as an exceptional case of this kind. Also when there is a well-founded suspicion that a prisoner intends to abscond, a warder's presence at a treatment event can be justified, provided the risk of absconding can not be eliminated in any other way.

If violation of privacy can not be entirely avoided, an effort must be made to arrange the treatment event in such a way that the violation is as minimal as possible. In some situations, the warder may only be able to see the prisoner, but does not need to hear what is discussed while treatment is being given. In other situations, by contrast, violation of privacy is lessened by visual contact being eliminated. Ascertaining whether a warder's presence is needed at a treatment event should be left to the doctor. It is also important to elicit the prisoner's view on the warder's presence. It would be purposeful to do this already before the reception if the persons responsible for guarding prisoners know beforehand that the reception can not otherwise be arranged.

Also from the perspective of the doctor's legal security it is important to find out whether the patient gives consent for the doctor to express information that is statutorily required to be kept secret to an outsider, i.e. in this instance to the warder. If the patient does not give consent and the doctor discloses confidential material in the presence of the warder, he or she is violating his or her official duty of secrecy. In this case it would be important for the doctor to request the patient's explicit consent to reveal confidential information. The degree of sensitivity of the matter involved is not of significance in assessing whether or not information concerning the patient's state of health can be disclosed to outsiders.

If outsiders are present when treatment is being given, appropriate entries recording this fact as well as the reasons for it and a record of the patient having been consulted in this respect must be made in the patient documents. It is also advisable to record in the patient documents that the patient has consented to confidential information being disclosed.

Case nos. 1302 and 1456/4/05 as well as 1643/4/05

4.5 MILITARY MATTERS AND THE DEFENCE ADMINISTRATION

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

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

they have been subjected. A considerable proportion of complaints by conscripts concern medical care and especially the way sick conscripts are treated.

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

34 complaints concerning military matters were resolved during the year under review. About a third of them led to measures. For example, Deputy-Ombudsman Jukka Lindstedt emphasised that danger situations and accidents should be investigated as quickly and efficiently as possible. In another decision he expressed his view that a formation drill had been conducted inappropriately in one military unit.

4.5.1 INSPECTIONS

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

Deputy-Ombudsman Jukka Lindstedt inspected the Signal Regiment at the Riihimäki Garrison on 15.11.2007. In the picture are Colonel Esa Salminen, the Deputy-Ombudsman and Legal Adviser Kristian Holman from the Office of the Parliamentary Ombudsman.

Photo: Petri Tuononen, Signal Regiment, Riihimäki

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

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

A total of nine units belonging to the Defence Forces and the Border Guard were inspected during the year under review. In addition, the Deputy-Ombudsman inspected the investigation department of the Defence Staff and made a familiarisation visit to a recruiting session arranged by the Helsinki military district.

4.6 FOREIGNERS

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

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

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

Decisions in 56 cases involving foreigners' affairs were issued during the year under review. Many complaints related to the length of time taken to deal with an application for a permit or dissatisfaction with an authority's decision not to grant a residence permit or visa.

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

4.6.1 INSPECTIONS

Deputy-Ombudsman Lindstedt paid an inspection visit to a reception centre in Kajaani and the Kainuu performance district of the Directorate of Immigration's asylum unit. The matters looked at during the visit included the way in which the Kainuu performance district's somewhat remote location in Kuhmo affects the processing of asylum matters and the position of asylum seekers.

No shortcomings relating to the activities of the objects of inspection were revealed on either visit. However, it will continue to be important to ensure that the long distances that asylum seekers have to travel to attend interviews with the authorities do not jeopardise their legal security.

4.6.2 DECISION

Processing of a Directive-based application for a residence permit

In a letter to the Ombudsman, the complainant expressed criticism of the action taken by the police in the Espoo court district. He reported that the police had on 27.3.2006 failed to accept his application for

a residence permit, which was based on an EU Directive dealing with the status of citizens of third countries who have been in residence for a long period.

The Member States were supposed to have enacted the acts, decrees and administrative regulations required under the Directive by 23.1.2006. However, implementation of the Directive was delayed and the changes required under it were not transposed into national law until 1.5.2007.

A Directive can, provided certain preconditions are satisfied, have immediate legal impacts if it has not been implemented within the specified period or if it has been incorrectly implemented. In the opinion of Deputy-Ombudsman Lindstedt, the Directive now in question had had an immediate legal impact.

However, the Espoo police could not grant a residence permit on the basis of a Directive that national legislation or the register system did not know. Thus effective application of EU law had not happened, because the Ministry of the Interior had not given police stations, which receive applications for residence permits, administrative guidance in order to ensure implementation of the Directive's immediate legal impact.

The Deputy-Ombudsman took the view that he did not have grounds to criticise the action of the Espoo police. The problems relating to submitting an application for a residence permit were more attributable to the Ministry of the Interior's failure to ensure the appropriate national implementation of the Directive. Because the Commission, as the authority overseeing implementation of Directives, had already drawn the Finnish authorities' attention to the delay in implementing the Directive nationally, the Deputy-Ombudsman only emphasised to the Ministry of the Interior the importance of complying with timetables for implementation of Directives.

The Deputy-Ombudsman drew the Ministry's attention also to the fact that if a Directive causes an immediate legal effect, but its national implementation is delayed, the necessary measures must be taken to ensure that implementation of the rights of the individual for which the Directive provides is safeguarded. In this case, for example, the police should have been advised on what to do when a residence permit application based on the EU Directive is submitted to them.

Case no. 1046/4/06

4.7 SOCIAL WELFARE

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

As in earlier years, the biggest category of complaints concerning social welfare related to income support, child welfare and services for the handicapped. There were only a few each in the categories of complaints relating to other social welfare, such as day care for children and housing services and home help services for the aged. The Ombudsman's oversight in the field of child welfare is explained in greater detail in the section dealing with children's rights.

Income support is the last-resort financial assistance to which a person is entitled when he or she has no other income or funds. It is a benefit that presupposes individual consideration of need and one in which the Ombudsman has no power to intervene if the matter has been dealt with within the parameters of the discretionary power for which the Act provides. The Ombudsman can not act as an alternative to the appeals system. As in earlier years, the Ombudsman has underscored the importance of using the means of appeal available in her decisions concerning income support.

Income support-related complaints concerned especially the long times taken to process applications. The Income Support Act, which was in force until the end of 2007, required that these applications be processed without delay in a municipality. The Ombudsman has taken the view, that at most one week from the time an application is accepted for processing can be regard-

ed as the a priori criterion of processing without delay, because income support is a central monetary benefit safeguarding the right to indispensable subsistence and care that the Constitution guarantees. It was found in several localities that processing of income support applications had taken too long, from two weeks to as much as seven weeks. The localities involved were both small and large ones in various parts of Finland.

With effect from the beginning of 2008, the Act has set deadlines for the processing of income support applications. In an urgent case, a decision concerning income support must be made on the basis of the available data on the same weekday as the application is received or at the latest on the following day. In a non-urgent case, the decision must be made not later than on the seventh weekday after the application has been received.

There were also complaints concerning processing of applications for services for the handicapped having taken too long. The Act on Services for the Handicapped does not contain provisions on the length of time that processing can take. The Ombudsman has pointed out in these decisions of hers that applications must be processed within a time frame that is reasonable in view of the nature of the case and other circumstances with a bearing on it. For these reasons, it may sometimes take a lengthy period to process a matter without there having been delay. Applications for services for the handicapped require processing of matters that range from dwelling conversions that require a high level of building expertise to relatively simple transport arrangements. When assessing whether an application has been processed without delay, the importance of the matter to the person in question must also be taken into consideration. The greater the importance of the decision from the perspective of the client's everyday life, the greater the need to strive for expeditious processing. When safeguarding indispensable care or other fundamental rights is involved, greater importance must be attached to processing the matter without delay.

The Act on Support for Informal Care entered into force at the beginning of 2006. Support for informal care is a statutory social service, which municipalities are required to arrange within the framework of the funds that they have allocated for this purpose in their budgets. This can mean that not all applicants who meet the requirements of the Act actually receive the allowance. In accordance with established legal practice, municipalities have been regarded as having the right to prioritise who receives an informal care allowance in the event of the allocation not being sufficient to permit it to be paid to all applicants.

There were fewer than ten complaints relating to informal care allowances. They concerned, *inter alia*, applications having been rejected due to prioritisation. A couple of complaints concerned the arrangement of a free period for an informal carer. These complaints did not give rise to measures on the part of the Ombudsman.

There are no statutory provisions concerning the arrangement of services for the aged; instead, they are arranged through the general system of social welfare and health care services. However, a municipal authority must when arranging services ensure that everyone is guaranteed the right, which is enshrined in the Constitution, to indispensable care. There were only few complaints concerning the arrangement of care for the aged during the year under review.

As in earlier years, there were only a few complaints concerning services for mentally handicapped persons or their treatment. In fact, the emphasis in the Ombudsman's oversight of legality in the sector of care services for the mentally handicapped is on service centres, which are maintained by intermunicipal joint authorities and provide special care.

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

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

The Ombudsman has tried to make one extensive familiarisation and inspection visit per year to some or other municipality's social affairs and health department. The municipality where a visit of this kind took place during the year under review was Mikkeli.

The Ombudsman inspected one reception centre intended for intoxicant abusers in need of temporary accommodation.

4.8 HEALTH CARE

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

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

The complaints concerning health care in 2007 related to, among other things, a municipality's obligation to arrange health services and compliance with obligations under the treatment guarantee, a patient's right to good care, a patient's right of self-determination and the right to receive information, entries in medical records and divulging information about patients. As in earlier years, appropriate handling of matters by health authorities and in operational units also came up.

Other complaints received related to assessment of an intoxicated person's state of health and entitlement to good treatment. A further matter assessed on the basis of a complaint was the action of on-call personnel at a health centre in limiting the right of self-determination of a patient who was intoxicated and behaving disruptively.

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

How well the treatment guarantee had been met was assessed in decisions on several complaints. What the treatment guarantee means is that, in order to safeguard the availability of treatment, the Primary Health Care Act and the Act on Specialised Medical Care contain provisions specifying within what time period a patient must receive non-urgent treatment at a health centre or hospital. The treatment guarantee has been in effect since the beginning of March 2005. For example, in the Helsinki and Uusimaa hospital district, Jorvi Hospital did not comply with the treatment guarantee obligations under the Act on Specialised Medical Care, because it gave a glaucoma patient a payment commitment and a referral to the private sector only nearly a year after the patient's need for treatment had been assessed.

The Act on the Status and Rights of Patients (the Patients Act) contains provisions setting forth the right of a patient to receive good care and be treated well. The question of whether medical treatment had met the requirements of this Act featured often in complaints. As in earlier years, questions relating to patients' right to receive a report on matters relating to their treatment and on deciding on the treatment in agreement with them, as required under the Patients Act, likewise arose.

In recent years the Ombudsman has had to deal with complaints concerning decisions not to resuscitate patients (DNR decisions) being made in health care operational units. It has been argued in the complaints that interpretation of DNR decisions and the practices associated with them have been contradictory, unclear and difficult to outline. The view taken has been that the situation jeopardises the legal security of especially vulnerable patients and their relatives.

In a situation where a patient who is of age is incapable of deciding on his or her treatment, the provisions of Section 6.2 and 6.3 of the Patients Act must be applied. These provisions have proved to be open to interpretation. The view that the Ombudsman has taken in her decisions is that a DNR decision constitutes the kind of important treatment-related decision meant in Section 6 and that a patient should be treated in agreement with his or her legal representative, close relative or other person who is close to him or her. In the opinion of the Ombudsman, there may be a need to explicate this provision with respect to how especially Section 6.3, which requires the consent of a legal representative, close relative or other close person, is applied to making DNR decisions. The present legislative situation can not be regarded as appropriate from the perspective of the legal security of patients, their representatives nor of health care personnel. The Ombudsman informed the Ministry of Social Affairs and Health of her opinion that the provision needs explication and requested that it inform her of any measures that have resulted from her opinion.

The Ministry of Social Affairs and Health informed her that a Government Bill to amend the patients act was being drafted and that the intention was to introduce it in the Eduskunta in the course of 2008.

Questions relating to entries made in patients' medical records and to divulging information concerning patients continued to feature quite much in complaints.

The Ombudsman has over the past few years repeatedly drawn attention to shortcomings in the entries made in patients' medical records by operational units and health care personnel. There is often no record at all of what information patients have been given about matters relating to their treatment. The same applies to the reasons for decisions concerning treatment: for example, why a DNR decision has been made for a patient or why a patient's medication has been changed. Consultations and discussions concerning treatment have been left unrecorded. In addition, there have been especially many flaws in entries relating to discussions with patients and their relatives concerning what to do in, for example, a situation where a patient is no longer able to make a decision concerning his or her treatment.

In the Ombudsman's assessment, the regulations concerning the drafting of patient records are, as such, clear, unambiguous and precise. Observing them helps ensure implementation of the constitutionally guaranteed fundamental right to adequate health services.

The flawed nature of patient records has proved to be so great a problem that the Ombudsman asked the National Authority for Medicolegal Affairs to take measures to redress the matter. It announced that, following the Ombudsman's communication, a plan of action had been drafted to deal with the shortcomings that had been observed in the drafting of patient records. The key measures that the National Authority has taken or will be taking to improve the quality of patient records have been compiled in the plan. The National Authority has sent health centres and hospital districts a book of guidelines in which, among other things, they are urged to ensure that patient records are drafted in operational units in the way that regulations and patient safety require. In addition to its oversight and guidance work, the National Authority has also appealed to the bodies that train health care personnel to develop and improve their teaching in relation to drafting and handling patient records.

In addition, the National Authority announced that it would conduct a survey in 2009 to establish what measures had been taken by various bodies to improve the quality of patient records.

4.9 CHILDREN'S RIGHTS

The Finnish Constitution contains a provision concerning specifically equal treatment of children. International human rights conventions likewise safeguard the rights of children.

The Eduskunta passed a new Child Welfare Act in February 2007 and it entered into force on 1.1.2008. The purpose of this Act is to ensure that the rights and interests of children are taken into consideration when child welfare measures are implemented, to safeguard the support measures and services that the child and its family need as well as to improve the legal security of the child and its parents or guardians in, especially,

decision making in relation to child welfare. The biggest changes are in decision making concerning child welfare: when the Act enters into force, decisions concerning children being involuntarily taken into care will be made in the first instance by an administrative court on the application of a senior municipal official responsible for social welfare.

In 2007 the Ombudsman issued decisions relating to a total of 139 complaints or other oversight-of-legality cases concerning children's rights. A few of them are illustrated in the following.

A matter investigated on the Ombudsman's own initiative was delay in receipt of welfare reports that had been requested from the City of Espoo social affairs department in cases concerning child custody and visitation rights before the district court. Two individual complaints concerning the same problem were being investigated at the same time. In one of these, the complainant had not yet been contacted at all, although the welfare report had been in the drafting for 23 months. In the other complaint case, over 12 months had passed before the complainant was contacted for the first time. In this case, it took altogether over 20 months before the welfare report was completed.

The City of Espoo social affairs department gave the Ombudsman a report according to which a severe backlog had developed in the preparation of welfare reports in two strongly growing and populous parts of the city in 2001–04. The volume of work had become too large for the personnel to handle and they had had to accord priority to urgent child welfare matters. The backlog had not been caused by the actions of any individual official.

The Ombudsman pointed out that the Constitution requires the authorities to strive to deal with matters as expeditiously as possible and that the European Court of Human Rights has taken the view that matters relating to children's and family rights require rapid handling. In her view, the interests of the child also require that matters relating to custody, housing and visitation rights be dealt with expeditiously. She further pointed out that a municipality can not invoke a dearth of resources if the performance of work tasks that safeguard municipal residents' fundamental rights is unlawfully delayed. The number of personnel and working methods should be geared to responding to statutory tasks also when the situation changes and every effort should be made to minimise the adverse effects caused by changes.

Indeed, the Espoo social affairs authorities had later managed to clear up the backlog and substantially reduce processing times. Therefore, the Ombudsman was content to take no action other than informing the social affairs authorities of her opinion on the matter.

In 2007 the Ombudsman also issued decisions on three complaints concerning delay in investigating suspicion of sexual abuse of a child. In accordance with national recommendations issued in 2003, the social affairs and health authorities must give the police executive assistance when suspected cases of child abuse are being investigated. The recommendations had been drafted as a collaborative effort involving experts from various fields.

The problem in the cases investigated was that it was not clear to the local authorities which authority was responsible for examining the child in each individual case. Requests for executive assistance were sent in these cases to health care operational units which, having assessed the matter, came to the conclusion that they did not have the necessary expertise to perform the task and returned the requests without conducting examinations. The maximum time periods specified in the recommendations were unacceptably exceeded. There were also delays in, for example, referring a child immediately for somatic examination and further in making an appropriate request for an investigation or crime report to the police.

The Ombudsman emphasised the importance of observing the national recommendations. She pointed out that delay in investigating suspected sexual abuse can influence a child's memories and alter them. Therefore, the legal security of both the child and the person suspected of the abuse requires that the suspicion be studied expeditiously and expertly, if necessary in units specialising in these cases.

4.10 SOCIAL INSURANCE

The Constitution of Finland guarantees everyone the right to basic subsistence in the event of unemployment, illness and disability and during old age as well as at the birth of a child or the loss of a provider. Social insurance is a part of the system of security of basic subsistence and by it is meant statutorily arranged compulsory insurance for the event that any of the above-mentioned situations arises.

As in earlier years, the issues brought up in complaints during the year under review had to do mainly with disability pensions, housing subsidies, compensation payments under the Sickness Insurance Act, rehabilitation as well as other benefits provided for in the Employment Accidents Act and the National Pensions Act.

In many cases, the point of the complaint was that decision makers had, in the complainant's view, acted erroneously or illegally in rejecting an application for a benefit or a complaint. However the Ombudsman can not generally intervene in the content of a decision concerning a benefit. For this reason she often had to point out in her reply that the authority had reached its decision in the matter on the basis of its discretionary powers and then advised complainants to use the means of appeal available to them.

Many complaints related also to the procedure that the authorities had followed and perceived shortcomings in it. Aspects that featured most often in criticism were slowness in processing matters, failure to observe the service principle as well as neglect of obligations to provide information and advice and other shortcomings with respect to legal safeguards. By contrast, markedly fewer complaints than in the previous year related to the reasons presented in support of decisions.

It belongs to good administration and exercise of law that the length of time taken to deal with a matter is reasonable in the light of the matter's nature and other pertinent circumstances and that there is no undue delay. Processing times, especially in the cases of the Social Security Appeals Board (called the Review Board until the end of 2006) and the Insurance Court, are still so long that the situation in the area of social insurance must be considered a major problem of legal security. The average time that the Social Security Appeals Board and the Insurance Court took to deal with a case in 2007 was 15 months and complaints about this were made to the Ombudsman. By contrast, the Social Insurance Institution's processing times had markedly shortened compared with earlier years. The service principle and advice are likewise key sub-sectors of good administration. Shortcomings in the way transactions with authorities were arranged and cases processed as well as in the advice and guidance provided by officials featured in several complaints.

The information and guidelines provided by the Social Insurance Institution in Swedish as well as the adequacy of training were taken under examination on an inspection visit to the Åland Islands. It was found that the information provided by the SII in Swedish on its Internet site was less comprehensive than the information in Finnish. It emerged during inspection visits that problems had been experienced in arranging training through the medium of Swedish and drafting guidelines in this language. The Ombudsman noted in her decision that the SII's Internet site met the requirements of the Language Act and that the Institution had better opportunities than in the past to speed up translation of guidelines and promote the provision of training in Swedish.

Some organisations representing the handicapped asked the Ombudsman to examine whether the SII had acted lawfully in reducing the amounts of the already granted allowance for the handicapped and pensioner's care allowance and rejecting growing numbers of applications for medical rehabilitation for severely handicapped persons although the legislation had not changed. An investigation of the matter revealed that the proportion of applications rejected had risen by about 5 percentage points between 2003 and 2006.

The Ombudsman pointed out in her decision that the SII must examine the matter and find an explanation of what was causing the steady and constant growth in the proportion of rejected applications. Arising from the Ombudsman's decision, the SII later in 2007 launched a study in which the reasons for rejections

of applications for benefits were analysed. It was continued into 2008 after new legislation on benefits for the handicapped had entered into force.

Instances of the statutory maximum periods for postponements of appeals in employment pension institutions having been exceeded had been investigated by the Ombudsman as early as 2005, when she issued a decision in a matter that she had looked into on her own initiative. However, these deadlines were still being exceeded sometimes both in the SII and other insurance institutions, for which reason the Ombudsman again took the matter under investigation on her own initiative in 2007. She drew attention to instances of statutory deadlines having been neglected in cases mentioned in several complaints. She did not find the reasons that the SII offices and pension institutions presented for the deadlines having been exceeded acceptable. They must arrange processing of complaints in such a way that they are able to comply in all circumstances with the statutory deadlines.

In 2007 the Ombudsman inspected the insurance companies that provide statutory pension and compensation cover and continued her familiarisation with the SII's offices. The matters looked at during these inspection visits were the expeditiousness with which pension and compensation applications were processed, the reasons presented in explanation of decisions, how the companies have arranged advice and guidance for clients as well as how they promote the implementation of equality in their activities. The Ombudsman studied randomly pension decisions in advance as well as decisions on compensation under the Accident and Traffic Insurance Act.

The times taken by the companies to process applications were found to be reasonably good and the reasons presented for decisions mainly appropriate and adequate. All of the insurance institutions inspected had made inputs into developing advisory services and especially the service they provided online. The Ombudsman's observations indicated that the insurance institutions' service points also had sufficient staff with a command of Swedish.

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 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

Matters under consideration in 2007

Oversight-of-legality cases under consideration			*6,065*
Cases in initiated in 2007		3,857	
– complaints to the Ombudsman	3,397		
– complaints transferred from the Chancellor of Justice	39		
– taken up on the Ombudsman's own initiative	49		
– submissions and attendances at hearings	39		
– other written communications	333		
Cases held over from 2006		1,592	
Cases held over from 2005		611	
Cases held over from 2004		5	
Cases resolved			*3,963*
Complaints		3,544	
Taken up on the Ombudsman's own initiative		44	
Submissions and attendances at hearings		38	
Other written communications		337	
Cases held over to the following year			*2,065*
From 2007		1,418	
From 2006		639	
From 2005		8	
Other matters under consideration			*177*
Inspections [1]		69	
Administrative matters in the Office		108	

[1] Number of inspection days 50

Oversight of public authorities in 2007

Complaint cases			*3,544*
Social welfare authorities		700	
– social welfare	424		
– social insurance	276		
Police		572	
Health authorities		374	
Prison authorities		348	
Courts		239	
– civil and criminal	199		
– special	3		
– administrative	37		
Labour authorities		155	
Local-goverment authorities		143	
Environment authorities		130	
Tax authorities		107	
Education authorities		99	
Enforcement authorities		91	
Transport and communications authorities		85	
Agriculture and forestry		79	
Prosecutors		60	
Immigration authorities		57	
Guardianship authorities		50	
Highest organs of state		35	
Military authorities		32	
Church authorities		19	
Customs authorities		13	
Municipal councels		10	
Other subjects of oversight		126	
Private parties not subject to oversight		20	
Taken up on the Ombudsman's own initiative			*44*
Police		9	
Health authorities		7	
Prison authorities		6	
Social welfare authorities		5	
– social welfare	3		
– social insurance	2		
Education authorities		3	
Courts		2	
– civil and criminal	2		
Guardianship authorities		2	
Military authorities		2	
Prosecutors		2	
Local-goverment authorities		1	
Highest organs of state		1	
Other subjects of oversight		4	
Total number of decisions			*3,588*

Measures taken by the Ombudsman in 2007

Complaints		*3,544*
Decisions leading to measures on the part of the Ombudsman	*586*	
– reprimands	39	
– opinions	502	
– recommendations	15	
– matters redressed in the course of investigation	30	
No action taken, because	*2,147*	
– no incorrect procedure found to have been followed	521	
– no grounds to suspect incorrect procedure	1,626	
Complaint not investigated, because	*811*	
– matter not within Ombudsman's remit	83	
– still pending before a competent authority or possibility of appeal still open	461	
– unspecified	99	
– transferred to Chancellor of Justice	8	
– transferred to Prosecutor-General	10	
– transferred to other authority	14	
– older than five years	45	
– inadmissible on other grounds	91	
Taken up on the Ombudsman's own initiative		*44*
– prosecution	1	
– reprimand	2	
– opinion	17	
– recommendation	11	
– matters redressed in the course of investigation	2	
– no illegal or incorrect procedure established	4	
– no grounds to suspect incorrect procedure	4	
– lapsed on other ground	3	

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