Parliamentary

# Ombudsman

of Finland

Summary

of the

Annual

Report

2008

Parliamentary

# Ombudsman

of Finland

Summary

of the

Annual

Report

2008

# 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. This year also parts of the section of the report dealing with the issues involving fundamental or human rights that have arisen over the year have been translated and included in the summary. The report is published in both of Finland's official languages, Finnish and Swedish.

This 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 2008.

Helsinki 19.3.2009

Parliamentary Ombudsman *Riitta-Leena Paunio*

Secretary General *Jussi Pajuoja*

# CONTENTS

Decisions marked with an asterisk can be found as media bulletins on the Ombudsman's web site: www.oikeusasiamies.fi/english

## Photos

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

# 1. General comments

## RIITTA-LEENA PAUNIO

### THE OMBUDSMAN IN A GLOBAL WORLD

I have been able to follow the growth and development of the Ombudsman institution here in Finland and the rest of the world for over three decades. It has been interesting to do so, because in that time the institution has been spreading like wildfire in the world.

The Ombudsman in Finland can look back on a long history compared with many other countries. In February 2010 it will have been 90 years since the first complaint arrived on the Ombudsman's desk. A Master Sergeant in the light infantry, who was on remand in the Wiipuri Provincial Prison requested most humbly that the Ombudsman act to ensure that he, "*unless his case could be immediately reviewed by a Court Martial, be soon released from remand custody and that the person or persons who could be deemed guilty of having me detained without ground be prosecuted for misconduct in office*".

Oversight of legality has changed over time, but its basic features have been preserved and are still of topical relevance. The Ombudsman's role as a prosecutor has receded into the background, whilst the role of developer of official actions has become more emphatic. Promoting good administration has assumed a key position in the Ombudsman's work. A lot of attention has also been devoted to conditions and treatment in institutions. Oversight of prisons, institutions and Defence Forces units where conscripts serve has been extensive and numerous proposals concerning the development of legislation, administration of justice and administration in general have been made.

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.

Evolution of thinking on fundamental and human rights both in Finland and elsewhere has significantly shaped the Ombudsman's activities in recent decades. Looked at from the long perspective of history, we are now living in a time when the aim is to protect the fundamental rights of all people through international conventions. This era of human rights conventions is

regarded as having begun with the United Nations Universal Declaration of Human Rights, the 60th anniversary of which was celebrated towards the end of last year. A significant step in Finland was the signing and transposition into national law of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms in 1990. When the fundamental rights provisions in the Constitution were revised in 1995, the Ombudsman was statutorily entrusted with overseeing compliance with fundamental and human rights. This task can be said to have decisively altered the angle of the Ombudsman's examination from the duties of the authorities to implementation of human rights.

Thus the international development has in precisely this respect clearly influenced also the Ombudsman's oversight of legality, which has evolved with the times and societal and international changes. Also we underwent a significant phase of development in recent decades.

## The institution in the world

In 2009 it will have been 200 years since the institution of Ombudsman came into being in Sweden. The bicentenary will be marked with festivities in Stockholm in the beginning of June. Overseers of legality from many parts of the world will gather at the World Congress of the International Ombudsman Institute to ponder the development and significance of the institution, and the landmark event will be celebrated also in many other ways in Sweden.

Hundreds of Ombudsmen from all over the world will be in Sweden for the events marking the jubilee year. The institutions that they represent differ from each other in many ways. Some are chosen by national parliaments, whilst others serve in the contexts of constituent states or regions or even as local Ombudsmen. Their tasks and powers vary, as do the ways in which they work. Their tasks and cultures are reflected also in their titles - médiateur, parliamentary commissioner, defensor del pueblo, human rights defender – to mention just some examples. Internationally, the general designation used for all of them is *ombudsman* – a Swedish word meaning approximately "representative".

Another feature common to all of them is independence from the official instance whose actions they oversee on behalf of citizens and on the basis of complaints by those citizens. What is involved is defending the rights of citizens and developing administration by means that are founded on the institution's status rather than power to order and command.

Thus the origins of the Ombudsman ideal are in Sweden. Finland was the second country in the world to adopt the institution, along the lines of the Swedish model, but it was the Danish model that was largely followed when the institution spread more widely in the world, especially in the late decades of the 20th century. The Ombudsman institutions that came into being in the latter half of the last century did not have powers as extensive as their counterparts in Sweden and Finland. For example, the new Ombudsmen – with a few individual exceptions – generally do not have the power to order prosecutions. Oversight of courts is likewise usually excluded from their remit. In some countries, Ombudsmen have been given quite a limited role as safeguarders of good administration. Mediation between citizens and authorities is an accentuated feature in some of the Ombudsman's tasks.

Naturally, the stage of development that every country has reached in its political and social system and with respect to the rule of law has influenced the form in which the institution has been established there. In some countries, Ombudsmen have played a strong contributory role in the promotion of human rights and have struggled – sometimes risking their lives – to defend the civil and political rights of citizens as well as their economic, social and cultural rights. Many are fighting to put an end to hunger in their countries, others to build educational, health-care and independent judicial systems or to safeguard freedom of speech. In countries where problems relating to human rights are great, the role that the Ombudsman plays in the promotion of these rights has been accentuated. In some countries, the Ombudsman's primary task is to fight corruption.

However, the aim has generally been to strengthen the rights of citizens relative to the public authorities in such a way that citizens and other people have a channel that is as convenient as possible – and also free of charge – through which they can approach a person who can defend and help them against arbitrary action and bad treatment by officials.

Something that I find worth noting is that the spread of the Ombudsman institution has been contemporaneous with the recent stages of the international development in the field of human rights that I have described in the foregoing. Irrespective of the different roles and emphases, the Ombudsmen's tasks are associated closely with development of the rule of law and with strengthening human rights and fundamental freedoms.

## The International Ombudsman Institute – a forum for mutual contact

Thirty years ago, the enthusiasm of the Ombudsmen in Canadian provinces, especially Alberta, led to the beginning of international cooperation by Ombudsmen through their own organisation. The International Ombudsman Institute (IOI), which has tried to support the spread of the Ombudsman ideal to various parts of the world, was created under the aegis of the University of Alberta in Edmonton. Its significance has lain in its work to compile information on the institution and distribute it to Ombudsmen and others who are interested in the subject. Conferences, discussions, training events and exchanges of information are among the means that have been used to improve the prerequisites for Ombudsmen in their work. The world conferences arranged every fourth year have been important events. The next, to be held in Stockholm in summer 2009, will be the ninth.

The activities of the IOI have had different emphases in different continents. A large part of the organisation's members are European Ombudsmen, nearly 80 out of a total of 160. International interaction between the European Ombudsmen has been very lively. Their cooperation has not taken place solely within the framework of the IOI; much of it has also been between Ombudsmen from the member states of the Council of Europe and EU, in addition to which there has been a good deal of interaction with a regional flavour, such as in the Nordic countries and those around the Baltic Sea.

A landmark in the history of the IOI will be reached at the Stockholm conference when the organisation's headquarters is transferred from Canada to Vienna. Austria has made a substantial financial commitment that will ensure the operation of the organisation's headquarters under the aegis of the Office of the Austrian Ombudsman, with the Ombudsman as its Secretary-General. This will mean a new stage of development in the organisation's history. It has been interesting to play a part in building that future as a member of the IOI Board for the past four years.

I also believe that we are on the threshold of a new orientation in the organisation's activities. Whereas up to now the objective in the IOI's activities has been to strengthen and support existing Ombudsman institutions and spread the Ombudsman ideal, it now seems that the organisation will henceforth strive to exert influence through the UN and other bodies to strengthen human rights on a more general level. There have been signs of natural development aspirations, but it remains to be seen how they will be implemented in practice and what attitude the organisation's members will adopt to them.

## What does the future look like?

In a few brush strokes I have outlined the development and spread of the Ombudsman institution over the past few decades. I have seen the growth of the institution as a part of the development associated with strengthening of international human rights. But how is the international development likely to influence the Ombudsman's work in the near future?

In Europe, I can see international cooperation continuing to contribute strongly to the human rights perspective being accentuated in the Ombudsman's work. In

some of my earlier comments in annual reports I have called for a strengthening of fundamental and human rights on the national level in a way that would make it unnecessary for people to have to turn to international oversight bodies to investigate, deal with and remedy violations of human rights. Assessing the matter in the light of my experience of oversight of legality, this does not seem particularly realistic. It does not appear that the many problems relating to implementation of fundamental and human rights to which Ombudsmen and others have drawn attention time and time again in their reports and decisions are being remedied. One reason for this is that on the national level the possibility of recompense being made for violations of human rights is inadequate. Besides, it is clearly evident that international criticism tends to make domestic decision making and administration more sensitive.

By contrast, it seems realistic that the Ombudsman can and will, as a part of an international network, influence the development of the situation with respect to fundamental and human rights at home and abroad. Something that I see as playing a key role in our own continent is the network of national human rights institutions and other structures in this field that has come into being on the initiative of the Council of Europe's Commissioner for Human Rights, and as a part of which the Ombudsman works. Projects like OPCAT, will further strengthen the Ombudsman's oversight of prisons and closed institutions. Through international reporting the impact of these on the promotion of fundamental and human rights here in Finland will probably become greater.

I can see that in the future the Ombudsman will have a greater input than at present into the drafting of periodic reports required under international human rights conventions. Likewise, the Ombudsman's contribution in bilateral and regional cooperation to build the rule of law in developing countries will become more prominent. Many European Ombudsmen – including my Danish counterpart – have been very active in cooperation of this kind. During the year under review, also we had a part in arranging this kind of human rights training in the Nordic region for Ombudsmen from Central America.

Indeed, the emphasis in promotion of fundamental and human rights through international cooperation will in all probability lie to an increasing extent in the Ombudsman's work to promote these rights also here at home. The past three decades have been an extraordinarily interesting period of development for the Ombudsman institution. And it looks like the coming decades will be no less interesting.

## PETRI JÄÄSKELÄINEN

# SHORTCOMINGS IN ENSURING LEGAL AID FOR PERSONS WHO ARE DEPRIVED OF THEIR LIBERTY

### The right to confidential legal aid

The guarantees of the fair trial that is safeguarded as a fundamental right include an entitlement to receive legal aid and the right to choose one's own legal counsellor and to discuss matters in confidence with this person. Comparable guarantees of legal security are to be found in, for example, the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. The confidential relationship between legal counsel and client also falls within the sphere of the protection of privacy and correspondence that is guaranteed by the Constitution and the Convention mentioned above.

Naturally, also prisoners and other persons who are deprived of their liberty and for whom it is more difficult to take care of their legal affairs than it is for those who are at liberty are entitled to these rights. For them, the opportunity to maintain confidential contact with a lawyer or other legal representative can be a matter of fateful consequence.

The legal status and treatment of persons who are deprived of their liberty are regulated in three different Acts. The Prison Act applies to a person who is serving a sentence of imprisonment or a conversion sentence, *i.e.* a so-called custodial prisoner. Implementation of the loss of freedom of a person who has been remanded in prison for the duration of a criminal investigation is regulated by the Detention Act. If remand prisoners are kept in police cells, however, they are subject to the third piece of legislation, the so-called Police Cells Act, which regulates the treatment of persons in police detention. The same Act applies also to persons who have been arrested and detained by the police. There is, in addition, another Act, which applies to the treatment of foreigners who have been detained, but I shall not deal with it in this context.

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.

These Acts contain provisions on the right to confidential legal aid that persons who are deprived of their liberty nevertheless enjoy. This right is also enshrined in, for example, the UN Standard Minimum Rules for the Treatment of Prisoners and the Council of Europe Prison Rules.

Thus a variety of norms and recommendations are the ways through which efforts to guarantee confidential legal aid have been channelled. However, several problems and shortcomings relating to safeguarding the services of legal counsel for persons who are deprived of their liberty have come to light in the course of the

Ombudsman's oversight of legality. These shortcomings are associated with first and foremost protecting the confidentiality of meetings or correspondence between prisoners and their legal representatives.

## Supervision of meetings with legal representatives

Under the Prison Act, the Detention Act and the Police Cells Act, visits can be supervised, unsupervised or specially supervised. Prisoners or other persons who have been deprived of their liberty are ordinarily entitled to supervised visits. Allowing visits to be unsupervised is at the discretion of the relevant authority. The law allows an unsupervised visit to take place if this is justified in order to allow the person who has been deprived of freedom to maintain contacts, deal with legal matters or for some other comparable weighty reason. An additional prerequisite is that the meeting does not disturb order in or the functioning of the prison or other place of confinement. A meeting can be arranged under special supervision (a specially supervised visit) in situations, as specified in the Act, with which threats to security are associated.

Under the Detention Act, meetings between prisoners and their legal representatives may not be supervised unless there is a well-founded reason to suspect that the law would be broken in the course of the visit. Thus the Act presupposes, as the main rule, that a meeting with a legal representative will not be supervised. Neither the Prison Act nor the Police Cells Act contain a corresponding provision. This is a shortcoming, because the requirement and necessity of a meeting with a legal representative being confidential do not depend on whether the prisoner in question is serving a sentence or on remand or confined in a prison or on police premises. I have considered it untenable that a remand prisoner's right to a confidential meeting with a legal representative is legally safeguarded in a different way depending on whether he or she happens to have been incarcerated in a police facility or an actual prison. Where a remand prisoner is placed can depend on local circumstances and case-specific, random factors, which ought not to have any bearing on supervision of meetings with legal representatives.

I have recommended to the Ministry of Justice and the Ministry of the Interior that regulation by the Prison Act and the Police Cells Act of supervision of meetings with legal representatives be brought into line with the provisions of the Detention Act.

## Inclarity of definition of different kinds of visits

What "supervision of a prison visit" means is that the personnel in a prison or police detention facility supervise the meeting by being present at it. Supervision can be arranged also with the aid of video equipment.

The phrase "specially supervised conditions", in turn, means that the meeting takes place in a space where a plastic or glass partition or other similar barrier separates the person who has lost his or her freedom from the legal representative. Specially supervised conditions can also be arranged in such a way that the meeting is monitored by being present.

The way in which the contents of various kinds of visits are formulated in the precursor documents of these Acts leaves it unclear what exactly is meant by each of the supervision modes mentioned. For example, supervising a meeting in such a way that someone from the staff of the detention facility is present has been mentioned as a form of both supervised and specially supervised visit. Conceptual inclarity of this kind can have the practical effect of watering down the different prerequisites that the law stipulates for the use of different forms of visits.

I have recommended to the Ministry of Justice and the Ministry of the Interior that the provisions concerning definition of different forms of visits and the preconditions for them that the Prison Act, the Detention Act and the Police Cells Act contain be clarified.

## Structural arrangements in visiting areas

I observed already in 2007 that in some prisons visiting areas in which prisoner and visitor are separated by a transparent plastic wall and where they have to converse via intercom have been installed. It had not been grasped in prisons that arranging visits in spaces of this kind means specially supervised visits. Because the law permits a visit to be specially supervised only on the basis of discretion in each individual case and subject to the preconditions provided for in law, arranging normal visits in areas of this kind is unlawful.

It next emerged that also meetings with legal representatives had been arranged in prison areas of this kind. On those occasions, first there had been a circumvention of the statutorily required consideration of whether the visit could be arranged entirely without supervision. Assessment as to whether the grounds for special supervision of a visit exist, as required by the law, had likewise been bypassed.

After that, it was revealed that in police detention facilities the general practice was to arrange meetings with legal representatives under specially supervised conditions. Specially supervised visits were routine practice although the law makes it clear that this is meant as the last alternative. What this procedure had led to was that the arrangements for meetings had not been thought of as specially supervised. I found it astonishing that within the police administration there appeared to be a generally incorrect or flawed conception of the contents of the legislation concerning visits with persons who are deprived of their liberty. Something that I considered cause for special concern is that their unawareness related to meetings between prisoners and their legal representatives, safeguarding of which is one of the key guarantees of a fair trial.

A specially supervised visit limits the prerequisites for a free discussion and confidential exchange of information between prisoner and legal representatives. It has been established in the case history of the European Court of Human Rights that a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms had occurred when a legal representative arriving in the prison to meet a principal had been separated from the prisoner by a glass partition, which prevented handling of documents and required the conversation to be conducted in loud voices.

I have stressed that the threshold to a specially supervised meeting must be kept especially high when the persons visiting those who have lost their freedom are their legal representatives. Then the only prerequisite for arranging a specially supervised visit that can arise is mainly the suspicion that the meeting will cause danger to the safety of the visitor, *i.e.* the legal representative in question. In my view, a visit can be arranged as specially supervised on this ground against the legal representative's will only in quite exceptional cases.

If an authority deems that the lawful requirements for a visit being specially supervised appear to be met, the views of the person who has been deprived of liberty and of the legal representative should be heard before the visit. Then the grounds for special supervision can be explained to them and any views that the parties to the meeting put forward regarding, for example, the need for and means of safeguarding confidentiality can still be taken into consideration.

I have informed the Ministry of Justice and the Ministry of the Interior of my observations and views and asked the former's Criminal Policy Department together with the Criminal Sanctions Agency to examine visiting arrangements for prisoners.

## Inspecting a legal representative's post

According to the European Court of Human Rights, correspondence with a legal representative, irrespective of its purpose, has a special status under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court considers this protection of correspondence to be of special importance, because legal representatives do not always have the possibility to pay personal visits to their clients in prison.

According to the law, a letter or other postal item addressed by a prisoner to a legal representative must not be inspected or read. By contrast, inspection of post arriving for a prisoner is possible subject to the preconditions specified in the law being met. That is the case when "it is credibly manifest from the envelope or otherwise" that the sender is a legal representative, but there are grounds to suspect that it contains contraband substances or objects. Then the letter can be opened and its contents inspected, but only with the prisoner present and without reading the message that it contains.

The way in which the legislation is formulated has proved problematic in practice. That is because it is not possible in practice to "credibly" establish on the basis of the sender indicated on the envelope that it is from the prisoner's legal representative. The "sender" marking may be forged, or an envelope from a law firm can have been stolen or reused. It has emerged in the course of investigating complaints that this uncertainty regarding the authenticity of sender markings, which in principle always prevails, may have been used in prisons as a ground for opening a letter even when the sender is completely clearly marked as a well known law firm. Then the second criterion that is a statutory precondition for opening a letter from a legal representative, namely "that there are grounds to suspect that the letter contains contraband substances or objects", is in actual fact devoid of any independent significance. With an interpretation of this kind, it has been possible for a letter from a legal representative to be opened even without the prisoner being present.

Suspicion that a sender marking has been forged can prompt also the suspicion that the contents of the letter are contraband. In my decisions on complaints, however, I have stressed that the uncertainty that is, as I have noted in the foregoing, always associated with the authenticity of the sender marking is not in itself sufficient ground for suspicion that the letter contains contraband. Suspicion that a sender marking is false is in general poorly suitable as a ground for opening a letter, because its authenticity is easy to verify by telephoning the law firm indicated as sender. The protection of correspondence that is safeguarded as a fundamental and human right must not be violated if this can be avoided with simple measures.

According to the case law of the European Court of Human Rights concerning the confidentiality of correspondence with legal representatives, opening a letter from a legal representative to a prisoner always requires the existence of facts or knowledge in the light of which an objective observer looking at the matter from the outside may conclude that a communications channel that enjoys special protection is being abused.

I have found the provisions of the law to be excessively subject to interpretation from the perspective of safeguarding fundamental and human rights and inadequate to ensure that the regulations are uniformly enforced. I have also considered it important that sufficient reasons for decisions to open letters from legal representatives be presented and recorded. They are essential for controlling use of the authority's discretionary power and serve to promote the legal security of parties to communication, trust in official actions and well as self-control by authorities.

I have recommended to the Ministry of Justice and the Ministry of the Interior that the prerequisites for opening post from a legal representative that are stipulated in the Prison Act, the Detention Act and the Police Cells Act be clarified and that decisions to open correspondence and records of and presentation of reasons for these decisions be regulated.

## Conclusions

There are problems relating to safeguarding legal assistance for persons who are deprived of their liberty. These problems stem mainly from shortcomings in legislation, which are reflected also in practice. For example, definition of the preconditions for supervising a meeting with a legal representative and of the conceptual contents of different types of visits contains inclarities to the extent that it has been possible for incorrect practices relating to visits to come into being. Correspondingly, the partly failed formulation of the prerequisites for inspecting post from legal representatives has led to inspection practices which violate the confidentiality of correspondence with them.

One problem is the non-uniformity of the regulations that the Prison Act, the Detention Act and the Prison Cells Act contain. The basic solution of these three separate Acts seems in and of itself purposeful, but in my view there are no grounds why the provisions of confidential legal assistance to those who have lost their liberty are regulated differently in these three separate pieces of legislation. Confidential legal assistance should not depend on the status relative to the trial proceedings of persons who have lost their liberty or to where they are being detained.

In its replies to the recommendations of mine referred to in the foregoing, the Ministry of Justice has informed me that it will take the necessary changes into consideration in conjunction with a revision of prison legislation currently in the preparatory stage. I consider explication of the legislation important. The right to confidential legal assistance is one of the cornerstones of a fair trial, one that the public authorities must safeguard for everyone. The legislation must be so comprehensive and unambiguously precise that the rights of those who have lost their freedom are safeguarded also in practice.

## JUKKA LINDSTEDT

# THE OMBUDSMAN AND MEDIA FREEDOM

The relationship between the Ombudsman and the media can be examined from many angles. The news media are closely monitored by the Office of the Parliamentary Ombudsman. A shortcoming that is highlighted in news reports can lead to a matter being investigated on the Ombudsman's own initiative. A second perspective consists of the visibility that the Ombudsman's decisions and other actions receive in the media. This visibility was one focus of attention a few years ago, when the impact of the Ombudsman's work was surveyed.

In the following I shall concentrate on a third area, *i.e.* those of the Ombudsman's decisions with a bearing on the media's freedom. They are decisions that concern official actions with an indirect influence on the activities of the media. The media themselves do not, of course, come under the Ombudsman's oversight.

On the one hand, there are cases in which the police or some other instance subject to the Ombudsman's oversight have restricted the activities of the media or a private photographer. A second distinct category comprises cases in which the police or another authority are suspected of having publicly disclosed information that is required by law to be kept secret. I shall make no more than a brief mention of cases concerning, for example, requests made to authorities by journalists seeking documents or the publicity of trials.

The Ombudsman's decisions with a bearing on the operations of the media often concern protection of privacy. That nowadays prompts a lot of discussion. One reason is the authorities' expanded powers to obtain information on people's private lives. The increasing amount of news about people's private lives that the media publish is another contributory factor. In addition, citizens are increasingly alert with regard to protection of their privacy and are prepared, also through legal action, to establish where the limits of protection of privacy run.

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

Interesting juridical questions are associated with protection of privacy and the exercise of freedom of expression. They are resolved not only through domestic court proceedings that often arouse great interest, but also at the European Court of Human Rights, where Finland has been found guilty in cases involving freedom of expression.

Sometimes in a court case freedom of expression and protection of privacy have to be weighed against each other, which is not an easy task. The factors that must be taken into consideration include whether a restriction impinges on the core area of a fundamental right. This kind of deliberation has to be made also in the Ombudsman's decisions, even if they are not equat-

able with a court's judgements. If, however, the information in question is absolutely required by law to be kept secret, there is no scope for this kind of weighing in the balance. Then the obligation to keep it secret follows directly from the legislator's decisions.

## An authority as a restricter of freedom of expression?

What is involved in cases where the complainant believes that an authority has restricted freedom of speech is often photographing or filming. It is an activity that, for example, is easy for the police to notice. Photography often arouses negative emotions in its target. In the case law of the European Court of Human Rights, for example, publishing a picture has been regarded as a more forceful invasion of privacy than publishing a name. Of course, the difference between taking a photograph and the use to which it is subsequently put must be borne in mind; the legality of taking a picture and of using it can be assessed in different ways.

Events surrounding the "Smash Asem" demonstration in autumn 2006 led to numerous complaints. An incident that I investigated on my own initiative in this connection was one in which a press photographer was detained and released only after over 17 hours' deprivation of freedom. Because the photographer was charged with obstructing the police – one of many to be prosecuted for this offence – all I could do was examine his treatment on a general level only. I pointed out that journalists are not exempted from compliance with the police's orders. On the other hand, it would be very problematic if even the suspicion were to arise that the police were using their power to move journalists away from the scene of an event merely to keep their actions out of the spotlight of publicity. I considered it important that clear ground rules be laid down in advance for the actions of the police and the media in situations of this kind.

Although in the Smash Asem decision the press photographer assumed a different position with regard to arrest and confiscation than private persons who had taken pictures, I do not believe that a distinction of this kind can be drawn in every respect. Namely, also private persons can mediate important information through their pictures.

Numerous decisions concerning photographing or filming have been issued by the Ombudsman in the past ten years. A 1999 decision concerned a hostage situation in which the police had imposed a ban on photographing, because it had exacerbated the situation. It was stated in the decision that, taking the risks into consideration, the police had legal grounds to forbid the taking of pictures. Compared with a possible expansion of the cordoned-off area, prohibiting photography was a milder restriction of the media's activities. In 2005 a decision was issued in a complaint case where a policeman had demanded that a newspaper contributor destroy a picture he had taken. It was ruled in the decision that the policeman had not had the authority to order the photographer to show what had been recorded on the camera's memory card, nor to order that the picture be deleted from the memory.

A well-known decision related to a complaint over TV camera operators being required to obtain permits for recording at railway stations, Helsinki-Vantaa Airport and in the Helsinki Metro. According to the decision issued by Deputy-Ombudsman Petri Jääskeläinen in 2005, photographing or filming by a news medium belongs to the freedom of expression that is guaranteed in the Constitution. It was pointed out in that decision that the borderline between the freedom of expression associated with photographing and protection of privacy is drawn in the provision of the Penal Code that deals with illicit observation. The premises involved did not belong to the category referred to in the Penal Code, where the sanctity of the home is protected or which are closed to the public. It was made clear in the decision that photographing or filming at transport stations can not be forbidden.

Many decisions have concerned photographing or filming by private persons. In principle, similar situations could arise in the activities of the media as well.

A decision that I issued in 2007 concerned photographing at a polling station. I took the view that the chairman of an electoral board had acted within the limits

of his discretionary powers when he banned a private person from taking photographs there. An electoral board must be able to assess whether photographing jeopardises the secrecy or freedom of the ballot or order at the polling station.

One complainant had taken photographs in the waiting area of a health centre. Invoking the instructions of a senior physician, a security guard had interrupted the photography, although it had not had any person as its focus. In my decision last year, I adopted the starting point that protection of privacy in health care introduced additional features into the matter compared with pictures being taken in, for example, transport stations. Merely the information that someone is a patient of health care is in itself something that is required to be kept secret. A person who has reported to the reception in a health centre as a client is already a patient at that point. However, freedom of expression means that advance permission can not be required for photographing in the waiting area of a health centre, but it was pointed out in the decision that an instruction to contact the staff of the health centre before beginning to take pictures would be an appropriate measure.

Decisions concerning photographing have also been made this year. In one case a police patrol forbade the complainant to take pictures of the interior of a diplomatic car in such a way that a person in the car would have been identifiable from a picture. It was stated in the decision that questions relating also to diplomatic protection and privileges had to be taken into consideration. Photographing the inside of a diplomatic vehicle without the permission of the person in charge of it could be interpreted as prohibited disturbance of the sanctity of a diplomatic representation, for which reason I took the view that the policeman had not acted wrongly.

Another decision this year was one by Ombudsman Riitta-Leena Paunio concerning a ban on the use of camera phones in hospitals belonging to a hospital district. Although the Ombudsman regarded protection of privacy in health and hospital care to be of accentuated importance, the ban went too far. If a patient wants to use a camera phone to maintain contact, he or she has the right to do so. A factor that the Ombudsman found appropriate in her decision was a plan by the hospital care district to define more precisely the areas where photographing would in general be allowed and, on the other hand, those where it would not be.

Thus the starting point in decisions has been that restricting the taking of picture has required legal grounds, relating to, for example, isolating a crime scene or diplomatic protection. Thus the ground may lie elsewhere than in the provision prohibiting illicit observation. In the sphere of health care, in turn, protection of patients' privacy must be safeguarded.

It was pointed out in many decisions that what was involved in restricting the taking of pictures was not a restriction that extended into the core area of freedom of expression. Communications on a societal theme were seen as belonging to the core area of freedom of expression. However, it is probably not possible to adopt the point of departure that all photographing would be in a secondary position in this respect. A factor that influenced the matter was what kind of photographing was involved in just those cases: for example, a crime scene, the waiting area in a health centre or the interior of a diplomatic car. By contrast, attention was drawn in the Smash Asem decision to the task that the news media perform in monitoring the exercise of power by the authorities. In my view, when documenting a demonstration, one is clearly in the core area of freedom of expression.

## An authority as a discloser of information that is required to be kept secret?

A claim that occasionally crops up in oversight of legality is that a police officer or other authority has publicly disclosed information too loosely. Even though that may have happened, the information is presumably usually published. There is obviously trust within the media that information provided by the authorities has already undergone the controls that are required before it is released. Besides, the media are not under an obligation to keep information secret and have the right to protect their sources. As such, not everything that is public is necessarily publishable, because the private sphere is defined differently in the Penal Code and in the Act on the Openness of Government Activities.

A complainant may take the view that his or her suspicion of a crime has featured in the news too early or too prominently as a result of the way the police release information. The police have power of discretion with respect to releasing the name of a suspect, but publication *a priori* presupposes an especially weighty reason. Whether the names have already been in the public spotlight and whether the person concerned is a civil servant or politician or just an ordinary individual has been taken into consideration in decisions. Whether a police officer has proactively provided information or just replied to a journalist's questions has also been of significance. Rebukes have been issued if information relating to the initiation of a criminal investigation against someone has been made public before the person him- or herself has been informed of the matter.

Even when the police do not release a name, a suspect can be identifiable from the information that is provided. It has been pointed out in several decisions of the overseer of legality that information concerning a suspect ought not to be provided in such a way that, owing to the detailed character of the information or otherwise, the identity of the suspect would *de facto* be revealed. A point emphasised in one decision was that when a suspicion of a crime comes to the knowledge of specifically the suspect's relatives, it can especially easily cause unnecessary grief and harm. There are also decisions in which police bulletins have been criticised for having been too detailed or stigmatising from the perspective of presumption of innocence.

Releasing information on the cause of death has been investigated several times in oversight of legality. For example, one policeman was criticised during the year under review for having provided information about a death and its probable cause despite the fact that information on examining the cause of death is required to be kept secret. Although the name of the deceased was not revealed, it was easy in a small locality to conclude who it was. On the whole, it appeared questionable whether there had been any need at all to release information. In addition, the deceased person's relatives first found out what the cause of death had been from the media and not from the police in person.

Leaks are a phenomenon associated with provision of information by the police. In a decision made by the Ombudsman during the year under review, deliberate leaks were considered serious and it was demanded that the police prevent them. It was stated in reports received that there were clear indications that information which is required to be kept secret is leaked from within the police and other authorities to the media. It appeared that what lay in the background to this was more a matter of carelessness than deliberate action. It was also pointed out at the same time that information on a crime can enter the public domain also through many other routes, such as from an involved party or witnesses.

The starting point in the decision was that the provision of information by the police should be open and active. In general, it must be possible to discuss suspicions of crimes that are of societal significance in public already before their possible deliberation by a court, but respecting the presumption of innocence. If the societal significance of a suspected crime is such that there is a weighty reason for providing information about a criminal investigation, what is involved is not a leak. The key consideration is that what is deemed to be secret under the law is indeed kept secret.

Problems that have recently been pondered have related to outside persons accompanying the police. For example, reporters have been familiarising themself with the work of the police and reporting on it. This practice has given rise to several complaints.

In a decision I made during the current year I saw problems in the application of regulations that require the observation of secrecy when an outside person is accompanying the police. The legislator has struck a balance in the law with respect to the principle of publicity and information that is statutorily required to be kept secret. Information that is absolutely secret must not be disclosed to outsiders by or with the assistance of an authority. The fact that information will probably not be revealed, for example by being passed on by a journalist, does not obviate the unlawfulness of the situation.

Although information that is required to be kept secret can come to the knowledge of outsiders, also by

chance, it is a different matter if the police actively take outsiders into a situation where information of this kind is revealed. It is, namely, forbidden to reveal secret information also by neglecting measures to prevent outsiders gaining access to it.

There is a societal need and even an obligation stemming from the principle of publicity for the police to be proactive in providing information and presenting police work to the public. However, police procedures must be arranged in such a way that secret information is not disclosed to outsiders through the police's own actions. In my decision, I asked the Ministry of the Interior to inform me whether it intends to draft a set of guidelines in this respect.

The provision of information by the police adds to the publicity of official activities, which is in and of itself a good objective. Here, as in other official actions, a good intention is still not enough, because it must be realised within the limits of the law.

# 2. The Ombudsman institution in 2008

## 2.1 TASKS

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. Private individuals and organisations that do not perform public tasks are excluded from the scope of the Ombudsman's oversight of legality. The Eduskunta in its lawmaking role and parliamentarians involved in this task are likewise beyond the scope of the Ombudsman's oversight.

In addition to the Ombudsman, the Eduskunta elects two Deputy-Ombudsmen. The term of office for all three is four years. The election, powers and tasks of the Ombudsman are regulated by the Constitution and the Parliamentary Ombudsman Act. These legal provisions are presented in Annex 1 of this report.

The Ombudsman decides how tasks are divided between herself and the two Deputy-Ombudsmen. The division of labour is explained in Annex 2. The Deputy-Ombudsmen deal with the cases assigned to them independently and with the same powers as the Ombudsman. The Ombudsman can choose a substitute Deputy-Ombudsman to serve for a term of not more than four years in those situations in which a Deputy-Ombudsman is prevented other than briefly from performing his tasks.

The Ombudsman is an independent overseer of legality. He or she is entitled to receive from authorities and others entrusted with a public task all of the information necessary in the performance of this task. The annual report that the Ombudsman gives the Eduskunta contains an assessment of the state of administration of the law. The report for 2007 was presented to the Speaker of the Eduskunta on 21.5.2008.

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

## 2.2 ACTIVITIES

The Ombudsman oversees and promotes compliance with legality and respect for fundamental and human rights mainly by investigating complaints. All complaints on the basis of which there appears to be a ground to suspect that an unlawful action has been taken or a duty neglected must be investigated. In addition to those arising from complaints, the Ombudsman can also decide on her own initiative to investigate shortcomings that come to light.

The number of complaints has been growing strongly in this decade. The number received in the year under review was a record and the number in which decisions were issued was likewise greater than ever before. The numbers and contents of complaints and the measures to which they led are described in greater detail in section 2.5.

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.

The emphasis placed on different tasks in our work is determined principally on the basis of the number and nature of cases to be dealt with at any given time. It has not been possible in the present work situation to increase the number of on-site inspections, although there would be a need for this where closed institutions are concerned. The places where inspections are conducted are mainly prisons, police stations, units of the Defence Forces, psychiatric hospitals and child welfare institutions. For more about inspection visits see section 2.6.

Fundamental and human rights are the focus of attention in oversight of legality when complaints are being investigated and subjects of own-initiative investigations chosen. This report contains a separate section outlining what kinds of issues relating to fundamental and human rights arose in 2008 and what stances they led to. (see section 3).

A significant event in the sector of fundamental and human rights was a seminar arranged on 11.2.2008 for representatives of NGOs, authorities and experts. Its theme was the challenges of promoting equality. For more about the seminar see section 2.7.

The Ombudsman is tasked with overseeing the use of so-called coercive measures affecting telecommunications – wiretapping, remote surveillance and technical eavesdropping. These measures can usually be used only after a court order is obtained and can be employed primarily in investigations of serious crimes. Their use impinges on several constitutionally guaranteed fundamental rights, such as privacy, confidentiality of communications and protection of domestic peace. The Ministry of the Interior, the Customs and the Ministry of Defence are statutorily required to report annually to the Ombudsman on the use of these measures.

Subject to certain preconditions, the police have a legal right to conduct undercover operations to combat serious and organised crime. Through these operations, the police obtain information about criminal activities by, e.g., infiltrating a criminal group. The Ministry of the Interior must give the Ombudsman an annual report on also the use of undercover operations. Oversight of coercive measures affecting telecommunications and of undercover operations is outlined in section 3.4.

International cooperation between Ombudsmen in relation to oversight of fundamental and human rights has increased markedly. We received a large number of visitors from both Finland and abroad during the year. Many foreign groups are interested in how oversight of legality is carried out in Finland. Recent years have seen a lot of interest in why corruption is, as international comparisons show, relatively rare in Finnish society.

A joint project of the Nordic Ombudsmen, within the framework of which Ombudsmen and their assistants from the Central American countries spent several days familiarising themselves with openness of administration, promotion of human rights and oversight of legality in several of the Nordic countries, was implemented in 2008. The initiative for the project was made by the Danish Ombudsman. Cooperation internationally and in Finland is outlined in section 2.8.

The cornerstones of the service with which the Office of the Parliamentary Ombudsman provides the public are the lawyers who are on call to provide advice on, e.g., making a complaint, and the diverse range of online services that are available in several languages. Services and the Office are described in sections 2.9 and 2.10.

2.3

# OBJECTIVES OF THE OMBUDSMAN'S OVERSIGHT OF LEGALITY

*The goal that has always been aspired to in the Ombudsman' activities is high quality. This and the other objectives of the Ombudsman's oversight of legality were confirmed as follows by the management group at the Office on 15.12.2008:*

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

## TASKS

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

## EMPHASES

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

## OPERATING PRINCIPLES

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

## OPERATING PRINCIPLES IN ESPACIALLY COMPLAINT CASES

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

## THE IMPORTANCE OF ACHIEVING OBJECTIVES

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

## 2.4 CHANGES ON THE WAY

Projects that may affect the Ombudsman's work in the next few years were in the preparatory stage during the year.

Ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is under way at the Ministry for Foreign Affairs. It requires the establishment of a national oversight body. The so-called OPCAT Working Group deliberating the matter will probably recommend that the Ombudsman functions as an oversight body of this kind. The oversight body will be tasked with examining places where persons who have been deprived of freedom are or could be detained, such as prisons, police cells and psychiatric hospitals. This work will entail new reporting obligations and presuppose an expansion of the Ombudsman's powers of inspection, development of contents and the use of outside experts. The working group's deadline has been extended until 31.10.2009.

The idea of creating also a national human rights institution in Finland has been discussed in recent years. Studies dealing with this matter have mentioned the Ombudsman as one alternative to serve as this body. The tasks that the institution would perform include promoting human rights, monitoring harmonisation of legislation and international human rights, contribute to spreading information about human rights and to developing research and teaching in schools as well as opposing all forms of discrimination and racism. The institution should be created under an Act, independent and autonomous as well as pluralistic in composition.

The process of appointing a body tasked with doing the preparatory work for the human rights institution is currently under way at the Ministry of Justice. 2008 also saw the introduction of a legislative initiative calling for an independent national human rights institution to be created under the aegis of the Office of the Parliamentary Ombudsman.

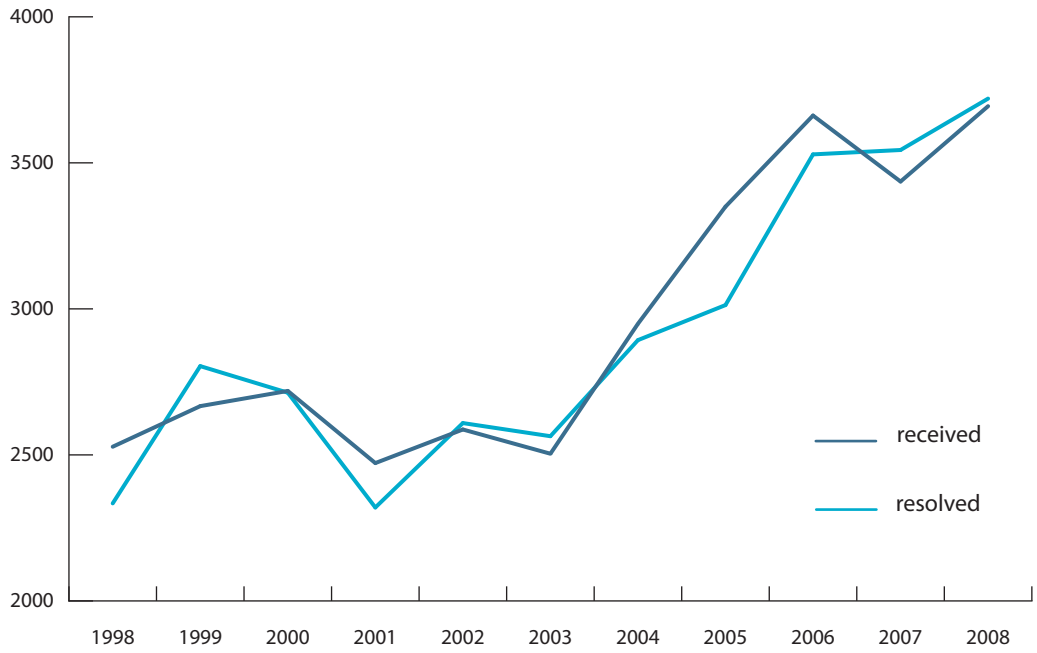
## 2.5 COMPLAINTS AND OTHER OVERSIGHT-OF-LEGALITY MATTERS

The numbers of complaints and other oversight-of-legality matters have been increasing strongly in the present decade. The number of complaints grew by 48% in 2003–08 (from 2,504 to 3,694). See table on next page.

In addition to complaints, oversight-of-legality matters include actions taken on the Ombudsman's own initiative and other written communications. The latter are enquiries in nature or letters that are vague and non-specific in content from citizens. They are not registered as complaints; instead, the notaries and inspectors at the Office reply to them immediately and give guidance and advice. Also included in the oversight-of-legality category of cases are submissions to committees of the Eduskunta and attending hearings arranged by them (Annex 3).

Growth in the volume of electronic transactions has contributed to increasing the number of complaints in recent years. The number of complaints arriving by traditional means – by post, delivered in person or faxed – has been gradually declining since 1998, whilst the number of complaints sent electronically has been growing strongly. About 43% of complaints received in 2008 were by e-mail or through our web site.

Despite the greatly increased numbers of complaints and other oversight-of-legality matters, the times taken to deal with complaints have not lengthened in recent years. Processing of complaints has been made more efficient by developing work methods and procedures and making strong inputs into personnel training and wellbeing at work. No new posts have been created. The aim is, of course, to shorten processing times without compromising on the quality of our work and the requirements of monitoring respect for fundamental and human rights.




*Oversight-of-legality matters received and decided on 1998–2008*

Drafting of an invitation to tender for a new document information system for the Office began towards the end of 2008. The intention is that the initiation of investigation into complaint cases, preparatory work (obtaining reports and submissions), decisions and the provision of information will in future all be done within the same IT system.

The hope is that this and some other changes in work methods will cut processing times. In any case, it has been considered important that the Ombudsman would have broader powers than at present in relation to complaints being taken under investigation. With this in mind, it would be purposeful to broaden the Ombudsman's discretionary powers to proceed with investigation of complaints if she deemed an investigation necessary in the light of the individual's legal security or implementation of fundamental and human rights. The matter is currently under consideration at the Ministry of Justice.

## Incoming and resolved matters

A total of 4,107 new oversight-of-legality matters were referred to the Ombudsman for decision in 2008. Decisions were issued in a total of 4,114 cases.

The number of complaints received was a record 3,694, an increase of over 7% on the previous year. The number of complaints on which decisions were issued was likewise greater than ever before at 3,720, representing an increase of around 5% on 2007.

The main targets of the complaints received were the social welfare authorities. The next-biggest target of complaints was the police; the number of complaints against the police increased by about 14% on the previous year. The numbers of incoming complaints belonging to the other big categories of cases – social

| ▮ received ▮ decided on | 2007 | 2008 |
|---|---|---|
| Complaints | 3 397<br>3 544 | 3 632<br>3 720 |
| Transferred from Chancellor of Justice | 39 | 62 |
| Own initiatives | 49<br>44 | 61<br>47 |
| Requests for reports, statements and to hearings | 39<br>38 | 33<br>33 |
| Other written communications | 333<br>337 | 319<br>314 |
| Total | 3 857<br>3 963 | 4 107<br>4 114 |

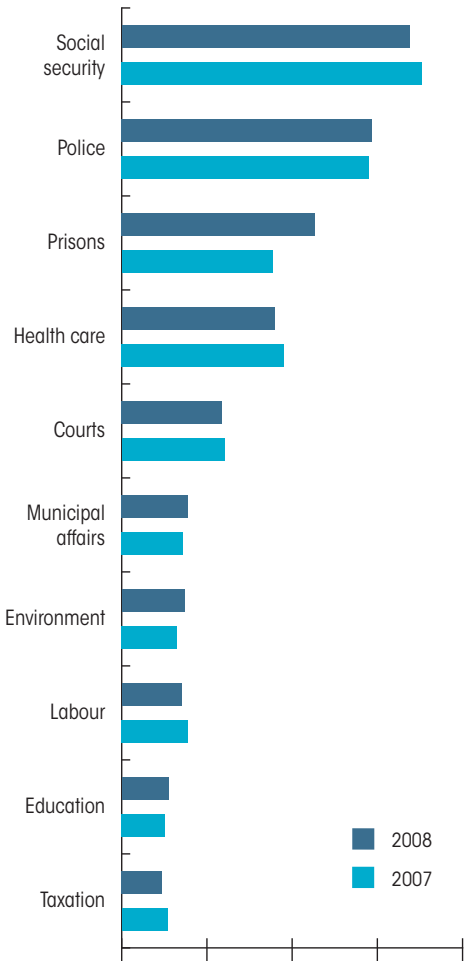
welfare authorities, the prison service, health care and courts – were more or less unchanged from the previous year. More precise data on the 10 biggest categories of incoming complaints are shown in Annex 4.

The average length of time taken to deal with an oversight-of-legality case at the end of the year was 7 months, which is the same as the previous year.

## Categories of matters and measures

Most decisions arising from complaints and matters investigated on our own initiative were in cases concerning social security, 18% of all cases in which decisions were issued. Other big categories are cases relating to the police (16%), the prison service (12%), health care (10%) and courts (6%). The numbers of cases resolved in the big categories were generally on the same level as in the previous year. The most significant growth was in the category prison service, in relation to which the number of decisions increased by about 28%. Detailed information on decisions by category of matters and other statistical data are shown in Annex 4.

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.




*Biggest categories of cases in which decisions were issued*

A prosecution is the most severe means of reaction available to the Ombudsman. However, if she takes the view that a reprimand will suffice, she may decide not to prosecute even if the subject of oversight has acted

## MEASURES TAKEN BY PUBLIC AUTHORITIES

| Public authority | Measure | | | | | | Total number of decisions | Percentages* |
|---|---|---|---|---|---|---|---|---|
| | Prosecution | Reprimand | Opinion | Recommen-dation | Rectification | Total | | |
| Prisons | | 5 | 137 | 5 | 4 | 151 | 454 | 33,2 |
| Social welfare<br>- social welfare<br>- social insurance | | 4<br>4 | 101<br>62<br>39 | | 21<br>15<br>6 | 126<br>81<br>45 | 675<br>369<br>306 | 18,7 |
| Police | | | 73 | 2 | 4 | 79 | 587 | 13,4 |
| Health care | | 9 | 62 | 4 | 4 | 79 | 359 | 22,0 |
| Labour | | 1 | 27 | | 1 | 29 | 140 | 20,7 |
| Environment | | 4 | 22 | | | 26 | 147 | 17,7 |
| Local-goverment | | 1 | 19 | | 4 | 24 | 155 | 15,5 |
| Other subjects of oversight | | 3 | 19 | 1 | 1 | 24 | 175 | 13,7 |
| Defence | | | 13 | 4 | 3 | 20 | 58 | 34,5 |
| Education | | | 17 | 1 | | 18 | 110 | 16,4 |
| Customs | | | 14 | | 1 | 15 | 32 | 46,9 |
| Enforcement | | | 12 | | | 12 | 78 | 15,4 |
| Transport and communications | | | 9 | | 2 | 11 | 89 | 12,3 |
| Courts<br>- civil and criminal<br>- special<br>- administrative | | 1<br>1 | 7<br>6<br>1 | 1<br>1 | 1<br>1 | 10<br>9<br>1 | 235<br>200<br>35 | 4,2 |
| Taxation | | 2 | 6 | | 2 | 10 | 94 | 10,6 |
| Agriculture and forestry | | 2 | 5 | 2 | 1 | 10 | 76 | 13,1 |
| Prosecutors | | | 7 | | 2 | 9 | 89 | 10,1 |
| Guardianship | | | 4 | 2 | | 6 | 51 | 11,8 |
| Asylum and immigration | | | 3 | | 2 | 5 | 41 | 12,2 |
| Highest organs of state | | | 1 | 1 | | 2 | 67 | 3,0 |
| Church | | | 1 | | | 1 | 19 | 5,3 |
| Private parties not subject to oversight | | | | | | | 28 | |
| Municipal councils | | | | | | | 8 | |
| Total | | 32 | 559 | 23 | 53 | 667 | 3,767 | 17,7 |

* Percentages of decisions involving measures

unlawfully or neglected a duty. The Ombudsman can also express an opinion as to what procedure would have been lawful, or draw the attention of the subject of oversight to the requirements of good administrative practice or to aspects that promote the implementation of fundamental and human rights. An opinion expressed can have the character of a rebuke or be intended for future guidance.

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

A total of 667 decisions led to measures in 2008. This represented about 18% of all 3,767 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 42% of cases and complaints were not investigated in 26% of cases. In these cases, the matter in question was either not within the Ombudsman's remit or still pending before another competent authority. The number of cases in which decisions involved measures being taken represented 24% of the total number investigated.

No prosecutions were ordered. 32 reprimands were issued and 559 opinions expressed. Rectifications were made in 53 cases that were being investigated. The decisions categorised as proposals totalled 23, although expressions of opinion relating to development of administration and which can be regarded as constituting proposals were included in other decisions as well. One decision can involve several measures.

## 2.6 INSPECTIONS

Inspection visits were made to 71 places during the year under review (69 the previous year). Annex 5 contains a list of all inspection visits. The visits are described in more detail in the sections dealing with various categories of cases.

Unannounced visits to prisons were a new feature. These were made to four different prisons either under the leadership of a Deputy-Ombudsman or by legal advisers from the Office. The subject of an inspection visit is not always the entire institution, but instead, e.g., the secure wing of a prison.

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.

## 2.7 ANNIVERSARY SEMINAR

A seminar on the theme of promoting equality in official actions was arranged in the Pikkuparlamentti building on 11.2.2008 to mark the 88th anniversary of the Office. Representatives of NGOs, authorities as well as other experts on equality issues had been invited to discuss challenges encountered in promoting equality.

The Ombudsman reminded the participants in her opening address that equal treatment for people is one of the cornerstones of our legal system and that one of the key objectives of the Ombudsman institution is to ensure equality for people in official actions. She drew attention to the fact that equality does not, however, always mean that people receive the same treatment. Formal equality must sometimes be deviated from to safeguard real equality.

The theme on which the Ministry of Justice's head of legislative affairs Sami Manninen spoke was the Constitution and equal treatment. He said that while the idea of equal treatment is clear and simple, defining what constitutes it is one of the most difficult legal questions. What is largely at issue in equality is prohibiting arbitrary distinctions. This means that treating people differently must be justifiable according to objective criteria and for acceptable reasons.

*The Finnish Ombudsman for Minorities Johanna Suurpää (left) and the Swedish Ombudsman against Ethnic Discrimination Katri Linna – who was later elected to head the country's new Office of the Ombudsman against Discrimination – gave presentations at an equality seminar arranged by Ombudsman Riitta-Leena Paunio (right) in February.*

The Swedish Ombudsman against Ethnic Discrimination Katri Linna – who was later elected to head the country's new Office of the Ombudsman against Discrimination – outlined the experience of multicultural Sweden. She said that coexistence of religions and their visibility in everyday life are a challenge for many Swedes. In her assessment, what is essential in work to combat discrimination is to highlight the structural and often hidden causes of discrimination. It is also important to support groups that have been subjected to discrimination.

The Finnish Ombudsman for Minorities Johanna Suurpää examined the objectives of promoting equality in a Finland that is becoming increasingly multicultural. She also outlined the tasks of the Ombudsman for Minorities in Finland and the contents of the Equality Act.

Seven different NGOs had been asked to contribute speeches on the challenges of promoting equality in Finland. These were the Finnish League for Human Rights, Kynnys ry (which promotes the rights of the handicapped), the Finnish Mental Health Association, the Advisory Board on Romani Affairs, Seta ry (sexual equality), the Federation of Russian-speaking Associations in Finland (FARO) and the Central Union for the Welfare of the Aged.

Secretary-General Kristiina Kouros of the Finnish League for Human Rights expressed her thoughts about the internal hierarchy within which different minorities exist in Finnish society. She asked who is entitled to speak in the name of a particular minority, given that highly divergent views can be found within minorities. Executive Director Kalle Könkkölä drew attention to unimped-

ed mobility of the handicapped, for example when travelling by rail. In his view, the weak employment situation for handicapped people is problematic from the perspective of equal treatment.

The Finnish Mental Health Association's Development Director Liisa Saaristo discussed the weak signals that could reveal unvoiced distress or inequality in society. Among the examples that she outlined were the growing prevalence of depression and the mental health problems that are stemming from the lack of community spirit in the classless upper level of secondary schools. Deputy-Chair Väinö Lindberg of the Advisory Board on Romani Affairs reminded the seminar participants that equality plans on the municipal level are not being made sufficiently well.

Chair Juha Jokela of Seta described how legal and health-related perceptions have changed. He pointed out that it was only as late as 1981 that homosexuality was deleted from the list of illness classifications. What was then seen as an illness is now recognised as a fundamental right. He also dealt in his speech with homophobia and the equality challenges associated with care of aged members of sexual minorities.

Executive Director Anna Leskinen of the Federation of Russian-speaking Associations in Finland (FARO) noted that over 40,000 Russian-speaking immigrants are currently resident in Finland. In her assessment, Russians have only a poor familiarity with Finnish equality legislation. She considered it important that respect for the rights of Russians be monitored and shortcomings intervened in. Executive Director Pirkko Karjalainen of the Central Union for the Welfare of the Aged examined in her presentation whether elderly people are being given equitable treatment in Finland and outlined problems associated with both official actions and legislation.

## 2.8 COOPERATION IN FINLAND AND INTERNATIONALLY

### Events in Finland

Speaker of the Eduskunta Sauli Niinistö visited the Office on 29.1.2008. Other visitors included Chancellor of Justice Jaakko Jonkka and Deputy Chancellor of Justice Mikko Puumalainen as well as representatives of the Border and Coast Guard School, the Finnish League for Human Rights, the Helsinki Court of Appeal and the Ministry of Education.

The main events attended by the Ombudsman and the Deputy-Ombudsman were the following:

Ombudsman Paunio gave a presentation at the Kuopio Mental Health Days on 30.9.2008 on the theme *Is the legal security of citizens being realised in the Insurance Court and/or decisions by the Social Insurance Institution* and spoke at the 10th-anniversary seminar of the National Advisory Board on Health Care Ethics on 8.10.2008, when her theme was *The weak and silent in health care – is human dignity respected, and what about justice?*

Deputy-Ombudsman Jääskeläinen was present as an expert at a fundamental and human rights forum arranged jointly by the Finnish League for Human Rights and the Eduskunta's human rights group on 2.4.2008. Among the themes at that event were the problems of implementing fundamental and human rights globally and in Finland. He also gave a presentation about the Ombudsman institution to parliamentarians from developing countries at a seminar arranged by the Eduskunta and the World Bank on 12.11.2008.

Speaking at a consultative seminar for the command echelons of the Defence Forces on 18.9.2008, Deputy-Ombudsman Lindstedt presented a review of the rights and treatment of conscripts. He also gave a presentation at a seminar marking 10 years of law teaching at the University of Joensuu on 14.11.2008, when his theme was *Protection of privacy from the perspective of oversight of legality.*

*The Estonian Chancellor of Justice Indrek Teder (left) and Deputy Chancellor of Justice Madis Ernits visited the Office of the Parliamentary Ombudsman in May.*

Several legal advisers from the Office likewise gave presentations and lectures at events arranged by NGOs and authorities. In addition, the Ombudsman, the Deputy-Ombudsmen and other Office personnel attended dozens of events and meetings in Finland.

## International contacts

The Estonian Chancellor of Justice Allar Jõks visited the Office at the end of his term on 20.2.2008. His successor Indrek Teder and the Deputy Chancellor of Justice Madis Ernits toured the Office and the Eduskunta on 8.5.2008.

The European Committee *for the* Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Office on 21.4.2008.

In collaboration with his Nordic counterparts, the Danish Ombudsman arranged a collaborative project for Ombudsmen from Central America. Representatives of the Ombudsman institutions in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama visited the Office together with their Danish group leader Jens Olsen on 24–25.11.2008.

The Office also received delegations from Afghanistan, Lithuania, Spain, Singapore, Cuba, Vietnam, Turkey, South Korea, Hungary and Syria.

Ombudsman Paunio is a member of the board of the International Ombudsman Institute (IOI). She attended a meeting of the board in Hong Kong on 4-9.11.2008 and took part in its subsequent visit to Beijing as guests of the Chinese Audit Ministry. She also attended a meeting of the board's European directors in London on 24–26.4.2008, the 90th-anniversary celebrations

*Representatives of the Ombudsman institutions in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama acquainted themselves with the work of the Finnish Ombudsman in November.*

of the Office of the Chancellor of Justice in Tallinn, Estonia on 7.3.2008 and the 20th-anniversary celebration of the Polish Human Rights Ombudsman in Warsaw on 15–16.5.2008.

A meeting of the Nordic Ombudsmen in Oslo on 15–16.9.2008 was attended by the Ombudsman and both of the Deputy-Ombudsmen. Deputy-Ombudsman Jääskeläinen participated in an international OPCAT seminar in Paris on 17–18.1.2008 and Deputy-Ombudsman Lindstedt attended a conference arranged by the Ukrainian Human Rights Ombudsman in Kyiv on 12–15.4.2008.

Legal advisers from the Office also attended international meetings on themes belonging to their respective sectors of work.

## 2.9 SERVICE FUNCTIONS

### Services to clients

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

Two lawyers at the Office of the Ombudsman are tasked with advising members of the public on how to make a complaint. They dealt with some 2,600 tele-

phone calls last year and about 150 persons visited the office in person.

The Registry at the Office receives complaints and replies to enquiries about them, in addition to responding to requests for documents. Last year, the Registry received about 3,000 telephone calls. There were around 400 personal visits by clients and 300 requests for documents. The records clerk mainly provides researchers with services.

## Communications

The media are informed of those decisions by the Ombudsman that are deemed to be of special general interest. About 30 bulletins outlining decisions made by the Ombudsman or a Deputy-Ombudsman were issued in 2008. In addition, decisions of considerable legal significance are posted on the Internet. About 240 of them were posted during the year. Publications, such as annual reports and brochures, are likewise posted on our web site. The Ombudsman's web pages in English are at the 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 (legal advisers) in addition to an Information Officer.

## 2.10 THE OFFICE

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

The regular staff totalled 54 at the end of 2008. They were, in addition to the Ombudsman and the Deputy-Ombudsmen, the Secretary General, five legal advisers and twenty-four legal officers, two lawyers with advisory functions as well as an information officer and an online information officer, two investigating officers, four notaries, a records clerk, two filing clerks and eight office secretaries.

Preparations for the new Eduskunta remuneration system were made during the year by, inter alia, drafting difficulty and performance appraisals.

Joint training events for Office staff were arranged on the themes of human rights, the values observed in official actions, publicity of proceedings in both general and administrative courts, the objectives of the Office's work and the criteria used in monitoring it as well as the division of labour there.

The staff of the Office made a study trip to the Estonian parliament, the Finnish Embassy and the Office of the Chancellor of Justice in Tallinn on 27.5.2008. In addition, some members of staff made a study trip to the European Court of Human Rights, the Council of Europe's Commissioner for Human Rights and the Office of the European Ombudsman in Strasbourg on 26–28.10.2008. Some members of staff also went on a study trip to two courts of the European Communities, i.e. the Court of First Instance and the Civil Service Tribunal in Luxembourg on 24–26.11.2008.

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 in 2008.

# 3. Special tasks of the Ombudsman

The aim in this section is to create a general picture of events relating to Finland in the sector of fundamental and human rights on the legislative and international level last year. After that, we present a sample of the decisions with a bearing on implementation of these rights that the Ombudsman issued last year.

## 3.1 FUNDAMENTAL AND HUMAN RIGHTS

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

The central points of departure in Finnish human rights policy are the universality and indivisibility of these rights, the principle of non-discrimination and openness. Implementation of human rights in Finland and Finland's international human rights policy are linked to each other. The areas of emphasis in human rights policy are protection of women, children, minorities and indigenous peoples as well as the rights of persons with a handicap.

The principles underlying Finnish human rights policy and its objectives are set forth in the reports on this policy that the Ministry for Foreign Affairs makes to the Eduskunta. The most recent of these reports so far was submitted in early 2004 (VNS 2/2004 vp). Both Finland's international involvement in human rights and implementation of the most central of these rights in our own country are outlined in the report.

Drafting of a new report on human rights policy began in December 2007. As requested by the Eduskunta, the endeavour in it is to deal more comprehensively with implementation of fundamental and human rights in Finland. On 25.1.2008 the Ombudsman attended a formal hearing associated with drafting of the report, which is due to be submitted to the Eduskunta in 2009. A national plan of action to safeguard fundamental and human rights will be drafted on its basis.

### 3.1.1 DEVELOPMENTS IN THE SECTOR OF HUMAN RIGHTS

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which introduces a mechanism of individual complaints, was adopted by the UN General Assembly in autumn 2008. According to information received by the Ministry for Foreign Affairs, the intention is to ratify the Protocol in Finland as quickly as possible.

Finland's combined 17th, 18th and 19th periodic reports to the UN on implementation of the International Convention on the Abolition of all Kinds of Racial Discrimination was submitted in August 2007. The Racial Discrimination Committee set up under the Convention will deliberate the Finnish report in March 2009. In association with drafting of the report, the Ombudsman made a submission to the Ministry for Foreign Affairs and also supplied an English version of the submission to the racial Discrimination Committee.

In December 2008 Finland submitted her fourth report to the UN Committee on the Rights of the Child on implementation of the UN Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict. A report on implementation of the European Social Charter was submitted to the Council of Europe in December.

On 30.3.2007 Finland signed the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, which contains a mechanism for individual complaints. Within the European Union, work continued during the year under review to have the Convention ratified as expeditiously as possible. The objective of the Convention is to strengthen the opportunities of persons with disabilities to exercise all existing human and fundamental rights to the full and on a basis of equality with others. In addition, it obliges the signatory parties to institute a national monitoring and coordination system to facilitate implementation of the Convention.

In November 2008 Finland signed a protocol on genetic tests to the 2008 Council of Europe Convention for the Protection of Human Rights and dignity of the human being with regard to the application of biology and medicine.

A working group appointed by the Ministry for Foreign Affairs, and which includes also a representative of the Office of the Ombudsman, continued studying the prerequisites for ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It has been proposed in conjunction with deliberation of the matter that the Ombudsman be designated to head the national monitoring system that the Optional Protocol requires. The working party heard the views of the Ombudsman on 1.10.2008. Its deadline was extended until 31.10.2009.

### 3.1.2 POSITIONS ADOPTED BY HUMAN RIGHTS OVERSIGHT BODIES

In January 2009 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) gave the Finnish Government a report on its inspection visit to Finland on 20–30.4.2008. The sites inspected by the Committee during the visit were seven police stations, detention centres for intoxicated persons, a detention unit for foreigners, three prisons and two psychiatric hospitals. No instances of allegations of poor treatment of persons who had lost their freedom came to the Committee's knowledge in these facilities. The members of the Committee also met the Ombudsman.

A focus of criticism by the Committee with respect to the police during the year under review was especially that it is still general practice to keep remand prisoners in police prisons, where they lack the opportunity for any kind of recreational activity for even as long as months. The Committee did not find the situation acceptable in light of the fact that no substantial progress had been made in the matter since inspections began over 16 years ago.

The Committee's final report contains numerous recommendations, critical comments and requests for additional reports. The Committee draws attention also to, *inter alia*, the legal security of persons apprehended and detained by the police, their right to use and freely choose someone to represent them as well as to the conditions of detention in police stations. In the opinion of the Committee, an authority must ensure that those who have lost their freedom are informed of their rights immediately when they have been brought to a police station. Care must additionally be taken to ensure that detained persons really understand their rights.

The hope is expressed that Finland will give serious consideration to opening a second detention centre for foreigners in addition to the Metsälä one.

In the view of the Committee, measures should be taken in all Finnish prisons to ensure that all prisoners have

*The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) studied the Ombudsman's observations during their visit to Finland in April.*

the opportunity to use the WC facilities at all times. The necessary sufficiency of staff also at night should be ensured either by establishing new posts or by reassigning prison staff.

The Committee believes that there should be more substantial inputs than at present into preventing violence between prisoners. Those who are segregated at their own request must be given the opportunity to participate in activities, training, sport and daily outdoor exercise. Prisoners' individual needs should be assessed at regular intervals, and when necessary also the prisoner's transfer to another institution should be considered.

A further recommendation of the Committee is that health care services for prisoners be improved and developed. The Finnish Government will give its response to the report in six months' time.

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) examined Finland's fifth and sixth periodic report (for 2003 and 2007) in July 2008. It praised Finland for, *inter alia,* having drafted a plan of action to counter trafficking in women and girls. The plan includes the opportunity to grant residence permits to victims of human trafficking. Measures on the part of Finland that the Committee called for include actions to make sexual harassment a punishable offence and the inclusion in the next periodic report of complete statistical data on prostitution. It also requested an appraisal of the implementation to date of legislation and urged constant monitoring of the impacts of legislation and policy from the perspective of immigrant women. Also called for were effective measures to eliminate discrimination against Roma and handicapped women.

## Complaints against Finland at the European Court of Human Rights in 2008

As in earlier years, the number of complaints made to the European Court of Human Rights in 2008 remained fairly high. 276 cases were filed against Finland (269 the previous year). At the end of the year, 286 cases concerning Finland were pending at the European Court of Human Rights, representing a substantial fall in the number compared with the previous year (481).

The overwhelming majority of complaints to the Court were declared inadmissible. This is done through a so-called Committee decision (three judges). No information on a complaint of this kind is supplied to the respondent government; instead, only the complainant is notified by letter. Thus the matter does not require measures with respect to the government. The number of complaints in this category concerning Finland was exceptionally large in 2008, which explains the sharp drop in the number of pending complaints. All of 461 (253) complaints were declared inadmissible or removed from the list of cases, 448 (241) by Committee decision and 13 (10) by Chamber decision.

In Chamber composition (seven judges) the Court decides whether a complaint meets the criteria for admissibility. A decision can also confirm a friendly settlement, whereby the complaint is struck off the Court's list. Final judgments are always given in Chamber composition or by the Grand Chamber (17 judges). In a judgment, the Court resolves a case involving an alleged violation of human rights or confirms a friendly settlement.

A total of 22 of the complaints concerning Finland were decided in Chamber composition, fewer than the previous year (36). Nine final judgments concerning Finland were issued (8); in all but one of them, a violation of a human right safeguarded by the Convention was established. Three complaints (3) were ruled inadmissible after the communication stage. Handling of a complaint was concluded as a result of a friendly settlement in 8 (6) cases and in 2 (1) cases because the situation had been rectified (foreign nationals whose deportation from the country had been ordered were granted asylum while their complaints were pending before the Court).

In the cases that ended in a friendly settlement, one complaint had been withdrawn when the Finnish State had offered to pay the complainant restitution and compensation for the cost of court proceedings. Three complaints related to the length of time civil proceedings had taken, four to the duration of a criminal trial and one, in a criminal trial, to a decision to screen made by a Court of Appeal.

The total paid by the State as compensation with court costs in these cases was just over €85,000 (less than €59,000 the previous year). In addition, in its judgments in which it established that a violation of human rights had taken place, the Court ordered the Finnish Government to pay restitution and compensation totalling over €80,000 to the complainants.

### Fair trial

The *Ahtinen* judgment (23.9.2008) was the only decision of the Court concerning Finland last year in which a violation of a human right safeguarded by the Convention was not established. The Court took the view that Article 6 of the Convention concerning a fair trial was not applicable to a case in which a Cathedral Chapter had decided on the transfer of a pastor of the Evangelical-Lutheran Church to another parish.

Two judgments that revealed violations of rights concerned the unacceptable length of time that legal proceedings had taken (most of the complaints concerning the duration of proceedings have ended, as noted above, in friendly settlements). In the *Rafael Ahlskog* judgment (13.11.2008) civil proceedings in an in case of demand for payment had taken nearly 7 years and in the *Eloranta* judgment (9.12.2008) criminal proceedings against the complainant had been in progress for over 6 years.

Two cases related to an administrative court having failed to arrange, as demanded by an interested party, an oral hearing in a case concerning a tax increase. In

the *Kallio* and *Lehtinen* judgments (both 22.7.2008), the administrative courts had ruled it unnecessary to arrange an oral hearing considering the written material available to them. The European Court of Human Rights took the view that, differently to what had been the situation in the judgment arrived at by the Grand Chamber in the *Jussila* case in 2006, in the case at hand, the facts of events themselves and the credibility of the witness accounts were so much in dispute that the complainants' legal security would have required the arrangement of an oral hearing (see also the Ombudsman's reports for 2006 p. 36 and 2007 p. 224 (in Finnish) as well as Supreme Administrative Court judgment, KHO 2007:67–68).

Failure to implement a fair trial was at issue also in the *S. H.* judgment (29.7.2008). A violation of Article 6 of the Convention had occurred in that, while adjudicating an accident pension case, the insurance court had not informed the complainant of two doctor's submissions that an insurance company had forwarded to it and enabled the complainant to comment on them before the case was resolved.

## Protection of privacy

A violation of the Convention's Article 8, which protects, *inter alia*, privacy, was established in two cases. In the *I* judgment (17.7.2008), a right had been violated when a register of patient records had been inadequately protected in a hospital. The complainant had been working in the same hospital as she was being treated in for an illness. With the system in use at the time of the event, it was possible for also others than those in charge of the complainant's treatment to access her medical records, and the information that she was HIV-positive was disclosed to others. The Court found that the way the register was used in the hospital did not comply with the regulations of the Personal Data File Act in force at the time and that this fact had not been accorded sufficiently great significance in the national courts.

The matter at issue in the *K.U.* judgment (2.12.2008) concerned failure to meet the so-called positive obligations based on Article 8 of the Convention when a notice with sexual overtones about a 12-year-old boy was posted on an Internet dating site, it was not possible under the legislation in force at the time to ascertain the identity of the person who had done so. – This legislative shortcoming was put right as and from 1.1.2004, when the Act on the Exercise of Freedom of Expression in Mass Media entered into force.

## Violation of freedom of expression

A violation of the freedom of expression guaranteed in Article 10 of the Convention featured in the *Juppala* judgment (2.12.2008). The complainant had told a doctor of her suspicion that her grandchild had been physically abused by a parent. Despite the complainant's withholding permission to do so, the doctor had informed the child welfare authorities of the suspicion. Criminal proceedings were brought against the complainant, and a court of appeal found that the complainant had committed slander. No punishment was imposed on the complainant, but she was ordered to pay the child's parent about 500 damages and pay the costs of the legal proceedings.

The Court took the view that there had been an interference with the complainant's freedom of expression and that this interference pursued a legitimate aim, namely to safeguard the reputation or the rights of others. However, it had not been shown that there were sufficient grounds for the interference nor a pressing social need to limit freedom of expression. The question was how to strike a balance in a situation in which a parent has been groundlessly subjected to suspicion of physically abusing her child and nevertheless a child at risk of significant harm has to be protected.

In the opinion of the Court, the complainant had acted appropriately in wondering whether a bruise on the child had been deliberately caused. The seriousness of child abuse as a problem in society requires that persons who act sincerely in the interests of the child must not be influenced by fear of prosecution or a civil suit when they are considering informing health care personnel or the social welfare authorities of their suspicions.

### New communicated complaints

The judgments issued by the Court in Chamber composition during the year were weighted heavily towards communicating new complaints to the Government for its reply. The Finnish Government was asked for a reply arising from a record of 69 new complaints. The number is considerably large in the light of the fact that in about 10 years the total number of complaints communicated to the Finnish Government has been 238. The new complaints communicated during the year represent nearly 29% of this total. The number is also large when compared with some states with markedly greater populations: more complaints were communicated to Finland than to, for example, the UK (48), Italy (63) or Austria (68).

Thus numerous judgments and decisions by the Court concerning Finland can be anticipated in the next few years. With respect to the past ten years, it can be noted that around 30% of the complaints communicated to the Finnish Government have led to judgments in which the Court has found violations of rights. In all, 99 judgments concerning Finland have been issued in the past ten years and at in 71 of them least one violation of a right has been established.

As was the case in earlier years, the issues in most of the new complaints communicated to the Government for reply were the length of time taken by court proceedings and implementation of the right of a party to the case to receive information. No fewer than 8 cases concerned alleged violations of journalists' freedom of expression in situations where sentences had been imposed on them for violations of privacy in news reports published in press articles and television broadcasts. One of them was associated with the Supreme Court's precedent decision KKO:2005:82. Newspaper and magazine articles had reported that A, who had been a key campaign adviser to a candidate in the presidential election, had had an extramarital affair with a certain TV journalist's former spouse. The article was judged to have violated A's privacy.

Freedom of expression was likewise the issue in a case concerning news reporting relating to a former National Conciliator. In this case, the Court asked the Government for, in addition, a reply to a claim relating to a principle of legality under criminal law (legal analogy to the detriment of the accused).

Several communicated complaints (6 cases) concerned the time limit contained in the transitional provisions of legislation implementing the Paternity Act.

The communicated cases involved also such matters as failure to arrange oral hearings in a court of appeal and the insurance court, a decision to screen by a court of appeal, the reasons presented in support of decisions by the insurance court as well as failure to supply an interested party with copies of material sent to the insurance court. The question in one case was whether the complainant, whose telecommunications had been secretly listened to, had resorted to all national legal remedies when her spouse made a complaint in the matter to the Ombudsman (21.10.2003, case no. 200/4/01) without, however, resorting to other means of legal protection, such as applying to a court for criminal or civil law suits.

## 3.2 OBSERVATIONS BY THE OMBUDSMAN

### 3.2.1 FUNDAMENTAL AND HUMAN RIGHTS IN OVERSIGHT OF LEGALITY

The observations that the Ombudsman made with respect to implementation of fundamental and human rights in the course of her oversight of legality are outlined in the following. The observations were made during investigations arising from complaints on which decisions were issued during the year or were conducted on the Ombudsman's own initiative as well as on information that came to light during inspection visits. The presentation is not intended to reflect the Ombudsman's overall view of the state of fundamental and human rights in Finland. The cases that were resolved do not, for example, convey information about the times taken by the Social Security Appeal Board to

deal with cases, although delays in its processing of matters are a considerable problem from the perspective of implementation of fundamental and human rights. In general, only a limited sample of data reflecting the effectiveness of administration is revealed through complaints.

Several cases relating to protecting personal integrity came up during the year. Problems were observed in the activities of the police, prisons, health care units and district courts. A variety of shortcomings were in evidence in the production of adequate social welfare and health services. The long time taken to process matters was a general problem in several sectors of administration. Legal remedies against passivity on the part of authorities and delays in processing procedures are under development and currently in the law-drafting stage, but no legislation on these matters was promulgated during the year under review.

Situations also came to light in which legislation does not provide for an adequate right of appeal, for example with respect to the Trade Register Act and adoption counselling services. In general, the right that is enshrined in Section 21 of the Constitution to have a case dealt with appropriately and without undue delay and the right to effective legal remedies were implemented. However, problems with decisions that were not eligible to appeal against were observed in several sectors of administration.

Numerous problems relating to hearing interested parties and appropriately presenting the reasons for decisions were manifest in various branches of administration. In several cases, the reasons presented for an official decision had been excessively general in nature in that no position was adopted on the concrete facts involved in an individual case. There were also shortcomings in the way that the legal norm behind decisions was specified.

Several complaints against authorities relating to publicity of recorded material and obtaining information were resolved. A common problem that arose in complaints and decisions on them was the length of time taken to deal with a request for information. The law requires that a matter concerning a request for information be dealt with without delay and information on an official document must be provided as soon as possible. The line that the Ombudsman has followed in her decisions is that taking the maximum time allowed for in the legislation is acceptable only in cases that are open to interpretation and difficult.

Another fairly common subject of criticism in complaints concerning the Act on the Openness of Government Activities is that of issuing a decision that makes it possible for an appeal to be made. Then the party requesting information is not informed of a refusal to supply the information. In the worst case, the party who has requested the information has no other resort than to make a complaint, because there is no decision against which an appeal can be lodged in the ways provided for in the law.

A special theme in the Ombudsman's oversight of legality was implementation of the principle of publicity in official actions. The theme was taken up on inspection visits. Provision of information to clients was examined by, *inter alia*, scrutinising authorities' internal guidelines on publicity and confidentiality. Examples of questions discussed on inspection visits were the number of requests that clients had made for information, how handling of requests was organised and problems encountered in relation to requests. With respect to provision of information by authorities, the items examined included publications, forms and online information.

Noteworthy among the problems that came to light during inspections were situations in which a fee may not be charged for providing a document nor VAT added to the copying fee. An observation made in one administrative court was that the legislation on publicity of proceedings in these courts had not increased publicity, as it was intended to do, but that instead secrecy of information with a bearing on court proceedings had increased.

There were still shortcomings with regard to implementation of the authorities' obligation to provide advice. The authorities did not reply in time and precisely enough to various enquiries. The Internet and e-mail are imposing their own special demands, which it had

not always been possible to meet, with respect to the obligation on authorities in their operating environment to provide clients with advice and service. Several cases where, for example, an e-mail message had not been replied to came to light.

### 3.2.2 SECTION 6 EQUALITY

Equal treatment of people is one of the cornerstones of the Finnish legal system. This is enshrined in Section 6 of the Constitution. However, unequal treatment of people may be justified for an acceptable social reason. In the final analysis, it is up to the legislator to evaluate the generally acceptable grounds that in each individual case justify assigning a different status to individuals or a group of people. The duty of the public authorities to promote factual equality in society was stressed when the fundamental rights sections of the Constitution were revised. Equality aspects are often invoked in complaints received by the Ombudsman.

The following decisions concerning equality are especially noteworthy. Because they are in an intoxicated state, patients must not be assigned a different status relative to other patients when decisions are being made concerning the way their state of health is monitored at a health centre. An individual treatment decision must be based on the need for treatment that the patient's state of health requires and is medically called for (1147/2/04*). A city had made a contract with a private service producer to take care of reception services at a health centre. The contract stipulated that the maximum time that a client would have to wait for a non-urgent appointment at the health centre would be two weeks. The corresponding waiting time at the other two health centres in the city was from two to six weeks. Thus, where access to services was concerned, the residents of these two responsibility areas were in a disadvantaged position relative to those in the areas served by the health centre mentioned above, and the city had not presented an acceptable reason for this discrimination (3908/4/06).

A selection decision in which a vice dean of a university had admitted nine students who had enrolled in a way that breached the relevant guidelines was found to have failed to meet the requirement of equal treatment of students (2650/4/07). From the perspective of the equality of road-users, it is problematic in traffic control if suspects are treated unequally in that, owing to a police officer's defective language skills, those who wish to speak Swedish have to wait for an interpreter to arrive or must make a separate trip to the police station to be able to use their mother tongue (2710/4/06).

A vehicle inspector had been fined for seriously endangering traffic safety, arising from which his employer had been informed by the Finnish Vehicle Administration AKE that for three years he would be unsuitable to work as a vehicle inspector. The consequence caused for the inspector was unfair and contrary to the principle of equality when compared with other occupational groups (589/4/06). For example, a police officer can only be suspended from duty for a maximum of six months.

It is problematic from the perspective of the equal treatment of persons placed in detention under the provisions of the Aliens Act that the right to possess a mobile phone varies from one place of detention to another. Consideration of restriction of the use of a mobile phone should be done on the basis of the reason for each individual's loss of freedom and not depend on whether the foreigner is kept in a police facility or a detention unit specially reserved for this purpose (967/4/07).

#### Prohibition on discrimination

The prohibition on discrimination in Section 6.2 of the Constitution complements the equality provisions. It requires that no one "shall, without an acceptable reason, be treated differently from other persons ..." An acceptable reason as required by the Constitution exists for the ban on blood donations by men who have sex with other men. However, the blood transfusion service's guidelines under which blood donations by homosexual men were restricted had not been an acceptable reason for discrimination. Sexual behaviour can be a ground for determining suitability as a blood donor, but sexual orientation as such can not be (152/4/06*).

## A child's right to equal treatment

The equality provisions of the Constitution make special mention of children's right to equal treatment and require that they be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development. Children, a group with little power and whose position is weaker than that of the adult population, need special protection and care. Indeed, the provision offers a ground for also positive unequal treatment of a child in order that the child's equal status relative to the adult population can be safeguarded. A decision by Save the Children Finland not to give adoption counselling to couples seeking to adopt a child within Finland if one of them suffered multiple physical disabilities was deemed to have been based in its essential aspects on factors that are of relevance to assessing the child's interest. The decision had been made within the parameters of the discretionary power of the adoption counselling provider (1715/4/06).

### 3.2.3 SECTION 7 THE RIGHT TO LIFE, PERSONAL LIBERTY AND INTEGRITY

A central task of the State is to safeguard the inviolability of human dignity in society. This is the starting point for all fundamental and human rights. The prohibition on treatment violating human dignity applies to both physical and psychological treatment. It is intended to cover all forms of cruel, inhumane or degrading punishment or other forms of treatment.

Protection of fundamental rights applies to the life and liberty of individuals as well as to their personal inviolability and safety. Safeguarding physical fundamental rights has two dimensions: on the one hand, the public authorities must themselves refrain from violating these rights and, on the other, must create conditions in which these rights enjoy the best possible degree of protection also against violations of private persons. The latter dimension is involved when, for example, people are protected against crime.

Particularly sensitive matters from the perspective of protecting the individual's fundamental rights are coercive measures and force used by the police as well as conditions in closed institutions and units where conscripts are doing their military service. The Ombudsman has paid special attention on her inspection visits to putting an end to the military tradition of bullying. Personal liberty and inviolability have also featured centrally when inspection visits have been made to psychiatric hospitals, police stations, prisons and units of the Defence Forces. A focus of special attention on inspections of police stations has been the use of coercive measures that affect personal liberty and are beyond the control of courts, such as apprehension and arrest.

## Personal inviolability and security

Section 7.1 of the Constitution declares that everyone has the right to life, personal liberty, integrity and security. Section 7.2 states that no one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity. Violation of the personal integrity or deprivation of liberty of the individual, arbitrarily or without a reason prescribed by an Act, is prohibited in Section 7.3.

When a patient's personal liberty is intervened in with executive assistance, the preconditions set in the law must be met as precisely as possible and when the Mental Health Act is applied, the proportionality principle or the principle of least restriction must be observed. Taking a patient to a health centre against his or her will means a forceful intervention in the right of self-determination and personal liberty. Since the regulations contained in the Mental Health Act do not in this respect meet the demands relating to preciseness and clear demarcation of limits that are stipulated in the Constitution with respect to legislation that restricts personal liberty, the Ombudsman recommended to the Ministry of Social Affairs and Health that the shortcoming in the legislation be eliminated (114/4/07 and 4157/2/08).

The state of health of a prison inmate who had been placed in solitary confinement for observation was not examined by the health care staff in person, but me-

rely based on the information that a warder gave a nurse by telephone. This was problematic from the perspective of the prisoner's safety (168/4/07). The right to personal safety requires that the staffing level in a prison hospital be such that the safety of patients is not jeopardised (1538/4/05*). Police personnel have a duty to ensure the safety of persons who have lost their freedom and are in police custody. Therefore attention must be paid to training and familiarisation courses for staff who guard prisoners (1147/2/04*).

Defence Forces' explosives magazines that are in poor condition are located in some places so close to the barracks and training areas that they could pose a significant danger to a large number of people (1515/4/06).

A security check by the police is an intervention in personal integrity, for which reason there must always be a ground enshrined in law for conducting one. There was no such ground in a case where a person had been subjected to a security check when he was taken to a police station to be served with a summons and had not been arrested on suspicion of a crime or for any comparable reason (979/4/07).

The final sentence of Section 7.3 of the Constitution contains a constitutional imperative, which means that the requirements of, *inter alia*, international human rights conventions must be met in the way that persons subjected to deprivation of liberty are treated. A special group in its own right in the Ombudsman's oversight of legality comprises the rights during their incarceration of persons who have been deprived of freedom on grounds that are in and of themselves lawful. Decisions in numerous complaints concerning these matters are issued each year. The fundamental rights of persons who have lost their freedom must not be restricted without a lawful reason.

The seven-year prison sentence imposed on an Estonian person in Finland was *de facto* lengthened when the prisoner was transferred to Estonia to serve the sentence there. In Estonia, the prisoner failed in his request for parole and could renew his request no earlier than a year later, whereby the length of his custodial sentence had increased by at least two years compared with Finland. Although the preconditions for a transfer would not necessarily have been met in a retrospective assessment of the situation, the transfer was not, in the light of the facts known when the transfer decision was made and the case law of the European Court of Human Rights up to that point, in breach of the Convention or violated individual liberty (1374/4/07).

The demand that the rights of also those who have lost their freedom be safeguarded by the law applies also to a person being released from a court building. Therefore the Deputy-Ombudsman proposed that in further drafting of legislation on imprisonment consideration be given to the question of whether the regulations concerning the restriction of remand prisoners are applicable in a situation where a court has decided to send a prisoner that it has set free back to the prison to be released from there (3310/4/07).

As a general rule, the deportation of a prisoner being released from prison should best be done in conjunction with release. If the date of release of a foreign prisoner whose deportation has been ordered is known in advance, the aim should be that there be no further intervention in the liberty of a person, who has already served his or her sentence, due to travel arrangements or flight schedules, (2093/4/07).

The prohibition on treatment that violates human dignity includes the requirement that a person in police custody must be provided with the opportunity to obtain appropriate clothing suiting the situation. Transporting a prisoner walking without footwear on a snowy surface can be not only health-threatening, but also humiliating (123/4/06).

### 3.2.4 SECTION 8 PRINCIPLE OF LEGALITY IN CRIMINAL CASES

One of the fundamental principles of the rule of law is that no one may be found guilty of nor sentenced to punishment for a deed that at the time of commission was not proscribed in an Act as punishable. Nor may

the penalty imposed for an offence be more severe than that provided by an Act at the time of the commission of the offence. This is called the principle of legality in criminal cases. Problems relating to it are only very rarely referred to the Ombudsman for appraisal.

### 3.2.5 SECTION 9 FREEDOM OF MOVEMENT

The different dimensions of freedom of movement were regulated in greater detail than earlier when the fundamental rights provisions of the Constitution were revised. Finnish citizens and legally resident foreigners have the right to move freely within the country and to choose their place of residence. Everyone also has the right to leave the country. Regulation of the arrival of foreigners in the country and of their departure from it likewise falls within the sphere of freedom of movement. The police made an erroneous interpretation of the requirement in the Passport Act that the issue of a passport requires the consent of a guardian when a minor was not issued with an urgent passport at Helsinki-Vantaa Airport. A 17-year old child, who was travelling abroad to meet her mother, had a valid passport, but the so-called information page had become detached. The police should not have prevented the child from leaving the country (3335/4/06*).

### 3.2.6 SECTION 10 THE RIGHT TO PRIVACY

The right to privacy is protected by Section 10 of the Constitution. This protection is complemented by closely related fundamental rights such as the right to honour and the inviolability of domicile as well as protection of confidential communications. Protecting private life, the domestic peace and confidential communications often calls for difficult comparisons of interests when safeguarding other fundamental rights, such as freedom of expression and the related principle of publicity or openness of the administration of justice, requires a certain degree of intervention in private life or the disclosure of facts relating to it.

The Constitutional provision concerning protection of private life also contains a mention of personal data, which are covered by the same protection. The provision refers to the necessity of safeguarding, through legislation, the legal security of the individual, and protection of privacy when personal data are handled, registered and used.

#### Inviolability of domicile

Whether official measures that infringe on the domestic peace are founded in law is a question that often arises when the police conduct house searches. The sanctity of the home as a fundamental right requires careful consideration of the evidentiary threshold for conducting those searches (636/4/07).

#### Protection of family life

Section 10 of the Constitution does not mention protection of family life. However, the view has been taken that it is included in the guarantee of private life that is mentioned in the provision. In Article 8 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, family life is expressly equated with private life. A prisoner's request for an unsupervised visit with his family could not be rejected merely on the ground that he was not yet well enough known in the prison, given that in anther prison he had had several unsupervised meetings with his family in the previous six months and there had been no problems (2473/4/06). A request by a complainant serving a custodial sentence to be allowed to marry had been prevented when the prison governor decided that her bridegroom would not be admitted to the prison. Protection of private life includes also the right to marry, and there is no regulation that would justify restricting, in a way that sets them apart from other persons, the right of persons serving a prison sentence to marry (3616/4/06 and 453/4/08).

## Secrecy of communications

Restriction of the secrecy of communications manifests itself in, for example, opening and reading a mail despatch or eavesdropping on and recording a telephone conversation. These actions must be provided for in an Act.

Even if an employer were to deny an employee the right to use e-mail for any purposes other than work-related ones, the prohibition can not extend to incoming messages for the employee and the employer must not violate the secrecy of communications that covers these messages (1021/4/08).

The limits of protection of secrecy of communications often crop up when the police authorities are investigating crimes and in relation to communications to and from persons confined in closed institutions. As a category in its own right, matters concerning the secrecy of prisoners' mail were a focus of attention during the year under review.

A prison governor had acted erroneously in deciding that all of a certain prisoner's letters would be opened and read until further notice, although the case-by-case consideration required under the Act in force at the time meant that a decision to open mail had to be made with respect to each individual letter. Not even under the new regulations on prisoners' correspondence, which came into force on 1.4.2007, can the protection of confidential communications be completely removed from anyone indefinitely or even for a specific period. If broader power of decision is considered indispensable, the matter should be provided for in greater detail in an Act (1828/2/08).

Intervening in the protection accorded a confidential communication from a trial lawyer or other legal representative can, in addition to infringing the confidentiality of communications, affect the guarantees of a fair trial. The violation of a right was especially serious in a situation where a lawyer's letter arriving for a prisoner was opened without the prisoner being present (595/4/08). The prisoners concerned, one serving a sentence and the other on remand, had received the letters from their counsel. The letters had been opened in their presence, but without the decisions to open being logged in the prisoner database. Therefore it was not possible in retrospect to establish certainty as to whether grounds had existed for the intervention in a confidential message. Suspicion that the indication of sender is false is not well suitable as a ground for opening a letter, because it is easy to verify its authenticity by phoning the legal practice indicated as its source. The secrecy of communications must not be interfered with if this can be avoided through simple measures (1234 and 1843/4/07).

The provisions that the Prison Act, the Detention Act and the Police Cells Act contain with respect to inspecting letters from legal representatives to persons who have lost their freedom are too open to interpretation and, from the perspectives of both secrecy of communications and protection of the client-counsel confidentiality that implements a fair trial, in addition to which they are inadequate to ensure that they are interpreted uniformly in practice. The Deputy-Ombudsman recommended to the Ministry of Justice and the Ministry of the Interior that they give consideration to amending the Acts (3276 and 4045/2/08).

A meeting between a prisoner and his lawyer had been arranged as a specially supervised visit without lawful grounds for doing so. The conditions, in which the parties to the meeting were separated from each other by a plexiglass partition and the conversation had to be conducted through an intercom, weakened the prisoner's prospects of being able to rely on the confidential services of legal counsel, which is one of the key guarantees of legal security. In addition, the procedure had a detrimental impact on the protection of privacy and secrecy of correspondence (531* and 3287/4/07*). Comparable unlawful practices were revealed with respect to also police prisons, which are subordinate to the police administration (1197/4/07).

## Protection of private life and personal data

The patient's privacy must be taken into consideration in health care and social welfare measures, along with the fact that all persons other than those who partici-

pate in the patient's treatment or tasks related to it are outsiders. A health centre doctor acted unlawfully in sending a referral for the patient to a central hospital without receiving that person's consent (1330/4/06). The practice followed in a prison that *a priori* supervisory personnel were always present at a treatment event violated the patient's right to protection of privacy (535/4/06 and 323/4/07 as well as 91/4/08). The reason for a prisoner's visit to a doctor also falls under the protection of the prisoner's privacy. Something that is not considered an appropriate procedure is that prisoners who ask for immediate medical treatment must describe their ailment to a warder in order to get to see a nurse (2733/4/06).

The requirement that data in patient records be kept secret was violated in a hospital when, after their child had attended a polyclinic, its parents were sent a copy of another child's case history complete with name and personal identity code (954/4/08). The practice at a health centre run by an intermunicipal joint authority was that, in conjunction with the first visit by that person in each calendar year, the visitor's population register data were checked, including, for example, whether the register was maintained by a congregation of the church. Collecting information of this kind is not lawful, because data indicating religious conviction can be entered into a patient's medical records only if this can be regarded as essential from the perspective of treatment of the patient in question (1063/4/06).

### 3.2.7 SECTION 11 FREEDOM OF RELIGION

Freedom of religion includes both the right to profess a religion and the right to practise it. Intervention in the outward demands of religion can in some cases mean also interfering with internal freedom to practise. Freedom of religion and conscience requires that the need to handle data concerning membership or non-membership of a religious community is assessed according to strict criteria (1063/4/06). A teacher had intervened in the way a comprehensive school pupil prayed aloud during lessons and at meals. The Deputy-Ombudsman found that the pupil's right to practice her own religion could be restricted during lessons so that teaching could be organised and the other pupils' freedom of religion safeguarded (1136/4/06).

### 3.2.8 SECTION 12 FREEDOM OF EXPRESSION AND RIGHT OF ACCESS TO INFORMATION

#### Freedom of expression

It belongs to freedom of expression that its exercise does not require prior permission. Thus it is not lawful to require a permit and make it a condition for photography in a part of a health centre that is open to the public (3447/4/05*). The mayor of a municipality could not prohibit a journalist from writing an article about the municipality nor determine the contents of articles. The only way in which the mayor could influence the articles that the journalist wrote about the municipality was by giving interviews (4267/4/06). During a search conducted by the police, the employees of a company located in the business premises that were the focus of the search had been prevented from using the telephone. However, there had been no lawful ground for such an intervention in freedom of speech (636/4/07).

#### Publicity

Closely associated with freedom of expression is the right to receive information on documents or other recorded material in the authorities' possession. Publicity of recordings is a fundamental rights provision of domestic origin. The Act on the Openness of Government Activities that entered into force in 1999 has specially emphasised promotion of access to information.

The Deputy-Ombudsman issued a reprimand to the National Board of Patents and Registration for having exceeded by over a month the maximum time specified in the Act for dealing with a request for a document. Of irrelevance in assessment of the matter was neither the difficult work situation nor the fact that the complainant had been orally informed within the dead-

line that the document was not public. Availing of the maximum period allowed by the Act can be justified mainly in situations that are open to interpretation and difficult. By contrast, the maximum deadline may not be exceeded even in difficult situations of this kind (3541/4/06*).

Failure to supply a lawyer with a criminal investigation protocol within the statutory deadline of two weeks from its completion, even though an advance request for it had been submitted by the lawyer in his capacity as an interested party in a criminal case, was unlawful. Ultimate responsibility for implementing the request for a document resided with the officer in charge of the criminal investigation (214/4/07 and 2540/4/08).

A request for documents was not handled appropriately when a patient was given copies of his medical records only after requesting them three times (3020/4/08). It must be possible for a request for a document, *i.e.* a request to receive information on the contents of a document in the possession of the authorities, also to be made orally and an interested party has the right to see documents concerning him- or herself on the basis of an oral request (568 and 995/4/07).

### 3.2.9 SECTION 13 FREEDOM OF ASSEMBLY AND ASSOCIATION

Freedom of assembly and association was regulated in more precise terms than earlier when the fundamental rights provisions of the Constitution were revised. The right to demonstrate and the freedom to form trade unions were also explicitly guaranteed. Negative freedom of association, *i.e.* the right not to belong to associations, is mentioned as a part of freedom of association.

The venue for a demonstration is chosen primarily by the organisers, not the police. Therefore, when the venue is changed, the police must genuinely negotiate a new one if the one chosen by the organisers can not be approved under the law. Nor may the transfer of venue be for the reason that the objects of the demonstration are being shielded from encountering views that may be bothersome to them (2936/4/06). The right to use ordinary meeting equipment is guaranteed by the Assembly Act, for which reason levying licence fees and similar charges for using city-owned areas and distributing leaflets may be problematic from the perspective of freedom of assembly and to demonstrate (3607/4/06).

### 3.2.10 SECTION 14 ELECTORAL AND PARTICIPATORY RIGHTS

Political rights, *i.e.* electoral and participatory rights, have been conceived of increasingly clearly as fundamental rights of the individual. The public authorities have been placed under an obligation to promote the opportunities of every individual to participate in societal activities and influence decision making that affects him- or herself. Hearing the views of patients' organisations in the process of assessing the therapeutic value of a medicinal preparation lends itself to strengthening the operation of civil society, promoting indirectly the individual's opportunities to influence decision making that affects him- or herself and thereby contribute to putting into practice the task that behoves the public authorities to promote participation by individuals (3227/4/06).

### 3.2.11 SECTION 15 PROTECTION OF PROPERTY

A broad margin of discretion with respect to protection of property has been applied in interpretation of the European Convention on Human Rights, but this can not have weakened the equivalent protection granted on the national level. Protection of property has traditionally been strong under domestic law. However, matters relating to protection of property are referred to the Ombudsman for investigation only very rarely. A municipal environmental board had acted unlawfully when it granted an applicant a permit to extract soil materials without requiring the applicant to provide an adequate report on the right to use the extraction site or the con-

sent of the other part-owner of the land to apply for a permit (934/4/06).

### 3.2.12 SECTION 16 EDUCATIONAL RIGHTS

Basic education free of charge is guaranteed everyone as a subjective fundamental right in the Constitution. In addition, all must have an equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop themselves without being prevented by economic hardship. What is involved in this respect is not a subjective right, but the obligation that the public authorities have to create the prerequisites for people educating and developing themselves, each according to their ability and needs. Freedom of science, the arts and higher education is likewise guaranteed in the Constitution, as is the right of all children to basic education.

### 3.2.13 SECTION 17 RIGHT TO ONE'S LANGUAGE AND CULTURE

In addition to the equal status of Finnish and Swedish as the national languages of the country, the language and cultural rights of the Sámi, Roma and other groups are guaranteed in the Constitution. The language regulations applying to the region of Åland are contained in the Act on the Autonomy of Åland. Finland has also adopted the European Charter for Regional or Minor Languages drafted by the Council of Europe as well as A Framework Convention on Protection of National Minorities.

An emergency response centre acted regrettably when a person answering calls there had changed the language of the conversation to Swedish although the caller had originally used Finnish (3279/4/07). A bilingual hospital district should have ensured that a patient's records were translated into his mother tongue when this was requested (3086/4/06*). An integration plan for an immigrant had been drafted by an employment office without an interpreter being present, something that was found to have the potential to lead to misunderstandings and even refusal of the measures specified in the integration plan and thereby to consequences that might affect the immigrant's security of livelihood (3275/4/06).

### 3.2.14 SECTION 18 RIGHT TO WORK AND FREEDOM TO ENGAGE IN COMMERCIAL ACTIVITY

As part of the revision of the fundamental rights provisions of the Constitution, everyone was guaranteed the right, as provided by an Act, to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The starting point has been the principle of freedom of enterprise and in general individuals' own activity in obtaining their livelihoods. The role of the public authorities in this respect has been to safeguard and promote. As a result of having been fined for gross endangerment of traffic safety, a vehicle inspector had been deemed unsuitable to work as a vehicle inspector for the next three years, something that the Deputy-Ombudsman found to be an unreasonable consequence (589/4/06).

### 3.2.15 SECTION 19 RIGHT TO SOCIAL SECURITY

The key social fundamental rights are guaranteed in Section 19 of the Constitution, which states that everyone has to receive the indispensable subsistence and care necessary for a life of dignity. In separately mentioned situations of social risk, everyone is additionally guaranteed the right to security of basic subsistence as provided for in an Act. The public authorities must also guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services. Separately mentioned is also the duty of the public authorities to promote the health of the population and the welfare and personal development of children as well as everyone's right to housing.

Applications for supplementary and preventive income support must be processed within statutory time limits. A decision must be made within the statutory period after the deadline for a request for supplementary information has expired and processing of an application for income support must not be deferred on the ground that an application for a housing subsidy is pending and awaiting resolution at the Social Insurance Institution (871/4/06).

Although the regulations on the division of costs for medical treatment between municipal health care and sickness insurance were explicated in the new Sickness Insurance Act, the regulations are still not sufficiently precise and unambiguous. With sufficiently precise legislation, the provision of adequate health care services and also equal access to them can be promoted. The Ombudsman informed the Ministry of Social Affairs and Health of her view that there is reason to implement urgent legislative measures to guarantee adequate health services and equal access to them (893/2/08).

The right to adequate social welfare and health services is explicated in the legislation that provides a guarantee of treatment. No time limit is set in the Act for assessing the need for treatment in special hospital care. However, a 10-month waiting list for a first examination can not be deemed to accord with the legislator's intention (1363/4/06).

A city social welfare and health centre did not act in accordance with the law when it required patients to have sobered up before they applied for detoxification treatment (1224/4/06). A child's right to adequate health services failed to be implemented when it was not provided with the psychiatric studies and treatment that it needed, because admission to a hospital in a case of examining sexual abuse was delayed (1726/4/06).

The starting point set for selecting tenants for State-supported rental dwellings can not be that only applicants whose credit status indicates no records of payment defaults can be considered as tenants. A dwelling can be refused only if the danger of non-payment of rent can be deemed, on the basis of a case-by-case assessment, to be real and founded (1354/4/07).

### 3.2.16 SECTION 20 RESPONSIBILITY FOR THE ENVIRONMENT

It is important from the perspective of people's opportunities to influence their own living environment that a method for putting documents on public display is arranged in, *inter alia*, planning and environmental permit matters in a way that ensures citizens have real opportunities to familiarise themselves with the documents as well as to express their views and make criticisms and appeals. Therefore, when the environment centres are issuing guidelines to municipalities, they should emphasise that the period for which documents are on public display during the summer months should contain a sufficiently long time also in June or August. When determining the time for which the documents are on public display, it must also be ensured that if the municipal office in question is closed for a period in summer, this does not place difficulties in the way of citizens having sight of the documents (3038/4/06). An environmental permit is one of the most important means of regulating and overseeing actions that affect the environment. Therefore processing of a matter pertaining to an environmental permit for an existing function must be expeditiously initiated (1520/4/06).

### 3.2.17 SECTION 21 LEGAL SAFEGUARDS

What is meant by legal safeguards in this context is mainly processual fundamental and human rights, or procedural legal security, as it is called. What it involves is that authorities follow procedures that are qualitatively unflawed and fair. Due process relating to official procedures has traditionally been one of the core areas of oversight of legality. Questions concerning good administration and fairness of legal proceedings have been the focus of the Ombudsman's attention most often in the various categories of matters.

Protection under the law is provided for in Section 21 of the Constitution. The provision applies both to criminal and civil court proceedings and to the exercise

of administrative judicial functions and administrative procedures. It is comparatively rare in international comparisons to find good administration regarded as a fundamental rights question. However, also the European Union's Fundamental Rights Charter – which will not be binding on the Member States until the Lisbon Treaty has come into force – contains a provision on good administration.

## Obligation to advise and provide service

Good administration includes an obligation to advise and provide service. Attention can be focused on how an authority has arranged advisory functions, on the one hand, and on the contents of advice, on the other. A complainant who had consented to her child being given to her common-law partner for adoption had not known that the adoption would sever her legal relationship with the child. The advice given by an adoption counselling centre, where the interested parties should have been given an explanation of, *inter alia*, the legal effects of the intended adoption had been flawed (2555/4/06).

It can be expected in today's society that officials are sufficiently active in following messages arriving in their official e-mail inbox and respond and reply to them appropriately. This obligation applies also to district court judges (3718/4/07).

A director of basic subsistence, acting in her capacity as the administrative superior of a chief medical officer and as the person responsible for the efficiency of administrative affairs, had neglected her duty to guide and advise when failing to give the doctor, without delay, an instruction to give the complainant a reasoned written decision, together with instructions for lodging an appeal, arising from a request that the complainant had made for a document (643/4/07). A municipal employer had not replied to an office-holder's enquiry concerning payment of salary in a way that would have enabled the office-holder to verify the correctness of the procedure that the employer had followed (906/4/07).

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

It is stated in Section 21 of the Constitution that everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority. When a person's rights and obligations are involved, it must be possible for the matter to be reviewed specifically by a court of law or other independent body for the administration of justice. Correspondingly, Article 6 of the European Convention on Human Rights states that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The effectiveness of legal remedies can in some cases presuppose restitution being made, in one way or another, for the harm arising from a violation of rights. In court procedures, Article 13 of the Convention leaves room for choice with regard to the way restitution is carried out. The Ombudsman can not intervene in the decisions of courts, and therefore can not influence the provision of the restitution intended, either. Immaterial damage caused by undue delay in criminal cases can in certain instances be compensated for in trial procedures (see Supreme Court Cases KKO 2005:73 and 2006:11). With respect to other administration, Ombudsman Paunio has proposed deliberation of the question of whether the Ombudsman should have the right to recommend that redress be afforded for damage or inconvenience caused by an authority (see Ombudsman Paunio's article in the Ombudsman's annual report for 2005 pp. 7–10).

What is typically involved in this category of cases is obtaining a decision against which an appeal can be lodged or, more rarely, applying a refusal of leave to appeal. Both influence whether persons can have their cases dealt with by a legally competent court of law or other authority at all. It is also important from the perspective of the effectiveness of legal remedies that an authority provides the address to which an appeal can be made or at least sufficient information to enable people to exercise their right of appeal. From the per-

spective of exercising their opportunity to appeal, the reasons presented in support of a decision are additionally of essential importance.

The opportunity to appeal against a joint-stock company being struck from the Trade Register had been provided for in legislation in a way that was open to interpretation. The Deputy-Ombudsman recommended to the Ministry of Employment and the Economy that a study of the system of legal remedies and its restructuring be expedited (1302/4/06). The Ombudsman dealt with the question of the absence of opportunities to appeal also in a case where Pelastakaa Lapset ry (Save the Children Finland) had decided not to give adoption counselling to married couples who were hoping to make a domestic adoption. The Ombudsman informed the Ministry of Justice of her decision so that it could be taken into consideration in a project to revise the legislation on adoption (1715/4/06).

Decision making on the part of a municipal council left it unclear whether a changeover had been legally made in the municipality from contract-based waste collection to a municipally arranged collection service. No one could have noticed that the municipal council had decided that the waste collection system had been changed, and accordingly could not appeal against the decision in this respect, either (588/4/08). A complainant had asked a doctor for her mother's death certificate. When refusing the request, the doctor should have informed the complainant of the possibility of obtaining a decision in the matter from a municipal authority and supplied the address to which to make the appeal (3080/4/06).

The fundamental rights that belong to crime victims, *i.e.* interested parties, regularly come up in the investigation of complaints in which it is reported that, for example, a requested criminal investigation was not carried out, that it was conducted in a flawed manner or that the matter had not been referred to a public prosecutor at the end of the criminal investigation. The question from the interested party's point of view is primarily how to have the matter that concerns his or her rights dealt with. With respect to the interested party's demand that a penalty be imposed, the right derives specifically from the Constitution; the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms does not as a general rule safeguard this right.

When a district prosecutor who had been in charge of pre-trial investigations concerning alleged crimes by a police officer decided not to conduct a criminal investigation, he failed to take account in his decision of all of the events that the person making the notification had clearly itemised and regarded as crimes. In addition, the serious attention of a detective inspector was drawn to his duty to register a notification when another notification by the complainant of a crime by another policeman had not been registered (3784/4/06).

## Dealing with matters without undue delay

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

Questions relating to expeditious handling of matters continually crop up in oversight of legality. The attention of the authorities has been drawn to the principle of expeditiousness with a view to guidance also when a concrete case has not involved an action that could be characterised as an actual neglect of official duty. The Ombudsman has tried to ascertain the reasons for the delay and has often recommended means of improving the situation or at least drawn the attention of higher authority to insufficiency of resources. As was the case in earlier years, the complaints concerning delays that led to measures during the year under review mostly related to authorities in various sectors of municipal administration.

The Deputy-Ombudsman regarded the length of time that a criminal trial had taken to have been problematic. A criminal investigation relating to the complainant had begun in 2000 and consideration of charges had still not been completed in September 2008. It had not

been revealed in the matter that individual authorities or officials had behaved in any way that would warrant criticism. That notwithstanding, the State may have to answer, for example, before the European Court of Human Rights, for the long time taken to deal with the matter. When assessing the urgency of a case, attention must always be paid also to how much delay there has already been. For example, when a case has been the subject of a long criminal investigation, the aim should be to reach a decision in consideration of charges as quickly as possible (1402/4/07).

A court of appeal announced its judgment in a criminal case only five months after the main hearing. This was not conducive to implementing the right to a trial without undue delay that Section 21 of the Constitution guarantees (3285/4/07). The Deputy-Ombudsman deemed the time taken by a district court to deal with a divorce application to have been long when the other spouse had been notified of the application only over five months after the case had been initiated (2748/4/07).

Processing of a compensation case under the Employment Accidents Act had taken unduly long, *i.e.* over 3½ years, at the Insurance Court (1591/4/07). It had taken the National Supervisory Authority for Welfare and Health just under 23 months to deal with a complaint case, exceeding the target period of 18–20 months set in a results-related agreement (3813/4/06).

There would have been reason for the customs authorities to begin creating an assessment system for use in car taxation, which is based on open principles, clearly earlier than they actually did and also implement it more expeditiously than happened in practice. Appeals relating to car taxation were still pending in thousands of cases for at least a year after the Supreme Administrative Court had issued its precedent-setting decision 2006:95 (1645/4/07).

## Publicity of proceedings

Questions associated with publicity of proceedings arise mainly in conjunction with the oral hearings arranged in court proceedings. No decisions concerning publicity of court proceedings of this kind were issued during the year. The other basic situation, *i.e.* fulfilment of requests for documents and information are dealt with in the foregoing with respect to Section 12 of the Constitution.

## Hearing an interested party

In oversight of legality, hearing the view of an interested party is one of the most central individual questions relating to procedural legal security. What is meant by the principle of hearing the views of interested parties is that they must receive, in time, information on all reports and statements that might influence the outcome of their case and that an opportunity must be reserved for them to participate in a review arranged to deal with their case. The hearing procedure itself must likewise meet the demands provided for in law, including that an interested party is given a real opportunity to present his or her point of view either orally or in writing, depending on the matter in question.

It is important to ensure that documents, such as those relating to physical planning and environmental permits, are posted on public display in a manner that citizens have real opportunities to familiarise themselves with and express their views on them, their criticisms relating to them and lodge appeals (3038/4/06). A school principal should have given a teacher the opportunity to be heard before ordering the teacher to attend assessments of ability to work (1864/4/06). The times, varying in length from two days to about a week, that the Consumer Ombudsman allowed for a debt collection agency to be heard were too short in view of the complexity of the matter (1546/4/06).

## Presenting reasons for decisions

One of the guarantees of good administration and a fair trial enshrined in Section 21.2 of the Constitution is the right to receive a reasoned decision. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms likewise requires that decisions be sufficiently reasoned. The obligation to present reasons for decisions is stipulated in greater detail in the Code of Judicial Procedure and in the

legislation on criminal trials and the exercise of administrative law as well as in the Administrative Procedure Act.

It is not enough just to announce the final outcome of a decision; the involved parties also have a right to know how and on what basis the decision has been arrived at. The reasons outlined for the decision must mention the actual facts underlying it as well as the legislative provisions and regulations. The language in which the decision is couched must also be as comprehensible as possible. Presentation of reasons is important from the perspective of both the legal security of the interested parties and public confidence in official actions and oversight of what authorities do. Once again, numerous complaints concerning the way in which decisions were reasoned were resolved during the year under review.

The Ombudsman drew the attention of the Insurance Court to the need for care in recording a witness statement and the scantiness of the reasons it presented for its decisions (1477/4/07). The Court had reasoned its decision inadequately when it failed to refer to the grounds stated by an appeal board for its decision concerning a study grant (2438/4/06).

No factual grounds had been presented for the suspicion of possession of contraband substances or objects that was the ground on which decisions to place inmates in isolation for supervision or to conduct body searches were made in a prison (2364/4/06 and 1933/4/07).

A tax office's tax adjustment decision to the detriment of a party liable for tax was conducive to creating an erroneous conception of the reasons on which the procedure was based, in addition to which the legal guidelines on which the procedure was based were not set forth in it (611/4/07). In a car tax decision, the evidence of the car's condition that the person submitting the car tax report had presented to indicate that the value of the car was lower than the general retail value had not been taken into consideration (63/4/06). A decision issued by a tax office on a complainant's application for tax relief did not explain why the reasons set forth by the applicant were not deemed to be special reasons, in the meaning of the relevant legislation, for reducing transfer tax (3934/4/06).

A decision issued by an office of the Social Insurance Institution in relation to per diem sickness benefits should have made a more precise analysis of the complainant's state of health and of the effect that his reduced capacity for work had on the work he did (115/4/07). A decision on income support did not contain a calculation of the income support nor any other explanation that would have made it clear what income and outgoings had been taken into consideration in determining the amount of the support payment (1296/4/06).

A decision on a criminal investigation completely lacked mention of its legal foundation and the reasons why an inspector had taken the view that it had become evident that the events in question bore none of the constituent elements of a crime (230/4/07 and 3732/4/06).

## Dealing appropriately with matters

The demand that matters be dealt with appropriately includes a general obligation to exercise care. An authority must thoroughly examine matters with which it has to deal and observe the legal provisions and regulations in force. Once again during the year under review, numerous complaints belonging to this broad category of matters were resolved. In some cases there had been individual instances of carelessness, whilst in others what was involved mainly has to do with the procedures that authorities have adopted and appropriately drawing lines in discretionary powers and evaluations.

The way in which a complaint matter was dealt with by a State Provincial Office was procedurally a failure in its entirety: a request for a response had been sent to the complainant in the wrong language and the complainant had had to personally demand her language-related rights. In addition, the specific request that the complainant had later made to receive the documents in Swedish had been overlooked in practice due to carelessness. The result of this had been that the decision on the complaint had included a misleading mention that the complainant had not given the response requested of her (2261/4/06).

That documents are not allowed to vanish at an authority can be regarded as a fundamental carefulness-related demand. However, cases of this kind arose at the headquarters of the Border Guard (1762/4/06), in a municipality (2030/4/06) and in an insurance company providing statutory coverage (3049/4/07).

A social worker had neglected her duty to carefully make a record of a telephone message from a child's relative on the form used to keep track of the network of relatives. The person's stance was not, therefore, precisely included in documents supplied to an administrative court (1384/4/08).

The Tax Administration's annual supervision of payments by employers was fully automated, and in monitoring payments neither the correctness of liability for tax had been examined nor the founders of a joint-stock company or the members of its supervisory board heard. As a consequence of this, the employers' contributions had regularly and several times a year been collected through distraint from parties who were not liable to pay them (1197/4/06*). Several instances of confusion occurred in the payment of income support, with the result that payment of the support beneficiary's rent was late, the rent was paid to the landlord twice and in addition to this the income support intended for payment of the January rent was paid to the complainant herself (380/4/07).

A district court judge must not try, on the basis of court practice nor invoking the volume of work and timetable considerations, to influence a legally founded demand of a defendant in a criminal case (710/4/07).

An advertisement inviting applications for a post with the Security Police was open to criticism from the perspective of good administration, because something not clearly stated in it was whether the demand with respect to a command of Swedish was a statutory eligibility requirement or only the employer's perception of what kind of practical ability in the language performance of the tasks in question actually required (3186/4/06).

Giving the occupant of a property that is the target of a house search the right to be present and to invite a witness to be present as well is intended to maintain trust in the appropriateness of police actions. Openness in the way a house search is conducted can contribute to preventing allegations of police misconduct in the course of the search. Accordingly, it is important that the police, on their own initiative, inform the target of a house search that he or she is legally entitled to this right (2294/4/06).

## Other prerequisites for good administration

In accordance with the State's policy guideline for good personnel policy, permanent tasks are performed by persons in permanent posts. This rule guides decision making in recruitment situations within the State administration. The use of fixed-term employment relationships must be based on the grounds specified in the State Civil Servants' Act and, with respect to persons employed on contract, in the Employment Contracts Act. Only when there is a reason specified in an Act for using a fixed-term service relationship can this be permitted. A training secretary in the National Board of Education's training unit for the Roma population had been employed for two years on a fixed-term contract for which there was no lawful basis (260/4/06*).

It was problematic from the perspective of implementation of the proportionality principle when the option of striking a joint-stock company from the Trade Register was resorted to when the information that is relevant, taking the intention of the provision into consideration, had been supplied to the National Board of Patents and Registration (1302/4/06).

Permission that a university had given to defend a doctoral dissertation could not be rescinded on the basis of a factual error after one of the opponents had declined to attend the public defence of the dissertation, because a procedure of this kind violated the dissertand's rights and the protection of confidentiality to which he was entitled in administration (3435/4/06). A procedure contrary to protection of confidentiality was also involved in a case where a municipality had ordered that new charges be retroactively levied on a senior citizen for living in serviced accommodation, which was to that person's detriment (3991/4/06).

The police must make its efforts to prevent information leaks more effective. These leaks can cause major and irreversible damage to people. In addition, they may impede investigation of crimes. In the view of the Ombudsman, a special effort must be made to investigate leaks even though investigation of suspected crimes is a challenging task for reasons that include protection of journalists' sources (278/2/05*).

## Guarantees of legal security in criminal trials

The minimum rights of a person accused of a crime are listed in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. They are also covered by Section 21 of the Constitution, although they are not specifically itemised in the domestic list of fundamental rights in the same way. The Constitution regulates criminal trials more broadly than the Convention, because it guarantees rights in trials also when an interested party demands a penalty. The cases highlighted here involve cases relating specifically to the rights of persons suspected of a crime.

A district court had convicted the complainant of petty assault, an offence where a decision to prosecute rests with an interested party, although the interested party in question had not demanded a penalty in the matter. The District Court's error affected a core area of judicial power and did not implement the minimum rights of a crime suspect that are prerequisites for a fair trial (2457/4/07).

A question asked in a criminal interrogation was imprecise with respect to what information it was claimed a fellow-suspect had provided during his own interrogation. The demands relating to a fair trial presuppose also that a criminal investigation be conducted in a way that is in all respects in compliance with the law and appropriate. The aim in an interrogation should be to use language that is as precise and unambiguous as possible (2207/4/07).

A decision as to whether material that is not included in a criminal investigation protocol should be revealed to interested parties resides with the authority conducting the investigation, and the regulations bestow discretionary power on the person who applies them. In the opinion of the Deputy-Ombudsman, however, it is obvious that the demands of a fair trial and the needs of the defence acquire special weight in at least those cases where handling of the matter has progressed to the point where the charge is being deliberated by a court. Among other things, the fact that, according to a report received, the data contained in lists obtained from a telecoms company were at variance with the contacts announced by an interested party may tend to have the effect that all data could be of significance to the defence in evaluating the matter (3171/4/06; associated with the thematic are the Supreme Administrative Court's precedent ruling 2007:64, which is critically examined on page 79 of the Annual report 2007 of the Ombudsman (in Finnish); see also the Natunen judgment issued by the European Court of Human Rights on 31.3.2009).

## Impartiality and general credibility of official actions

According to a rule concisely formulated by the European Court of Human Rights, it is not enough for justice to be done; it must also be seen to be done. The thinking in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is reflected from the side of the administration of law also to administrative proceedings. In domestic law, this is reflected also by the fact that the fair trial and good administration for which Section 21 of the Constitution provides are combined in the same constitutional provision. What is involved in the final analysis is that in a democratic society all exercise of public power must enjoy the trust of citizens.

The use of State property for a civil servant's own purposes can be deemed to have a harmful effect on the trust that is placed in that official's actions. Such an action can also be of significance from the perspective of the appropriate discharge of that person's official duties. A prison governor had used a prison-owned car

for private purposes. The Deputy-Ombudsman issued a reprimand to the governor for negligent breach of official duty (4285/4/06).

A former Director General of the National Board of Education had in 2004–06, especially in conjunction with the adoption of a new remuneration system, given the National Board's internal auditor a variety of operative administrative tasks that were not compatible with a good style of administration and the impartiality that internal auditing presupposes. The internal auditor in question had acted contrary to the impartiality and objectivity that his task demanded when, as the transition to the new remuneration system was being made, he had demanded information on personnel work performances that was classified as secret and had even recommended that cautions be issued to members of staff who refused to provide the information (4127/2/06*).

A lay assessor in a district court (land court) acted unlawfully when he participated in the handling of a case in which his brother-in-law was an interested party (794/4/06).

### Behaviour of an official

The trust that must be felt towards an official's actions is closely related to that official's behaviour both in office and outside it. The relevant legislation requires State civil servants and municipal office-holders to behave in a manner compatible with their status and tasks. Public servants in offices that demand special trust and esteem can be expected to behave in a manner worthy of their position also outside of working hours.

When performing the tasks and functions of a State civil servant that are outside the scope of freedom of science, also a professor must to the extent possible act in accordance with principles of good governance. E-mail messages that a professor sent to the social welfare authorities in relation to a pending case were inappropriate in content and violated the obligations with respect to a civil servant's behaviour that are a prerequisite for good administration (590/4/05).

## 3.3 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 AND JUDICIAL ADMINISTRATION

### 4.1.1 OVERSIGHT OF LEGALITY

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.

Complaints are typically made about also the way in which courts evaluate evidence, allegations of partiality in the procedures followed, disclosure of documents, the actions of summons-servers, the conduct of oral hearings, the reasons presented for decisions and delays in court handling of cases.

### 4.1.2 DECISIONS

#### Erroneous judgement by a district court in a criminal case where requesting a penalty resides with an interested party

The Deputy-Ombudsman issued a reprimand to a district court judge for future reference arising out of the judge's action in sentencing a defendant to a penalty for a crime in relation to which a public prosecutor did not have the right to lay a charge.

A simple assault on a person over 15 is an offence concerning which a public prosecutor can not lay a charge unless the victim, as an interested party, has demanded a prosecution. All that had been demanded in the case in the Kuopio District Court was a prosecution for assault as a minor, not simple assault, with respect to which the interested party had not demanded a penalty. However, the complainant was convicted of simple assault committed as a minor. A court of appeal later removed the district court's mention of simple assault, taking the view that this point of the indictment should have been rejected.

The Deputy-Ombudsman found it obvious that the district court judge's action in imposing the sentence had been contrary to the provisions of the Penal Code in that the defendant had been convicted of simple assault despite the fact that the interested party had not demanded the imposition of a penalty nor requested

a prosecution. The action was contrary to the official duties that the regulations require a judge to observe in his or her official actions. The Deputy-Ombudsman took the view that the error in sentencing had occurred as a result of carelessness and that responsibility for the error resided with the legally trained presiding judge of the district court.

A person in the position of a district court judge should know the contents of his or her official duties. The onus of carefulness on a judge of this stature, who exercises independent judicial power, is already *a priori* accentuatedly strong. The case manifested an error that is serious in principle, because it impinged on the core area of exercise of judicial power. The district court judge's erroneous action was clearly conducive to jeopardising trust in the appropriateness of judicial power.

In this case, the error was rectified by a court of appeal before it could cause any concrete drawback or harm. After the court of appeal had rectified the judgement, the effect that the error had on the punishment was ultimately fairly minor in that the sentence was reduced by only five day-fines. The district court judge had herself noticed the error soon after she had pronounced judgement and had proactively taken steps to have the matter rectified by a court of appeal. In these circumstances, the Deputy-Ombudsman took the view that the district court judge's unlawful action could not be deemed to constitute an offence in the performance of official duty. According to the Penal Code, for an action to constitute negligent violation of official duty it must not be minor when assessed as a whole.

Case no. 2457/4/07

## Transfer of a prisoner to an Estonian prison

An Estonian complainant was dissatisfied because his chances of being released on licence were reduced when execution of the seven-year prison sentence imposed on him in Finland was transferred to Estonia. In Finland, he would have been conditionally released after serving half his sentence, *i.e.* three years and six months. His request for parole was rejected in Estonia and he could only apply again after a year. By then he had already been incarcerated for five and a half years.

The Deputy-Ombudsman noted that the amount of prison time served had been increased in this case by at least two years compared with what it would have been in Finland. This corresponded to 57% of the time that the complainant would have had to serve in this country. The Deputy-Ombudsman compared the case to the situations that were the subjects of two judgements issued by the European Court of Human Rights in 2006 (Csoszánszki and Szabó), in these, the Court found that a *de facto* prolongation of a sentence by one year and four months (20%) was of significance, but not in contravention of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Deputy-Ombudsman noted that in the complainant's case a significantly greater increase in the severity of sentence had taken place than in the cases that the European Court of Human Rights had dealt with. He did not consider it ruled out that a two-year, 57% *de facto* lengthening of the period of incarceration could mean a violation of Article 5 of the Convention. However, the case law of the Court to date left the question open. In domestic law, the impediments to transferring a prisoner could be considered as going to some extent further than the criteria set by the European Court of Human Rights. In the light of the information available at the time, however, the Ministry of Justice did not, in the Deputy-Ombudsman's view, not exceed its discretionary powers under the law when it decided to transfer the complainant to Estonia.

In the view of the Deputy-Ombudsman, it may be necessary, especially in situations where persons serving shorter-than-average custodial sentences are being transferred, to take account of the aspect that, even if a probable prolongation of the duration of incarceration by a certain length of time were to remain within acceptable limits, the prolongation in percentage terms could exceed what is to be regarded as acceptable in the light of the case law of the European Court of Human Rights and the rights safeguarded by Section 7 of the Constitution. The Deputy-Ombudsman believes that the development of the case law of the European Court of Human Rights should be followed to see

whether, for example, an explication emerges concerning the significance of a percentual lengthening of incarceration and revision of parole rules with respect to the acceptability of transferring prisoners. The Deputy-Ombudsman informed the Ministry of Justice and the Helsinki Administrative Court of his opinion.

Case no. 1374/4/07

## 4.2 POLICE

Complaints concerning the police are one of the biggest categories. During the year under review 581 complaints relating to police actions were resolved. This was more than ever in the past (572 the previous year). About 13% of the decisions made during the year under review led to measures being taken.

One reason for the number of complaints 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.

### 4.2.1 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.

The Deputy-Ombudsman visited the Ministry of the Interior's Police Department during the year under review. A project to alter the administrative structure of the police and the impacts that the State productivity programme is having on the force were discussed during the visit. Other matters taken up included the police's internal oversight of legality as well as the use and oversight of secret intelligence gathering means. Inspections were also made to two local police forces and local units of the National Bureau of Investigation and the National Traffic Police.

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

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

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.

### 4.3.1 INSPECTIONS

The Deputy-Ombudsman and the legal advisers responsible for prison affairs visited the Criminal Sanctions Agency, where topical matters relating to oversight of the prison service were discussed.

In 2008 the Deputy-Ombudsman conducted inspections in Riihimäki Prison, the Eastern Finland Regional Prison and its placement unit, Kuopio Prison and Kylmäkoski Prison. The Riihimäki and Kylmäkoski visits were unannounced. On the Deputy-Ombudsman's instructions, legal advisers also conducted unannounced inspections of the prisons in Pelso and Mikkeli.

The unannounced inspections were related to ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It is possible that the Ombudsman will be designated to head the national monitoring system that the Optional Protocol requires and the tasks of which will include conducting inspections in closed institutions. Although OPCAT does not specifically require unannounced inspections, international oversight bodies have considered them important.

The desire now was to gain experience of these inspections. A notification of them was supplied to the Criminal Sanctions Agency on 12.3.2008. However, the experience gained remained quite limited, although no problems of any kind that were attributable to the prisons arose with regard to the conduct of the inspections.

As in the past, the opportunity accorded prisoners to have a discussion with the Deputy-Ombudsman was a key feature of the inspections. A total of 36 prisoners availed themselves of the opportunity. The matters that concern prisoners could generally be cleared up in the course of the inspections.

### 4.3.2 PROPOSALS AND OWN INITIATIVES

The Deputy-Ombudsman took nine new matters under investigation on his own initiative during the year under review:

- alteration of disciplinary documents in a prison
- shortcomings in supervision of prisoners that were revealed when a remand prisoner absconded
- segregation of minors in a prison
- delay in release on licence and unwarranted deprivation of freedom
- hearing the view of a prisoner in a special protection wing concerning continuation of his placement there
- conditions in wings C1, C2 (special protection) and C3 in Riihimäki Prison
- video surveillance in a prison and recording of material
- prison practices and guidelines in connection with visiting groups
- language rights of Swedish-speaking prisoners
- inmates' evening snack in prisons

In the following are outlined the matters investigated on own initiative and resolved during the year under review as well as the decisions in complaint cases that led to making proposals or recommendations. In addition, Deputy-Ombudsman Petri Jääskeläinen deals

*Deputy-Ombudsman Petri Jääskeläinen and Senior Legal Adviser Harri Ojala (centre) examine an outdoor exercise cage for inmates in Riihimäki Prison in May. Unannounced inspection visits to prisons began in 2008.*

in his article (pp. 11) with some of the shortcomings that came to light with respect to ensuring that persons who have lost their freedom have access to the assistance of legal counsel.

## Prisoners' right to marry

A complainant in Hämeenlinna Prison and her fiancé in another prison could not get married, because the governor of the prison had announced that the fiancé would not be allowed into Hämeenlinna prison. According to the complainant, the earliest opportunity that they would have to marry outside prison would be in 2013, because both were serving long terms.

The Deputy-Ombudsman found that the governor's decision had meant that the complainant's right to marry had not been implemented. The governor had acted erroneously.

The European Convention on Human Rights and the International Covenant on Civil and Political Rights specifically guarantee the right to marry. Although the Constitution of Finland does not contain a provision explicitly guaranteeing the right to marry, the protection of family life and personal liberty that the Constitution does mention includes, in the Deputy-Ombudsman's view, also this right. It is likewise clear from the Marriage Act that certain officials who are authorised to perform civil marriages are not only entitled, but also obliged to do so. The Act sets forth the factors (impediments) that limit the right to marry. A person has the

right to marry unless the impediments set forth in the Act exist. With respect to persons serving prison sentences, there are no regulations that would justify restricting their right to marry in any way different from the right that other persons enjoy or on any ground other than one specified in the Marriage Act.

The right of prisoners who are incarcerated in two different facilities to marry is not specifically taken into account in the prison regulations. The Deputy-Ombudsman found that a marriage between prisoners can not be prevented by invoking the poor applicability of the regulations on transferring a prisoner if failing to transfer the prisoner thereby de facto prevents the marriage from taking place. The prison authorities must in some way or other arrange a real opportunity for the prisoners to get married.

The Deputy-Ombudsman informed the governor of Hämeenlinna Prison of his view that he had acted wrongly. He also informed the criminal policy department of the Ministry of Justice of the shortcomings that he had observed in the regulations on prisoner transfers and requested that they be taken into consideration in drafting of amended legislation.

Case no. 3616/4/06*

## The child's interest in the mother-and-child sections of prisons

The Ombudsman informed the Ministry of Justice and the Criminal Sanctions Agency in statements of position that the interest of the child is not always implemented in the operations of mother-and-child sections of prisons. There are also problems relating to the placement of a child with its parent in a prison. Prisons do not adequately support the parenthood of mothers who have their child with them in prison or the objectives of implementation of their imprisonment.

The stances of the Ombudsman were based on her inspection visits to Hämeenlinna Prison and the mother-and-child section of Vanaja Prison in 2007 as well as on reports received from the Criminal Sanctions Agency. The Ombudsman asked the Ministry of Justice and the Criminal Sanctions Agency to inform her, by 30.11.2009, of what measures her statements of position have given rise to.

### Several problematic points

Some parents arriving in a prison are not informed that the law affords them the possibility of requesting permission to have their child with them there. The uncertainty of provision of this information can not be considered acceptable. The authorities must ensure that all prisoners to whom this possibility is available are informed of it.

Another matter that the Ombudsman considered problematic was that reports by the child welfare authorities who assess the welfare of the child have contained shortcomings. Municipal authorities have insufficient knowledge of prison conditions. This has rendered decision-making concerning a child's placement difficult.

The Ombudsman took the view that the appropriateness of reports must be followed and developed, so that implementation of the child's interest can be ensured. She pointed out that, under the Administrative Procedure Act, an instance making a decision is required to obtain additional reports supplementing an inadequate one so that a matter can be resolved.

A further matter that the Ombudsman considered problematic was that placing a child with its parent in a prison, something that accords with the child's interest, could in the worst case even be prevented, because there are not enough mother-and-child places. It cannot be regarded as acceptable that the solution deemed best for the child is not put into practice because there are not enough suitable places. The Constitution obliges the public authorities to ensure that fundamental and human rights are implemented. A dearth of resources does not absolve the public authorities of this obligation.

### The mother's problems are reflected on the child

It emerged during inspection visits that mothers who have their child with them in prison take care of it virtually round the clock and their opportunities to take part in leisure activities in the prison are limited. Something that the Ombudsman considered particularly problematic was shortcomings in rehabilitation services for mothers who have problems with substance abuse.

In the opinion of the Ombudsman, the problems that a mother has in managing her life are reflected in her ability and energy to bring up the child. Thus what is involved is putting the child's interest into practice. The situation of every child and prisoner must be individually assessed and taken into account.

The Ombudsman placed special emphasis in her decision on the importance of intoxicant rehabilitation, because what is involved in treating the mother of a small child for her intoxicant problem is not only the prisoner's own rehabilitation, but also the wellbeing of the entire family.

Case nos. 2758* and 2765/2/07*

## Language rights of foreign prisoners

The Deputy-Ombudsman decided on his own initiative to look into the opportunities available to foreigners to obtain information about prison conditions and their rights and obligations in prison. He considered the situation problematic and unsatisfactory from the point of view of foreign prisoners.

The Prison Act provides for prison rules, which regulate the exercise of prison-specific disciplinary powers. The Deputy-Ombudsman took the view that, especially from the perspective of the legal remedies available to foreign prisoners, it is important that they receive sufficient information on their rights and obligations. Hardly any of the rules had been translated into other languages. In several prisons, however, a translation project, mainly into English, had already been launched.

It appeared on the basis of a report that some prisons already have the capability to provide inmates orally and in a language that they understand with the information that the Prison Act requires on prison conditions and their rights and obligations. Written induction guides in foreign languages or summaries of them were apparently available in all prisons in some form or other (at their worst, however, they were only general translations, not specific to the prison in question). The language of the translations is mainly English, with also Russian and Estonian in some prisons. It has been possible to provide written guidelines concerning the facility in question, some of them fairly comprehensively, but partially only in Finnish.

According to the Deputy-Ombudsman, the regulations in the Prison Act and the Detention Act express only the minimum level of language service that is required of prisons. He emphasised the fundamental rights-oriented starting point that a prisoner's protection under the law, treatment and status should not be worsened for language-related reasons.

A working group appointed by the Director-General of the Criminal Sanctions Agency has drafted a proposed model set of prison rules (26.9.2008). The Deputy-Ombudsman noted that translating these rules into a variety of languages when they are adopted would make it easier to translate the rules for individual facilities and thereby substantially improve foreign prisoners' opportunities to obtain information on their rights and obligations.

Case no. 2845/2/06*

## Pricing of prisoners' phone calls

The Deputy-Ombudsman decided on his own initiative to investigate the high rates charged for telephone calls made by prisoners. It emerged from a report obtained that the rates were in part even several times

higher than the general price level for telephone calls in society in general. The Deputy-Ombudsman found that problematic in the light of the small amounts of funds that prisoners generally possess and the importance to them of being able to keep in contact with family and friends in the world outside.

The Deputy-Ombudsman pointed out that, according to the law, the content of imprisonment is loss or restriction of liberty. The enforcement of a sentence of imprisonment must not cause restrictions of the prisoner's rights or circumstances other than those that are provided for in law or which inevitably follow from the penalty itself. The conditions in which prisoners are kept must be arranged in such a way that they correspond insofar as possible to the conditions of live prevailing in society (the principle of normalcy). There must be an effort to prevent the adverse effects arising from loss of freedom (principle of minimisation of adverse effects). What the latter principle means is, for example, that the aim is to support prisoners' contact with their families and others close to them so that these contacts continue during the time that they are incarcerated.

The Deputy-Ombudsman pointed out that the high rates charged for calls could *de facto* limit a prisoner's entitlement, which is part of the constitutionally guaranteed right to privacy, to maintain contact with other people. A factor contributing to the high rates charged was the need to monitor the calls that prisoners make. Generally speaking, the expenses accruing from monitoring should be borne by society. In the view of the Deputy-Ombudsman, it would accord with the principles of normalcy and minimisation of adverse effects if the calls made by prisoners cost no more than corresponding calls at the general tariff charged in society.

The Ministry of Justice's criminal policy department concurred with these views and acknowledged that the costs arising from monitoring are to be borne by the prison service. The Ministry announced that it had informed the Criminal Sanctions Agency of this view and required that these expenses be eliminated from the rates charged prisoners for telephone calls. The Deputy-Ombudsman found this measure correct. However, he asked the Ministry's criminal policy department to inform him, by 30.6.2008, of what measures the Criminal Sanctions Agency has taken as a result of the Ministry's letter.

Case no. 4300/2/06

*The criminal policy department announced on 16.6.2008 that negotiations between the Criminal Sanctions Agency and a telecoms operator had led to a solution according to which the call rates charged in closed prisons will be brought into line with those charged in open facilities. Prisoners will pay only the SIM card price. The prison service will from that date on bear the costs arising from maintaining the phones that prisoner use.*

## Separate outdoor exercise areas in prisons and prisoners exercising outdoors in handcuffs

It emerged in the course of inspection visits and while some complaints were being examined in the Office of the Ombudsman that in some prisons separate outdoor exercise areas had been created for prisoners who it was thought, for various reasons, could not exercise together with the general population. The Deputy-Ombudsman found it questionable and problematic from the perspective of treating prisoners in a manner worthy of human dignity that separate, cage-like outdoor exercise areas were being used.

The Deputy-Ombudsman decided to investigate on his own initiative how many caged outdoor exercise areas or comparable spaces there are in Finnish prisons, what sizes they are and on what legal and factual grounds their use is based. At the same time, he initiated an investigation into whether outdoor exercise for violent prisoners had been arranged by keeping them in handcuffs while they were exercising.

### Separate outdoor exercise areas

The size of a prison outdoor exercise area is not regulated in law. According to the prison service's building design guidelines, the recommended size of a section-specific outdoor exercise area was 30 square metres

per person up to June 2007. The new design plan guidelines adopted by the Criminal Sanctions Agency recommend that an outdoor exercise area be dimensioned and shaped in a way that makes it possible to walk there. An area must be at least 70 square metres in size. At most two persons at a time exercise in an area. It is explained that the guidelines are intended primarily to apply to new building and can be applied *mutatis mutandis* to renovation work.

Separate outdoor exercise areas that were critical in size were found in Jokela, Kylmäkoski, Pyhäselkä, Riihimäki and Vantaa prisons. The situation was most problematic in Vantaa and Kylmäkoski.

In the assessment of the Deputy-Ombudsman, Vantaa Prison should try to bring about a reduction in the stated number of prisoners who are simultaneously in the outdoor exercise area, which is less than 50 square metres in size, to bring it substantially closer to the number specified in the design guidelines. For example, fifteen prisoners in an area of less than 50 square metres at the same time could not, in the Deputy-Ombudsman's view, be regarded as outdoor exercise in the meaning of the legislation. The same applied also to Kylmäkoski prison. There, according to information provided during the Deputy-Ombudsman's inspection visit on 16.12.2008, sometimes as many as ten prisoners at the same time exercise in a slightly larger area (about 60 square metres). The Deputy-Ombudsman deemed the areas in Pyhäselkä and Riihimäki prisons satisfactory, provided no more prisoners than the building design guidelines recommend exercise there at the same time.

The Deputy-Ombudsman asked the governors of Vantaa and Kylmäkoski prisons to inform him, by 30.6.2009, of what measures have been taken with respect to the use of separate outdoor exercise areas in their prisons.

## Outdoor exercise shackled

It had emerged from some of the complaints investigated by the Deputy-Ombudsman that individual prisoners had been handcuffed while exercising outdoors. According to the relevant Act, a threat of violence can be a ground not only for handcuffing prisoners, but also for denying them outdoor exercise altogether. In the Deputy-Ombudsman's opinion, the primary aim must then be to arrange outdoor exercise without having to handcuff the prisoner, either by making supervision more effective or allowing the prisoner to exercise alone or together with other prisoners who are not focuses of the threat of violence.

If it is still not possible to arrange outdoor exercise without a prisoner being handcuffed, it may be necessary, in the view of the Deputy-Ombudsman, to consider either denying outdoor exercise at all or handcuffing the prisoner while he is exercising. Which alternative is decided on in the case of a prisoner who behaves menacingly must be assessed in each individual case. The Deputy-Ombudsman considered both alternatives to be last resorts. When considering their use, account must be taken of, on the one hand, the nature of the threat, the outdoor areas available and the danger of damage or to personal safety that the threat poses and, on the other, to the adverse effects of the solution from the perspective of treating the prisoner fairly and in accordance with human dignity. In arranging outdoor exercise, attention can then be paid also to the prisoner's own preference given the choice between exercising in handcuffs or not being allowed to exercise.

Case no. 2076/2/06

## Request for a criminal investigation

The Deputy-Ombudsman asked the Vantaa Court District police to conduct a criminal investigation into a matter concerning a possible neglect of duty by the staff of Vantaa Prison in relation to a remand prisoner absconding on 29.2.2008, something that was not noticed until the following afternoon.

An investigation conducted by the Criminal Sanctions Agency revealed that failure to notice that the prisoner had absconded was attributable mainly to the neglect of some individual members of staff. Failings in the prison's technical surveillance system were also revealed, although the report indicated that they would

not have prevented the escape from being noticed in this instance. The report revealed also that the written guidelines specific to the work location in question were not in appropriate shape. An internal examination of administration led to the governor of the prison issuing a caution to the warder who had been supervising outdoor exercise and written reprimands to a warder who had been on duty in the central control room during the escape and a warder who had been on duty in the wing in question.

In the Deputy-Ombudsman's appraisal, there was reason to suspect that the incident had involved a violation of official duty or negligent violation of official duty in the sense of Section 9 or 10 of Chapter 40 of the Criminal Code, and the act, assessed as a whole and taking into consideration its detrimental and harmful effect and the other circumstances connected with it, was not minor in character.

In the opinion of the Deputy-Ombudsman, ascertaining the facts of the incident and legally assessing the question of duty and responsibility should not be left to depend entirely on the internal measures that the prison service took. In situations like this, there is *a priori* a need to conduct a criminal investigation. The grounds on which the Criminal Investigation Act allows for a decision not to conduct an investigation did not appear to exist in this case. On the contrary, the view could be taken that the public interest demanded an investigation, because there was reason to believe that instances of neglect relating to key functions of the prison and also endangering its internal security had occurred. If a prisoner can be missing for one and a half days without the warders being aware of it, not even the institution's internal security (for example with instances of violence or illness in mind) is of the required level.

Case nos. 861/2/08 and 1135/4/08

## 4.3.3 OTHER DECISIONS

### Inadequate level of care personnel in the Prison Hospital

The Deputy-Ombudsman considered it very worrying that the safety of patients was being put in jeopardy due to the low level of care personnel in the Prison Hospital. This applied especially to night shifts, during which one nurse can be responsible for 50 patients. There are markedly fewer nurses in the Prison Hospital than, for example, in the bed wards of health centres, although the patients in the hospital are more likely to suffer from multiple ailments than their counterparts in health centres.

The Deputy-Ombudsman emphasised that the fact that patients in the Prison Hospital often suffer from several ailments should be taken into consideration in the staffing level there. In his view, the constitutionally guaranteed right to personal safety imposes an obligation to make conditions in the hospital such that patient safety is not endangered.

It likewise emerged in the case that cleaning work in the Prison Hospital was entrusted to untrained substitute personnel in the evenings and at weekends. In the opinion of the Deputy-Ombudsman, the small number of trained institutional care personnel working in the Prison Hospital and the use of untrained persons to perform cleaning tasks increases the risk of spreading infections and can therefore weaken patient safety, especially at weekends.

The Deputy-Ombudsman asked the Criminal Sanctions Agency and the chief medical officer of the prison service's health care unit to inform him of what measures his expression of opinion has given rise to. He also sent a copy of his decision to the Ministry of Justice for its information.

A further matter that the Deputy-Ombudsman considered problematic is the fact that the National Authority for Medicolegal Affairs lacks the power to intervene.

That is because, since a separate provision does not exist, it cannot guide or oversee the operation of the Prison Hospital. The Deputy-Ombudsman does not find it purposeful that some organisations arranging health care services are excluded from the scope of the National Authority's guidance and oversight. The Deputy-Ombudsman informed the Ministry of Social Affairs and Health of this view.

Case no. 1538/4/05*

*The chief medical officer of the prison service reported that the number of patients in the Prison Hospital had been reduced, slightly improving the ratio of care personnel to patients. The ratio remains rather unfavourable, but night-time staffing has been brought to an acceptable level. It has not been possible to increase the number of institutional care staff. However, the Prison Hospital is continuing to examine ways of improving the situation.*

*The Criminal Sanctions Agency announced that it is not possible to increase the number of personnel owing to the financial situation and the measures caused by the State's productivity programme. The Agency stated that it was concerned about the smallness of the number of personnel during the night shift at the Prison Hospital and the standard of cleaning. It reported that it had urged the health care unit to consider staffing levels in its own units systematically to ensure that health care functioned in such a way that patient safety would not be endangered under any circumstances.*

## Prohibition on prisoners wearing their own clothes

Inmates in Hämeenlinna Prison complained about a decision by the governor to prohibit them from wearing their own clothes in the prison.

The governor cited reasons connected with order, supervision and occupational safety in the prison as his reasons for prohibiting inmates from wearing their own clothes. He stated that it had already earlier been obligatory to wear prison garb at work and that the decision to require the wearing of prison clothes applied equally to all prisoners. He also pointed to a similar practice in other prisons.

The Deputy-Ombudsman pointed out that the constitutionally guaranteed protection of personal liberty includes the right to wear one's own clothes. Loss of freedom does not necessarily include the loss of this right, and therefore denying people the right to wear their own clothes can be considered an infringement of their liberty. In prison situations, this is regulated by the Prison Act.

According to the Prison Act, the clear point of departure is that inmates can wear their own clothes in a closed prison. This is supported also by the Prison Act's regulations on the content of imprisonment and the principles of normalcy and proportionality that are expressed in the Act. The Act does allow the wearing of inmates' own clothes to be limited for reasons relating to the requirements of order, supervision or occupational safety in the prison.

In the view of the Deputy-Ombudsman, legislation that intervenes in the constitutionally guaranteed protection of personal liberty must be interpreted narrowly. The Act does not make possible the kind of categorical prohibition on wearing one's own clothes that negates the right to do so, which is the principal rule in the Act. The prohibition on prison inmates in Hämeenlinna wearing their own clothes was categorical in content and therefore, in the Deputy-Ombudsman's opinion, unlawful.

The Deputy-Ombudsman asked the prison governor to inform him, by 31.5.2008, of what measures his decision had given rise to.

Case nos. 1455 and 1633/4/07

*The prison governor forwarded a copy of a new decision concerning the matter on 30.5.2008. A complaint has been made about also the new decision (2246/4/08). Handling of the matter has not yet been completed.*

## 4.4 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 ha-

*Representatives of the conscripts' committee were among the persons with whom Deputy-Ombudsman Jukka Lindstedt had discussions when he made an inspection visit to the Uusimaa Brigade in December.*

zing mainly make their influence felt within conscripts' own circles, but the Ombudsman has underscored the responsibility for oversight that resides with regular personnel.

58 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 drew attention to shortcomings in the way explosives were stored by the Defence Forces. In another decision he stressed the obligation to hear the view of a conscript when his suitability for service status is altered.

### 4.4.1 INSPECTIONS

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

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

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. Discussions with conscripts have also a preventive significance.

A total of twelve units and staff facilities belonging to the Defence Forces and the Border Guard were inspected during the year under review.

## 4.5 ASYLUM AND IMMIGRATION

The complaints included in the statistics as asylum and immigrationals' 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 asylum and immigration affairs. The borderline between an asylum and immigration matter and other matters can be blurred, for example when the issue involved is discrimination directed against a foreigner.

Decisions in 47 cases involving asylum and immigration 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 asylum and immigration 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.

A decision concerning a congregation providing accommodation to asylum-seekers whose application had been turned down is outlined below under "Other matters".

## 4.6 SOCIAL WELFARE

Social welfare includes the social services and benefits arranged and provided by municipalities as well as last-instance financial assistance to which person are entitled when they have no other income or funds, *i.e.* income support. Section 19 of 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, services for the handicapped and child welfare. Complaints relating to child welfare are explained in greater detail in the section dealing with children's rights. There were only a few complaints each in the categories relating to other social welfare, such as children's day care, treatment for intoxicants abuse, home help services and institutional and housing services.

Income support is the last-resort financial assistance to which a person is entitled when he or she has no other income or funds. The Ombudsman can not adopt a position on the application of the Income Support Act in decisions that presuppose individual assessment of need if the authority concerned has acted within its statutory discretionary powers. In these cases, the Ombudsman has urged complainants to avail themselves of the appeal processes that they are entitled to go through.

Income support-related complaints concerned above all the long times taken to process applications. With effect from the beginning of 2008, statutory deadlines for dealing with them were in force. In an urgent case, a decision in an income support matter must be made on the basis of the available information on the same weekday as an application is received or at least the following day. In non-urgent cases, the decision must be made without delay, and not later than on the seventh weekday after receipt of an application. Because investigation of most of the complaints in which decisions were issued in 2008 had begun the previous year, the effects of the deadlines introduced at the beginning of the year were still not reflected in all respects in the complaints resolved.

Complaints relating to aged persons concerned, *inter alia,* obtaining home help services, the quality of care in various facilities where it is provided as well as the charges levied for services. There were also a couple of complaints concerning the attitude to relatives in negotiations concerning treatment. There are no separate 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. The law assigns responsibility for arranging services to municipalities.

Social services that are important from the point of view of specifically the aged population are support for informal care, home help and institutional and housing services. A municipality is required to arrange these within the framework of the funds that it has appropriated for the purpose. Thus the entitlement of aged persons to care services is not safeguarded in legislation as a subjective right for all who need them; instead, a municipality can channel its resources to those who need them most. In the final analysis, however, entitlement to care is safeguarded by the right that the Constitution guarantees everyone to receive the indispensable subsistence and care necessary for a life of dignity.

Aged or elderly persons are not recognised as a distinct category in the legislation on health services, either. Age is not a ground for excluding someone from treatment; instead, health care and medical treatment of a high standard must be given to all who, on medical grounds, need it. It is a different matter that age brings changes in the body and a reduction in the level of its functional capability. These can lessen the benefit obtained from treatment and measures and

increase the risk of their causing adverse effects. If the possible adverse effects and their probability outweigh the benefits to be expected from treatment, this can be a ground for withholding some or other treatment.

As in earlier years, most complaints concerning services for handicapped persons related to transport service, but there were also some relating to the arrangement of serviced accommodation, provision of interpreters, altering dwellings and obtaining a personal assistant. The long times taken to process applications for services for the handicapped likewise featured in complaints. The legislation on services for the disabled does not contain provisions on the length of processing periods.

The Ombudsman has pointed out in her decisions on complaints that the time taken to deal with applications must be reasonable, taking the nature of the matter and other relevant circumstances into consideration. For these reasons, processing times can sometimes lengthen without there having been any foot-dragging in the matter.

Applications for services for the handicapped range from those concerning dwelling alteration work that requires advanced knowledge of construction methods to often-simple requests for transport services. In assessing whether or not there has been delay in dealing with a matter, its importance to the party concerned must also be taken into account. The greater the impact a decision will have on the everyday life of the person concerned, the more expeditiousness should be aimed for in the processing leading up to it. When what is involved is safeguarding essential care or other fundamental rights, the more importance must be attached to ensuring that it is handled without delay.

As in earlier years, there were only a few complaints concerning services for mentally handicapped persons or their treatment. 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.

Coercive measures to which mentally handicapped persons are subjected and restrictions of their right of self-determination are the special focus of oversight during these inspection visits. The legislative provisions covering the use of restraint and other restrictions of the right of self-determination in special care services for the mentally handicapped are not precise. Coercive measures are resorted to in both institutional and open care and the persons subjected to them include also some who have not been committed to special care against their will.

Measures of this kind include being confined to one's own room or a safe room or being physically restrained. The legal security of mentally handicapped persons as well as of care personnel requires the grounds for the use of coercive measures and the procedures followed when they are used to be as clear and consistent as possible.

Other aspects looked at during inspection visits include the conditions in which inmates of institutions live and the treatment accorded them, protection of privacy, the comfort and pleasantness of their physical surroundings, their opportunities to engage in activities and the number and competence of staff. The facilities to which inspection visits were made during the year under review were two rehabilitation centres and one central institution belonging to a special care district.

Each year, the Ombudsman receives complaints concerning the action of social welfare authorities in disclosing secret information on parents and their children. The parents in question are generally locked in disputes with each other and one takes the view that confidential information about him or her has been incorrectly revealed to the other.

Under the Act on Publicity of the Activities of Public Authorities, the guardian of a child is entitled to obtain information on documents concerning the child. The problem is that documents in the possession of the social welfare authorities often contain not only information on the child, but also information on the other parent's private life, information that is required by law to be kept secret. However, separating information on the child from that concerning the parent living with it can be difficult. Separating these strands of information is especially difficult when a case involving child welfare is involved.

Indeed, the Ombudsman has noted in decisions on complaints with a bearing on this that the authorities always have a certain degree of discretion as to whether information concerning a parent can be regarded as relating to a child's care and maintenance in such a way that it can not be separated from information concerning the child. Under the Administrative Judicial Procedure Act, an appeal against a decision can be lodged by the party to whom the decision relates or whose right, obligation or interest it directly affects.

The Ombudsman pointed out in one decision on a complaint that, because the disclosure of information affected the interest and a right of one parent, it would have been appropriate to issue a written decision, complete with right of appeal to an administrative court, to release the documents and inform the parent whose information had been revealed to another party of the decision. She also took the view that this parent should have been consulted before information was revealed to the other parent.

## 4.7 HEALTH CARE

The Ombudsman oversees publicly provided health care. What is involved is primarily implementation of the adequate health services that are guaranteed in the Constitution as a fundamental right.

Complaints relating to health care in 2008 concerned, *inter alia*, compliance with the obligations imposed under the treatment guarantee, the right of patients to good treatment as well as their rights with respect to self-determination and access to information, entries in patient records and disclosure of information on patients as well as the obligation to keep patient information secret and protection of patients' privacy. As in earlier years, appropriate handling of matters on the part of health care authorities and operational units was in the spotlight of attention.

In oversight of legality, treatment must also be assessed against medical criteria. Before making a decision in these situations, the Ombudsman consults medical experts, generally the National Authority for Medicolegal Affairs, which since 1.1.2009 has been part of a new licensing and oversight body called the National Supervisory Authority for Welfare and Health.

Psychiatric care that is given without the patient's consent is an especially important area in oversight of legality. On her inspection visits to the operational units that provide psychiatric care the Ombudsman pays special attention to the conditions in which patients who have been committed are kept and the treatment they receive. She has discussions with the hospital management, patients' representatives, members of staff and with individual patients, studies documents and inspects closed wards and their special areas. During the year under review, she inspected the State-run Old Vaasa Hospital and the Harjavalta Hospital, which belongs to the Satakunta Hospital Care District joint authority.

### 4.7.1 SOME QUESTIONS THAT AROSE IN COMPLAINTS

The treatment guarantee obligations provided for in the Primary Health Care Act and the Act on Specialised Medical Care complement the guarantee of adequate health services that is enshrined in the Constitution, because they determine the maximum waiting times before being admitted for treatment. The main rules is that in basic health care patients must be admitted within three months, in oral health care within six months and in specialised health care likewise within six months. The Ombudsman criticised shortcomings with respect to implementation of the treatment guarantee in several of her decisions. Here are some examples:

The treatment guarantee obligations provided for in the Act on Specialised Medical Care were not complied with in the Tampere University Central Hospital. A patient had to wait over ten months to be admitted for a cervical spine operation. He had been suffering severe pain and as a result had hardly been able to work at all. The target waiting period for admission for this type of operation at the hospital had been estimated at two months. However, the hospital did not

arrange treatment for the patient within this period nor even within the maximum period, six months, specified in the treatment guarantee. Nor did it procure treatment for the patient from another provider.

A Helsinki health centre, in turn, contravened the treatment guarantee obligations enshrined in the Primary Health Care Act when a patient received necessary treatment, a filling for a split tooth and removal of plaque, only a year and three months after her need for treatment had been assessed.

Also investigated were complaints relating to the right of an intoxicated person to receive the treatment that his state of health called for. In her decisions on these complaints the Ombudsman has pointed out that a person seeking health care is a patient and comes under the terms of the Act on the Status and Rights of Patients irrespective of the reason for applying or arriving for treatment. Patients have a right to the health and medical care that their state of health presupposes irrespective of whether or not they are intoxicated. Nor may an operational unit providing psychiatric care refuse to accept a patient for examination on the ground that the patient is intoxicated or on the basis of a particular blood alcohol level. Thus individual treatment decisions must be based on assessment of the patient's need for medical treatment, based on medical reasons, and an intoxicated person can not be placed in a different position relative to other patients.

The Act on the Status and Rights of Patients states that a patient has a right to good care and treatment. A question often raised in complaints was whether the care provided had met the obligations of the Act. As in earlier years, questions brought up related to patients' right to receive an explanation of factors to do with treatment and reaching agreement on treatment together with the patient as required by the Act.

The way in which patient records are drafted and requests by patients to receive information concerning their own records continued to feature very often in complaints.

In one complaint case the Ombudsman considered it a very serious shortcoming that the entries in records concerning examination and treatment of an elderly patient in the Lahti City Hospital were in places so inadequate that the oversight authority, in this instance the Southern Finland Provincial State Office, from which the Ombudsman had requested an expert medical opinion on the complaint, was unable on their basis to evaluate the content and implementation of the patient's treatment in all respects. Owing to the flawed nature of the patient records, therefore, the Provincial State Office was unable to give the Ombudsman the expert submission that she had requested on the appropriateness of the treatment provided. For this reason, the Ombudsman was likewise unable to assess whether the patient had in all respects received the good health care and medical treatment required under the Act or whether the health care personnel who had participated in the patient's care had behaved appropriately in all respects in their professional actions.

Complaints alleging negligence with respect to the obligation to maintain the secrecy of information concerning a patient's state of health were among those resolved during the year. For example, an occupational health doctor in the City of Helsinki Occupational Health Care Centre was found to have acted contrary to the Act on the Status and Rights of Patients when she sent a sickness leave form containing details of a teacher's state of health and capacity for work to a school principal without the teacher's written consent.

As in earlier years, there were also complaints concerning the obligation that health care authorities have to provide advice and guidance.

The Ombudsman found that the Vaasa Hospital District joint authority had an obligation to inform the residents of its area of an agreement between the Etelä-Pohjanmaa, Keski-Pohjanmaa and Vaasa hospital districts and of the implications of this agreement for the availability of specialised hospital care. Under the agreement, patients can choose freely to seek treatment in a hospital in whichever district they prefer. There was no information about the arrangement on the hospital district's or central hospital's web sites nor any bulletin to patients. In the view of the Ombudsman, the population have the right to know how specialised hospital care services have been arranged in the hospital dis-

tricts and which health care operational units they are supposed to apply to when they need these services.

Some complaints investigated related to the appropriateness of procedures followed by health care authorities and operational units. Examples of the matters criticised included the long times taken to deal with complaints concerning health care by the Patient Insurance Centre, the Western Finland Provincial State Office and the National Authority for Medicolegal Affairs.

In one complaint investigated by the Ombudsman, the Blood Transfusion Service of the Finnish Red Cross was criticised for having imposed a permanent ban on blood donations by men who had sex with other men, the argument being that this was contrary to the anti-discrimination provision in the Constitution. The Ombudsman based her decision on several expert opinions that she had received. They contained appropriately reasoned epidemiological information to the effect that sex between men clearly increases the risk of contracting serious blood-transmitted infectious diseases, such as HIV and hepatitis B and C and thereby also increase the risk to safety in a blood transfusion. Because the aim is to ensure that blood is safe for a patient who receives it in a transfusion, the permanent ban on donation can be considered justified.

The Ombudsman pointed out in her decision that the Constitution requires the public authorities to promote the health of the population. Based on the expert submissions, it can be concluded that the acceptable reason that the Constitution presupposes exists for the permanent ban on blood donation. The Ombudsman emphasised that the ban does not relate to sexual orientation, which enjoys constitutional protection against discrimination, but rather from sexual behaviour.

The starting point in the legislation regulating the blood transfusion service is that not everyone can donate blood, but that the donor must be suitable. Suitability as a blood donor presupposes that the donor's illness, medication or the risk of illness does not endanger the donor's health nor the safety of the blood donated.

## 4.8 CHILDREN'S RIGHTS

In accordance with a request expressed by the Eduskunta in 1998, oversight of implementation of children's rights is one of the areas of emphasis in the Ombudsman's work.

The most important new development from the perspective of implementation of children's rights in 2008 was the entry into force of the new Child Welfare Act at the beginning of January. The new legislation prompted the media to devote considerable attention to child welfare. The relative share of child welfare in the cases dealt with during the year under review appears to have increased. Parents and guardians are presumably better informed than earlier about children's rights and their own rights in the area of child welfare, something that has been reflected in the number of complaints. In 2008 the Ombudsman issued decisions in a total of 120 cases concerning children's rights. About 22% of them led to measures. Complaints concerning children's rights are not shown in the statistics as a separate category, because they are grouped according to the authorities that are the subjects of complaints. Child welfare cases accounted for nearly a half of decisions. A second major category related to disputes between parents over child custody and visitation rights. Together these cases accounted for about two-thirds of decisions concerning children's rights.

The Ombudsman for Children, who has been overseeing implementation of children's interests and rights on a general level since 2005, paid special attention during the year under review to respect for children's *own rights of participation*. A report on how children themselves feel their rights are being respected was prepared and complemented with a separate report on implementation of the welfare and rights of Sámi children (Summary of the Report of the Office of the Ombudsman for Children 4:2008, Päivi Tuononen: "It concerns adults! The opinion of children and young people in Finland on the realization of their rights, (www.lapsiasia.fi). By contrast, the emphasis in the Parliamentary Ombudsman's oversight of legality was on guardians' and parents' take on implementation of children's rights rather than the perception of children themselves. Complaint cases are often felt to be diffi-

cult, for which reason they are taken care of by guardians, whose task it is to represent the child and speak on its behalf. Especially matters concerning implementation of the rights of special groups of particularly vulnerable children have been taken under investigation also on the Ombudsman's own initiative. One matter on which a decision was issued during the year, for example, concerned the position of children living with their mothers in prison.

## Implementation of the rights of children living with a parent in prison

In 2007 the Ombudsman inspected prisons in which children lived with their mothers. On the basis of the inspections and the reports obtained arising from them, she issued two decisions. It emerged from these that the way the mother-and-child sections of prisons operated did not correspond in all respects to the legislation on the prison service and child welfare. Several shortcomings were identified. Some parents entering prison did not receive information that the law allows them the opportunity to request permission to have their child with them. Children are placed in a prison under a decision for which a statement from the social welfare authorities concerning the child's interest is required, but these statements are not often based on sufficient expertise in relation to prison conditions. It was not possible to implement decisions in the intended manner, because there were not enough mother-and-child places. The Ombudsman took the view that, *inter alia*, sufficient expertise in relation to implementing the child's interest should be ensured in decision making. Towards the same end, enough mother-and-child places must also be provided.

A further aspect that the inspections revealed was that mothers who have their child with them in prison take care of it nearly round the clock and their opportunities to take part in leisure activities in the prison are limited. In the view of the Ombudsman, the problems that the mother has in managing her life are reflected in her ability and energy as an upbringer and thereby also in implementation of the child's interest. In her decision, the Ombudsman placed special stress on the importance of rehabilitation for substance abuse, because treating mothers of small children who suffer from these problems is also a matter of the welfare of the entire family.

The Criminal Sanctions Agency had commenced its own development work in relation to the position of children and parents together in prison. The Ombudsman considered it sufficient to inform this authority of the shortcomings that she had observed.

Case nos. 2758* and 2765/2/07*

## Problems with legal remedies in relation to adoption procedures

Markedly more complaints relating to the adoption process than in the previous year were dealt with in 2008. Among the cases in which the Ombudsman issued decisions were those involving: the complainants' question about possible discrimination and an absence of legal remedies when the adoption counselling being received by a person with several handicaps and that person's spouse was terminated and there was no right of appeal against the decision. The couple were seeking a domestic adoption. The Ombudsman found that assessing persons wishing to be adoptive parents from the perspective of the prospective adopted child's interest had not in and of itself constituted discrimination. The issue to be resolved in the complaint case was whether an association that provided adoption counselling services with the permission of the Ministry of Social Affairs and Health had used its discretionary powers in an acceptable way.

The Ombudsman concluded that the association's decision had been founded in its essential aspects on facts that could, in the light of the legislation in force, be deemed significant when assessing the interest of the child to be adopted. In her evaluation, the discretionary powers had not been exceeded nor used on grounds that could be considered inappropriate. Thus there was no reason to suspect discrimination in the case.

The association in question had, upon request, issued a written decision under which adoption counselling

had been terminated. The decision could not be appealed against. The Ombudsman assessed the case also taking into consideration that what was involved was an outsourced service, which was required to be of the same standard as an equivalent municipal service. She took the view that also a municipal authority can make a comparable decision to end counselling in relation to an application for a domestic adoption. It is not possible, the Ombudsman pointed out, to appeal against this decision. Nor is it possible according to the law to apply to a court for a ruling merely on suitability to be an adoptive parent. A prerequisite for an application to a court would be that the child intended to be adopted had already been placed with the parents receiving adoption counselling.

The Ombudsman sent a copy of the decision to the Ministry of Justice for information. Amended legislation on adoption is currently being drafted there. The use in domestic adoptions of a licence procedure similar to that used in international adoptions has been recommended in an assessment memorandum from the Ministry. This procedure would have given complainants the opportunity to have a decision reviewed if they considered it discriminatory.

Case no. 1715/4/06

In one other decision the complainant had criticised social workers from the Vantaa social welfare and health department who had provided adoption counselling. She had not, in her own opinion, consented to her child's confirmed adoption. The Vantaa District Court had confirmed the adoption on the basis of an application made to it. A common-law couple had believed that the complainant's child had thereby become theirs. It later emerged, however, that in the legal sense the complainant was no longer the parent of her own biological child.

Under the Adoption Act, an intra-family adoption is possible only when the adopting partners are married to each other. In other cases the adoption irrevocably severs the legal tie between the child and the parent that has given it up for adoption. The Ombudsman took the view that a report had shown that this had been unclear to the social workers who had provided the adoption counselling.

Under the Adoption Act, receiving the consent of the parents of a child that is to be adopted is a part of adoption counselling. Before they give their consent, the purpose of adoption, the prerequisites for it as well as its legal implications must be explained to the parents. The Convention on the Rights of the Child requires the signatory states to guarantee that, when necessary, the interested parties, having received appropriate adoption counselling, have given their informed consent for an adoption.

The Ombudsman issued a reprimand for having followed an unlawful procedure to the social worker who had given the adoption counselling. She also recommended that the City of Vantaa consider how it could make recompense to the complainant for the harm and inconvenience caused by the unlawful procedure that had been followed. In her view, the events revealed that the tasks involved in adoption counselling had not been divided nor the personnel guided in the best possible way.

Case no. 2555/4/06

## 4.9 SOCIAL INSURANCE

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

As in earlier years, the complaints received during the year under review concerned sickness insurance compensation payments, housing subsidies, parents' benefits, compensation for the cost of medicines, disability pensions, accident compensation, rehabilitation and injury as a result of criminal acts. Some complaints concerning study grants as well as compensation under the Military Injuries Act and matters relating to conscripts' allowances were also received, in addition to a number concerning determination of social security for persons resident abroad and those moving to Finland.

The focus of criticism was often the fact that an application for or an appeal concerning a benefit had been turned down. Among the matters expressed in complaints were dissatisfaction with the fact that a treating doctor had deemed a benefit applicant as incapable of work, but another expert physician in a pension institution or appeal instance had taken the view that the applicant was not entitled to the benefit. The Ombudsman can not generally intervene in the contents of a benefit decision, for which reason she must often point out in her reply that an authority had reached its decision in the matter within the parameters of its discretionary powers and advise the complainants to avail themselves of the appeal processes available to them.

Other things criticised in complaints were the slowness with which matters were handled, failure to observe the service principle as well as neglect of the obligation to advise and provide information. There were also expressions of dissatisfaction that benefit applicants had not been given sight of documents concerning them and that decisions were too scantily reasoned.

It is an aspect of good administration and judicial processes that matters are dealt with within a period that is, taking the nature of the matter and other relevant circumstances into consideration, reasonable and without undue delay. This is very important for the reason that the benefits involved safeguard basic subsistence. Indeed, processing times must be examined from the perspective of the applicant and the overall time taken to process a matter assessed. As things now are, the time it can take to obtain a decision on some benefits can be as long as over 30 months from submission of application to a decision by the Insurance Court.

The Ombudsman has in several years drawn attention in her responses and also in other conjunctions (such as in her presentation at the Mental Health Days in Kuopio on 30.9.2008) to the long times taken by the Insurance Court and the Social Security Appeal Board and pointed out that the state of affairs must be regarded as a major problem of legal security. The average time taken to deal with a matter in 2008 was 13.5 months in the Insurance Court and about 16 months in the case of the Social Security Appeal Board. Arising from this, the Ombudsman invited representatives of

*Dr. Raimo Pekkanen, a former justice of the European Court of Human Rights, welcoming Ombudsman Riitta-Leena Paunio to make a presentation to the Espoo War Veterans in October 2008.*

the Social Security Appeal Board to a consultation in her Office in late 2007. She also monitored implementation of the Social Security Appeal Board's results agreement and on this basis conducted an inspection visit to the Ministry of Social Affairs and Health's insurance department to explore the Appeal Board's situation.

Taking the special nature of social insurance into consideration, it is important that matters are dealt with not only expeditiously, but also carefully, that the reasons for decisions are appropriately outlined and that benefit applicants are guided and advised sufficiently well. Shortcomings were identified in the arrangement of transactions with authorities and their processing of matters as well as in the advice and guidance provided by authorities. Legal security may also be jeopardised as a result of complainants not being able to see documents concerning them.

The Ombudsman has in recent years made inspection visits to the Insurance Court, the appeal boards for statutory social insurance and first-instance employment pension institutions as well as to branch offices, insurance districts and the liaison centre of the Social Insurance Institution. In 2008 she made inspection visits to the insurance department of the Ministry of Social Af-

fairs and Health, the Insurance Supervisory Authority and the Social Insurance Institution's South Finland regional centre and collection unit.

On her visit to the Ministry's insurance department, the Ombudsman especially wanted to explore the situation of the Social Security Appeal Board as well as the status of civil servants, representatives of the labour market organisations and insurance institution doctors in the social security appeal bodies. She was also interested in compliance on the part of insurance institutions with the statutory deadlines for transferring appeals.

The purpose of the inspection visit to the Insurance Supervisory Authority was to examine that body's oversight of procedures and receive a report on the observations that it had made in the course of its inspection visits to insurance institutions.

The focus of the Ombudsman's attention on her visit to the Social Insurance Institution's South Finland regional centre was how the requirements of the Administrative Procedure Act and in general the demands with respect to good administration and official actions were being met. Matters that received special attention were the times taken to handle benefit applications, client service, advice, transfers of information from one benefit matter to another and implementation of equality. In the light of the Ombudsman's observations, processing times were relatively good in the insurance districts and the reasons presented for decisions were in the main appropriate and adequate.

## 4.10 OTHER MATTERS

### Parish did not hide asylum seeker

Deputy-Ombudsman Jukka Lindstedt took the view that the Parish Council and Vicar of the Mikaelinseurakunta (Parish of St. Michael) in Turku did not act in contravention of their official duty when, in 2007, the parish provided a woman from Iran with support and accommodation. The woman's application for asylum had been refused.

The parish based its action on the Finnish Ecumenical Council's publication "The Church as a Refuge", which it regarded as binding on the Evangelical Lutheran Church of Finland. The woman was the first person to seek refuge from the church after the guide booklet had been published.

However, it was pointed out in other statements received that the publication was not binding in nature. Deputy-Ombudsman concurred with this view.

The Deputy-Ombudsman found on the basis of reports that the asylum seeker had not been hidden, but that instead the matter had been dealt with openly and in accordance with the spirit of the Administrative Procedure Act, which requires authorities to assist each other and strive to promote inter-authority cooperation. Thus no improper procedure had been followed in the matter.

Case no. 2096/4/07*

# ANNEX 1

## CONSTITUTIONAL PROVISIONS PERTAINING TO PARLIAMENTARY OMBUDSMAN OF FINLAND

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

### Section 38 – Parliamentary Ombudsman

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

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

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

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

### Section 109 – Duties of the Parliamentary Ombudsman

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

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

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

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

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

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

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

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

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

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

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

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

### Section 113 – Criminal liability of the President of the Republic

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

### Section 114 – Prosecution of Ministers

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

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

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

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

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

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

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

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

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

## PARLIAMENTARY OMBUDSMAN ACT

(197/2002)

### CHAPTER 1
### OVERSIGHT OF LEGALITY

### Section 1 – Subjects of the Parliamentary Ombudsman's oversight

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

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

### Section 2 – Complaint

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

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

### Section 3 – Investigation of a complaint

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

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

### Section 4 – Own initiative

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

### Section 5 – Inspections

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

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

### Section 6 – Executive assistance

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

### Section 7 – Right of the Ombudsman to information

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

### Section 8 – Ordering a police inquiry or a preliminary investigation

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

### Section 9 – Hearing a subject

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

### Section 10 – Reprimand and opinion

(1) If, in a matter within his or her remit, the Ombudsman concludes that a subject has acted unlawfully or neglected a duty, but considers that a criminal

charge or disciplinary proceedings are nonetheless unwarranted in this case, the Ombudsman may issue a reprimand to the subject for future guidance.

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

### Section 11 – Recommendation

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

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

## CHAPTER 2
## REPORT TO THE PARLIAMENT AND DECLARATION OF INTERESTS

### Section 12 – Report

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

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

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

### Section 13 – Declaration of interests (24.8.2007/804)

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

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

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

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

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

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

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

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

### Section 15 – Decision-making by the Ombudsman

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

### Section 16 – Substitution (24.8.2007/804)

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

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

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

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

### Section 17 – Other duties and leave of absence

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

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

### Section 18 – Remuneration

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

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

### Section 19 – Annual vacation

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

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

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

(2) The provisions of this and other Acts concerning a Deputy-Ombudsman shall apply *mutatis mutandis*

also to a substitute for a Deputy-Ombudsman while he or she is performing the tasks of a Deputy-Ombudsman, unless separately otherwise regulated.

## CHAPTER 4
## OFFICE OF THE PARLIAMENTARY OMBUDSMAN AND DETAILED PROVISIONS

### Section 20 – Office of the Parliamentary Ombudsman

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

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

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

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

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

## CHAPTER 5
## ENTRY INTO FORCE AND TRANSITIONAL PROVISION

### Section 22 – Entry into force

This Act enters into force on 1 April 2002.

### Section 23 – Transitional provision

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

# ANNEX 2

## DIVISION OF LABOUR BETWEEN THE OMBUDSMAN AND THE DEPUTY-OMBUDSMEN

*Ombudsman Riitta-Leena Paunio decides on cases that concern:*

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

*Deputy-Ombudsman Petri Jääskeläinen decides on cases that concern:*

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

*Deputy-Ombudsman Jukka Lindstedt decides on cases that concern:*

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

# ANNEX 3

## SUBMISSIONS AND ATTENDANCES AT HEARINGS

### Submissions

*To the Eduskunta*

– on the Eduskunta terminology list (789/5/08)

*To the Ministry of Justice*

– on the report by a working group that studied the composition of district court benches 2007:19 revision of rules concerning composition of district court benches (129/5/08*)

– on working group report 2007:16 Development of legislation concerning national information systems for administration of justice (179/5/08)

– on committee report 2008:1 Need to revise equal status and equality legislation and alternative ways of doing so. Interim report of the Equality Committee (617/5/08*)

– on the report by a committee that studied leave to appeal 2008:3 Leave to seek further deliberation by a court appeal (2221/5/08*)

– on committee report 2008:2 Revision of the system of parliamentary elections. Report of the Electoral Area Committee (2844/5/08*)

– on the report by a working group on compulsory treatment 2007:13 International implementation of treatment orders arising from criminal offences (3489/5/07*)

– on committee report 2007:1 Development of a system of demands for rectification as a means of ensuring legal remedies. Interim report of the committee on rectification demands (3769/5/07*)

*To the Ministry of the Interior*

– on the draft Government bill to amend the Aliens Act; on minimum requirements to be applied in Member States in procedures relating to granting and remocal of refugees status (Asylum Procedures Directive) (3986/5/07)

– on rapporteur's report 15/2008 Development of the activities of the immigration administration and the Directorate of Immigration (1758/5/08)

– on the draft Government bill to amend the Aliens Act with respect to the system of residence permits for workers (2179/5/08*)

– on the draft Government bill to amend the Passport Act and certain Acts relating to it (2960/5/08*)

*To the Ministry of Social Affairs and Health*

– on report 2007:66 Redeployment of resources of agencies and institutions subordinate to the Ministry of Social Affairs and Health. Report by rapporteurs (4011/5/07)

– on memorandum of a working group on service vouchers 2008:32 Expansion of the scope of application of service vouchers. Memorandum of the Service Vouchers Working Group and draft of new social welfare and health care service vouchers bill (2255/5/08*)

– on final report of the Health Care Act Working Group 2008:28 New Health Care Act. Memorandum of the Health Care Act Working Group (2645/5/08*)

*To the Ministry of Defence*

– on committee report 2007:1 Exemption of Jehovah's Witnesses from compulsory military service – Appraisal of present situation and regulation alternatives (173/5/08*)

*To the Ministry of Education*

– on the draft Government bill to enact new legislation on universities (2629/5/08*)

– on the draft Government bill to amend and provisionally alter the Polytechnics Act (3286/5/08*)

*To the Ministry for Foreign Affairs*

– for drafting of the fourth periodic report on implementation in Finland of the UN Convention on the Rights of the Child (59/5/08*)

– for drafting of Finland's fourth periodic report on the CoE European Charter for Regional or Minority Languages (2881/5/08)

– for drafting of Finland's third periodic report on the CoE Framework Convention for the Protection of National Minorities (3478/5/08*)

## Attendances at hearings

*At the Constitutional Law Committee*

Ombudsman *Paunio* 13.2. in connection with the choice of a substitute for a Deputy-Ombudsman

Ombudsman *Paunio,* Deputy-Ombudsman *Jääskeläinen* and Deputy-Ombudsman *Lindstedt* 28.11. concerning the Ombudsman's annual report for 2007

*At the Audit Committee*

Ombudsman *Paunio* 25.9. concerning an ongoing study of the effectiveness of information guidance in social welfare and health care

*At the Defence Committee*

Senior Legal Adviser *Raino Marttunen* 9.4. concerning Government bill HE 3/2008 vp to enact an Emergency Powers Act and certain related items of legislation

# ANNEX 4

## STATISTICAL DATA ON THE OMBUDSMAN'S WORK IN 2008

### Matters under consideration

| | | | |
|---|---|---|---|
| *Oversight-of-legality cases under consideration* | | | *6,234* |
| Cases in initiated in 2008 | | 4,107 | |
| – complaints to the Ombudsman | 3,632 | | |
| – complaints transferred from the Chancellor of Justice | 62 | | |
| – taken up on the Ombudsman's own initiative | 61 | | |
| – submissions and attendances at hearings | 33 | | |
| – other written communications | 319 | | |
| Cases held over from 2007 | | 1,473 | |
| Cases held over from 2006 | | 644 | |
| Cases held over from 2005 | | 9 | |
| Cases held over from 2004 | | 1 | |
| *Cases resolved* | | | *4,114* |
| Complaints | | 3,720 | |
| Taken up on the Ombudsman's own initiative | | 47 | |
| Submissions and attendances at hearings | | 33 | |
| Other written communications | | 314 | |
| *Cases held over to the following year* | | | *2,118* |
| From 2008 | | 1,574 | |
| From 2007 | | 538 | |
| From 2006 | | 6 | |
| *Other matters under consideration* | | | *138* |
| Inspections [1] | | 71 | |
| Administrative matters in the Office | | 67 | |

[1] Number of inspection days 43

## Oversight of public authorities

| | | | |
|---|---|---|---|
| *Complaint cases* | | | *3,720* |
| Social security | | 671 | |
| – social welfare | 367 | | |
| – social insurance | 304 | | |
| Police | | 582 | |
| Prisons | | 442 | |
| Health care | | 355 | |
| Courts | | 233 | |
| – civil and criminal | 198 | | |
| – special | – | | |
| – administrative | 35 | | |
| Municipal affairs | | 153 | |
| Environment | | 147 | |
| Labour | | 140 | |
| Education | | 105 | |
| Taxation | | 94 | |
| Transport and communications | | 89 | |
| Prosecutors | | 87 | |
| Enforcement | | 78 | |
| Agriculture and forestry | | 76 | |
| Highest organs of state | | 65 | |
| Defence | | 55 | |
| Guardianship | | 49 | |
| Asylum and immigration | | 40 | |
| Customs | | 32 | |
| Church | | 19 | |
| Municipal councils | | 8 | |
| Other subjects of oversight | | 172 | |
| Private parties not subject to oversight | | 28 | |
| *Taken up on the Ombudsman's own initiative* | | | *47* |
| Prisons | | 12 | |
| Police | | 5 | |
| Education | | 5 | |
| Health care | | 4 | |
| Social security | | 4 | |
| – social welfare | 2 | | |
| – social insurance | 2 | | |
| Defence | | 3 | |
| Courts | | 2 | |
| – civil and criminal | 2 | | |
| Guardianship | | 2 | |
| Prosecutors | | 2 | |
| Municipal affairs | | 2 | |
| Highest organs of state | | 2 | |
| Asylum and immigration | | 1 | |
| Other subjects of oversight | | 3 | |
| *Total number of decisions* | | | *3,767* |

# Measures taken by the Ombudsman

| | | |
|---|---|---|
| *Complaints* | | *3,720* |
| *Decisions leading to measures on the part of the Ombudsman* | *632* | |
| – reprimands | 30 | |
| – opinions | 536 | |
| – recommendations | 15 | |
| – matters redressed in the course of investigation | 51 | |
| *No action taken, because* | *2,115* | |
| – no incorrect procedure found to have been followed | 548 | |
| – no grounds to suspect incorrect procedure | 1,567 | |
| *Complaint not investigated, because* | *973* | |
| – matter not within Ombudsman's remit | 135 | |
| – still pending before a competent authority or possibility of appeal still open | 483 | |
| – unspecified | 128 | |
| – transferred to Chancellor of Justice | 29 | |
| – transferred to Prosecutor-General | 15 | |
| – transferred to other authority | 11 | |
| – older than five years | 56 | |
| – inadmissible on other grounds | 116 | |
| *Taken up on the Ombudsman's own initiative* | | *47* |
| – prosecution | – | |
| – reprimand | 2 | |
| – opinion | 23 | |
| – recommendation | 8 | |
| – matters redressed in the course of investigation | 2 | |
| – no illegal or incorrect procedure established | 4 | |
| – no grounds to suspect incorrect procedure | 5 | |
| – lapsed on other ground | 3 | |

# Incoming cases by authority

## *Ten biggest categories of cases*

| | | |
|---|---|---|
| Social security | | 695 |
| – social welfare | 391 | |
| – social insurance | 304 | |
| Police | | 633 |
| Prisons | | 374 |
| Health care | | 370 |
| Courts | | 253 |
| – civil and criminal | 221 | |
| – special | – | |
| – administrative | 32 | |
| Labour | | 148 |
| Municipal affairs | | 146 |
| Environment | | 141 |
| Taxation | | 85 |

# ANNEX 5

## INSPECTIONS

*Courts*
- Eastern Finland Court of Appeal
- Kuopio Administrative Court
- Kuopio District Court
- Kuopio office of the Administrative Service Centre for the Judicial System

*Public prosecution service*
- Åland Region Prosecutor's Office

*Police administration*
- Espoo Court District police service prison
- Helsinki-Vantaa Airport unit of the National Traffic Police
- Police Department of the Ministry of the Interior
- Åland Police Authority
- Åland unit of the National Bureau of Investigation

*Prison service*
- Criminal Sanctions Agency
- Eastern Finland Regional Prison
- Eastern Finland Regional Prison's placement unit
- Kuopio Prison
- Kylmäkoski Prison
- Mikkeli Prison
- Pelso Prison
- Riihimäki Prison

*Distraint functions*
- City of Kuopio financial and debt counselling services
- North Savo Distraint Office
- Päijät-Häme Distraint Office

*Defence Forces*
- Archipelago Sea Naval Defence Area
- Gulf of Finland Coastguard's
  - Helsinki border inspection department
  - Suomenlinna Coastguard Station
- Gulf of Finland Naval Defence Area
- Häme Regiment
- Karelia Wing
- Military Medical Centre
- Naval Academy
- Naval Headquarters
- North Karelia Border Guard
- North Karelia Brigade
- Uusimaa Brigade

*Social welfare*
- City of Helsinki Sofianlehto departments (unit for care of the mentally handicapped)
- City of Rauma
  - Family Support Centre
  - Kannastupa (unit for care of the mentally handicapped)
  - Kinno Hostel (unit for care of the mentally handicapped)
  - Social Welfare Department
  - Uudenlahti Home for the Aged
- Helsinki Deaconess Institute's
  - Pitäjänmäki child and family work units
  - Salli support centre for homeless women
  - Women's housing unit
- Kolpene service centre
- Matula Oy (private child welfare institution)
- Satakunta Special Care District's Antinkartano centre and serviced homes (unit for care of the mentally handicapped)
- Vailla vakinaista asuntoa ry's Sällikoti Hostel
- Vuorela Reform School

*Health care*

City of Rauma
- intoxicants clinic
- health centre bed department
- health services

Harjavalta Hospital
Old Vaasa Hospital

*Protection of interests*

Lahti Administrative Court's guardianship unit

*Social insurance*

Insurance Supervisory Authority
Ministry of Social Affairs and Health's insurance department
Social Insurance Institution's Lahti collection unit
Social Insurance Institution's Southern Finland regional centre

*Education*

City of Porvoo education department
State Provincial Office of Western Finland, education department
Turku Polytechnic

*Other places inspected*

Agency for Rural Affairs
Crisis Management Centre
Emergency Services College
Helsinki Emergency Response Centre
Helsinki-Vantaa Airport Police-Customs-Border Guard crime intelligence centre
Helsinki-Vantaa Airport security checks arrangements
Housing finance and development centre ARA
Åland
- State Provincial Office
- Regional Government
- Office of the Ombudsman for Discrimination

ISSN 0784-5677
Printing: Yliopistopaino, Helsinki 2009
Graphic design: Matti Sipiläinen / Meizo
Format: Virpi Salminen
Translation: Greg Coogan

PARLIAMENTARY OMBUDSMAN

FI - 00102 Eduskunta
telephone +358 9 4321
telefax +358 9 432 2268
ombudsman@parliament.fi
http://www.ombudsman.fi/english