



PARLIAMENTARY OMBUDSMAN  
OF FINLAND

SUMMARY  
OF THE ANNUAL REPORT  
2017



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## To the reader

The Constitution (Section 109.2) requires the Parliamentary Ombudsman to submit an annual report to the Eduskunta, the parliament of Finland. This must include observations on the state of the administration of justice and any shortcomings in legislation. Under the Parliamentary Ombudsman Act (Section 12.1), the annual report must include also a review of the situation regarding the performance of public administration and the discharge of public tasks as well as especially of implementation of fundamental and human rights.

The undersigned Mr *Petri Jääskeläinen*, Doctor of Laws and LL.M. with Court Training, served as Parliamentary Ombudsman throughout the year under review 2017. My term of office was from 1 January 2014 to 31 December 2017 (subsequently from 1 January 2018 to 31 December 2021). Those who have served as Deputy-Ombudsmen are Doctor of Laws Mr *Jussi Pajujoja* (from 1 October 2013 to 30 September 2017), Licentiate in Laws Ms *Maija Sakslin* (from 1 April 2014 to 31 March 2018, subsequently from 1 April 2018 to 31 March 2022) and Doctor of Laws and LL.M. with Court Training Mr *Pasi Pölönen* (from 1 October 2017 to 30 September 2021). Pölönen performed the tasks of the Substitute for a Deputy-Ombudsman for a total of 52 days during the year under review until 30 September 2017.

Licentiate in Laws and LL.M. with Court Training, Principal Legal Adviser Mr *Mikko Sarja* was selected to serve as the Substitute for a Deputy-Ombudsman for the period 1 October 2017–30 September 2021. He performed the tasks of a Deputy-Ombudsman for a total of 9 days during the year under review.

The annual report consists of general comments by the office-holders, a review of activities and a section devoted to the implementation of fundamental and human rights. It additionally contains statistical data and an outline of the main relevant provisions of the Constitution and the Parliamentary Ombudsman Act. The annual report is published in both of Finland's official languages, Finnish and Swedish.

The original annual report is about 360 pages long. This brief summary in English has been prepared for the benefit of foreign readers. The longest section of the original report, a review of oversight of legality and decisions by the Ombudsman by sector of administration, has been omitted from it. However, the chapter dealing with the oversight of covert intelligence gathering as well as the chapter of European Union law issues are included in this summary.

I hope the summary will provide the reader with an overview of the Parliamentary Ombudsman's work in 2017.

Helsinki 29 March 2018

*Petri Jääskeläinen*  
Parliamentary Ombudsman of Finland



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**PHOTOS**

The pictures in the page spreads feature items from Aimo Katajamäki's sculptures series Wood People (2006), which is in the entrance foyer of the Little Parliament annex building. Photos Anssi Kähärä / Werklig Oy

Mikko Mäntyniemi p. 12, 19, 25, 33

Photo archive of the Parliament of Finland p. 47

Photo archive of the Parliamentary Ombudsman of Finland p. 48, 70, 72, 91, 97, 99, 101, 104–105, 108–109

# 1 GENERAL COMMENTS







Parliamentary Ombudsman  
Mr PETRI JÄÄSKELÄINEN

## Problems in realising the principle of openness

According to section 12 of the Constitution of Finland, documents in the possession of the authorities are public, unless their publicity has, for compelling reasons, been specifically restricted by an Act. Everyone has right of access to public documents and recordings.

The content of this regulation, known as the principle of publicity, has been further specified in the Act on the Openness of Government Activities (621/1999, Openness Act) as well as in some other special acts. Although the Openness Act will soon have been in force for 20 years, cases regularly come to light as a result of the Ombudsman's oversight of legality, indicating that some authorities still have gaps in their knowledge of the content of the act and the procedural requirements arising from it. Yet the Openness Act also includes provisions that are difficult, if not impossible, for authorities to comply with, regardless of how well they know the law.

Here, I will highlight some of the problems I have identified in practicing the principle of openness, mainly from the perspective of the Openness Act.



### THE PROCEDURAL REQUIREMENTS UNDER THE OPENNESS ACT ARE POORLY UNDERSTOOD OR NOT APPLIED

The objectives of the right of access and the duties of the authorities provided in the Openness Act are to promote openness and good practices on information management in government, and to provide private individuals and corporations with an opportunity to monitor the exercise of public authority and the use of public resources, to freely form an opinion, to influence the exercise of public authority, and to protect their rights and interests (section 3).

Authorities, as referred to in the Act on the Openness of Government Activities, also include private bodies who are performing a public task. The Administrative Procedure Act and the Language Act are applicable to all private bodies performing a public task, but the Act of the Openness of Government Activities is applicable to private bodies only in the exercise of public powers. This rule leads to ambiguities in the scope of application of the Act of the Openness of Government Activities. Where public administrative tasks are

delegated to a private body under Section 124 of the constitution, separate legal provisions on the application of the Act on the Openness of Government Activities are required if the tasks do not include exercise of public powers. The Act on the Openness of Government Activities does, however, apply to documents issued by virtue of the assignment by a public authority.

Section 14 of the same law provides detailed procedural requirements on how an authority should proceed when someone is requesting access to a document. The process has two stages. At the first stage, the access to a document is granted by an official. If an official refuses to grant access to the document, they must, by law,

- 1) inform the person requesting access of the reason for the refusal;
- 2) inform the person requesting access that he or she may have the matter decided by the authority;
- 3) ask a person who has filed a written request for access whether he or she wishes to have the matter forwarded to that authority; and
- 4) inform the person requesting access of the charges involved in the consideration of the request.

If the person requesting access to documents requires an official decision on the matter, an authority will issue such a decision, which is subject to appeal, in the second stage of the process. The official decision by which access to a document is fully or partially denied may be appealed to the Administrative Court.

The processing of a request for access to a document is not governed by the provisions on the procedure for requesting an administrative review under section 7 a of the Administrative Procedures Act (Supreme Administrative Court Decision 11 September 2017/4357).

Oversight of compliance with the Openness Act conducted by the Ombudsman is usually restricted to the rules of procedure under the act. This is because the Ombudsman is not in a position to determine the openness of an authority's documents or give orders concerning their publicity. The publicity of a document is initially determined by an official, then an administrative body

and ultimately an administrative court. However, compliance with the rules of procedure is essential with a view to ensuring that the openness principle is exercised in practice.

Compliance with the rules of procedure when processing a request for access to a document is crucial in the light of securing everyone's right of access to a public document. We have repeatedly come across weaknesses in this respect. Either a request for access to a document is not responded to at all, or the official who refused access fails to provide guidance on how to obtain a decision that can be appealed as required by law. Such failures are starkly in contrast with the principle of openness and may prevent the customer from exercising their legal rights in the matter for which they have requested access.

If an official has refused access to a document partially or fully, the matter must be forwarded to the authority, if the person requesting access so wishes, in order to obtain a decision which is subject to appeal. This process is essential to securing the right of the person requesting access to have his or her case dealt with by a legally competent court of law, as provided under section 21 of the Constitution. There seem to be frequent problems in issuing decisions which may be appealed, even in very straightforward situations.

It has been the practice, in the Ombudsman's oversight of legality, to expect authorities to issue decisions that can also be appealed in certain special cases. According to a Supreme Administrative Court decision (Supreme Administrative Court Decision 22 March 2005/668), a decision open to appeal should be issued on request, even when the authority in question does not have the document to which access has been requested. Such conduct would ensure that the issue of the existence of the document in question does not rest on the official's notification only.

According to the Openness Act, access to the public contents of a document shall be granted in the manner requested (e.g. orally, by providing the document for review, or as a printout). Since the decision on the manner in which access to a document is granted also has a bearing on the individual's rights or interests, with regard to his oversight of legality the Ombudsman has taken the view

that this, too, should be issued as a decision that can be appealed, if so requested. This will allow the matter to be submitted to a court for evaluation, if necessary.

Another scenario, in which a decision that can be appealed must be issued on request, occurs when the document to which access has been requested is not, according to an official, a document falling within the Openness Act's scope of application. In such a case, the decision will allow the interpretation of the nature of the document to be forwarded to a competent court of law.

Delays are a typical problem in the processing of a request for access to a document. Under the Openness Act, a request for access to a document shall be considered without delay, and access to a document in the public domain shall be granted as soon as possible, and in any event within two weeks from the date upon which the authority received the request for the document. If the number of requested documents is large, if they contain secret parts, or if there is any other comparable reason for the consideration and giving a decision on a matter requiring special measures or an otherwise irregular amount of work, the matter shall be decided and access to the document granted within one month of the receipt of the request for access by the authority.

The provision concerns the time limit for honouring a request for access to a document in general (granting or refusing access to the document partially or fully), although the wording of the provision only refers to granting access to a "public document". In certain cases, applying the time limits prescribed by the Openness Act in the two stages of the procedure may be subject to interpretation.

The Office of the Parliamentary Ombudsman regularly processes complaints concerning failures to comply with the statutory two-week or one-month rule, sometimes with a considerable delay.

### IN SOME CASES, THE SECRECY OBLIGATIONS ARE TOO RESTRICTIVE OR INCONSISTENT

An authority may provide access to a secret official document if the person whose interests are protected by the secrecy provision consents to access, or there is a specific provision on such access or the right of such access in an Act. However, an authority must also ensure that access to information on the activities of the authority is not unduly or unlawfully restricted, or more restricted than necessary for the protection of the interests of the person protected (section 17 of the Openness Act).

The secrecy provisions under the Openness Act are listed in 32 paragraphs in section 24 of the Act. The provisions on document secrecy have been formulated in three ways:

- 1) If the secrecy obligation is independent of the case-by-case consequences of access, this constitutes what is referred to in the act as *strict secrecy*.
- 2) If any access to the document is based on the adverse consequences of access, this is referred to as *secrecy based on putative access*.
- 3) If, however, any access to the document requires that there are manifestly no adverse consequences of access, this is known as *secrecy based on putative secrecy*.

The provisions formulated in accordance with 2) and 3) above often give an official the necessary latitude for discretion when considering granting access to a document. However, any documents falling under strict secrecy shall be kept secret without exception.

The latter provisions typically concern sensitive documents, such as those related to social and health care services, which must understandably be kept secret. There are, however, documents which fall within the scope of the provisions but which can not be considered particularly sensitive. A customer relationship with a health care provider, such as a visit to a dentist, is information that is governed by the rules of strict secrecy. Similarly, an authority may under no circumstances reveal if a person is a member of a sports club or plays football in their free time, because participation in

voluntary associations or leisure-time activities is among the information that must be kept strictly secret under the provision of the Openness Act.

In cases of strict secrecy, an authority may not disclose any information, even if the case is of major interest with regard to openness. For example, documents related to establishing a cause of death must be kept strictly secret under a special act, even though the general public's need for information may be great in suspected criminal cases that have received wide publicity. Similarly, in one case that I investigated, a police inspector and a chief physician of a hospital had disclosed information on the cause of death of a woman who had died in childbirth. As this was the second maternal death in the same hospital within a year, there was understandably great public demand for information on whether these deaths were the result of malpractice. Under law, however, this type of information must be kept strictly secret.

Secrecy obligations may also have further repercussions. They may lead to a situation where no affairs governed by strict secrecy, such as using ordinary health care services, can in practice be discussed by e-mail. According to the established interpretation of the Data Protection Ombudsman, an authority is not permitted to send secret information by unsecured e-mail, even with the protected person's express consent or request.

Under section 14 of the Openness Act, the decision to grant access to an official document shall be made by the authority in possession of the document. The same document may be – and indeed often is – in the possession of several authorities, in which case each authority must independently consider granting access to it. This could lead to inconsistent interpretations of the law, with one authority considering the document secret while another authority grants access to it. In the worst case, the norms governing the publicity of the same document may be contradictory with respect to different authorities. Even a document that a court of law has declared secret may be accessible through an administrative body.

There is also a practical discrepancy concerning the secrecy of documents in that documents

must be kept secret and access to them strictly controlled, but there is not always any way of preventing the same information from reaching a third party through oral communication. Typical scenarios in which this could happen include customer service situations and ward rounds in hospitals.

### PRACTICING OPENNESS THROUGH ANONYMISATION MAY BE DIFFICULT

As required by the principle of openness and the provisions under section 20 of the Openness Act, the authorities must promote the openness of their activities and produce information on issues such as their practices regarding decisions. The Openness Act has, in many ways, improved the standards of transparency in government. However, as a result of the Openness Act, a significantly higher number of documents than in the earlier legal situation are classified as secret. Back in the days before the Openness Act entered into force, when I was working at the Office of the Chancellor of Justice, we kept a “press box”, where we placed copies of the decisions issued by the Chancellor of Justice for journalists. If the Office of the Parliamentary Ombudsman kept a similar box today, it would be virtually empty. This is because nearly all decisions issued by the Ombudsman include passages that must be kept secret.

According to the Act of the Openness of Government Activities and the Personal Data Act, access to a secret document may be granted provided that the names and other identification data of the parties concerned are removed. This anonymisation is necessary to allow the authority to communicate to the public on decisions involving secret information, or otherwise disclose information about them to third parties. Nowadays, information on decisions issued by the Ombudsman is given on the office website, where the decisions are published in anonymised format.

However, removing names may not always be sufficient to safeguard the privacy of a person, as he or she could still be identified based on the place or time or other details related to the events.

In practice, the possibility of identification cannot be completely ruled out. There are nearly always people close to the person concerned who will be able to identify him or her on the basis of an anonymised decision. It is also possible that the identity of the person concerned may be inferred by compiling information from different sources.

If making identification impossible is strictly required, this would mean that authorities would frequently be unable to publicise their decisions, even in matters of significant interest in terms of openness. However, an authority must also ensure that access to information on the activities of the authority is not unduly or unlawfully restricted, nor more restricted than necessary for protecting the interests of the protected person (section 17 of the Openness Act).

Regarding the matter of establishing a cause of death referred to above, I have worked towards developing guidance for authorities for those situations where access is granted to an anonymised format of a document under strict secrecy. The fundamental question is, how should an authority act to protect personal data, on the one hand, and, on the other, to promote access to information in compliance with the principles laid down in section 17 of the Openness Act. In my view, the pertinent questions to be deliberated on in this context are 1) the risk of identification, and the severity and scope of that risk, 2) the interest protected by the rules of secrecy and the level of sensitivity of the protected information, and 3) the weight of the publicity interest in the matter.

Based on these three aspects, my view was that the public interest with regard to openness was important to maintaining the public's trust in the operations of the maternity hospital. However, there was a certain risk of the person involved being identified, and it was difficult to assess the severity or scope of that risk. The privacy of the deceased person had to be protected, but the content of the information disclosed was not especially sensitive, revealing only that the outcome was not a result of malpractice. Based on my overall assessment, I concluded that that police inspector and the chief physician had not violated their secrecy obligation. I have, however, made a proposal to the Ministry of Social Affairs

and Health to consider an amendment to the Act on the Inquest into the Cause of Death in order to take proper account to both the right to privacy of a deceased person, and to a justifiable need for communication with' the public.

### THE RELATIONSHIP BETWEEN THE OPENNESS ACT AND THE PERSONAL DATA ACT IS NOT ALWAYS CLEAR

Under the Personal Data Act (523/1999), everyone has the right of access to the data on him or her in a personal data file. Anyone who wishes to have access to data on him or herself must make a request to this effect to the controller, with a personally signed document or by appearing personally on the premises of the controller.

Cases have regularly come to light in the Ombudsman's oversight of legality which reveal that authorities are not always aware of or clear about the relationship between the Openness Act and the Personal Data Act. A request for access to personal data may only be processed as a request governed by provisions under the Personal Data Act and not the Openness Act. It may follow from this that access to a document may be refused regardless of the fact that the person requesting the access could be entitled to access under the Openness Act. In such situations, the authority should, when necessary, explain to the customer what the difference is, under the Administrative Procedure Act, between right of access under the Personal Data Act and right of access under the Openness Act, and clarify the type of request to which the customer is referring.

Under certain circumstances, the relationship between the Openness Act and the Personal Data Act is genuinely unclear. According to section 8, sub-section 4 of the Personal Data Act, the provisions on access to official documents apply to access to information in the personal data files of the authorities and other disclosure of personal data therein. In contrast, section 16 sub-section 3 in the Openness Act refers back to the provisions under the Personal Data Act, when the case pertains to the disclosure of information from a personal data file held by an authority.



Court records are personal data files. It is apparently a widely adopted policy in general courts that an open request for access to court documents must be made in writing, and it must provide the name of the person requesting access and the reason for the request, so that the criteria for granting access to personal data governed by the Personal Data Act can be evaluated.

I find this policy highly problematic from the perspective of the principle of openness. In accordance with the principle of openness, an authority may not request identification information on the person requesting access to a document or the purpose of the request, unless this is necessary to exercising discretion or establishing whether granting access to the document is legal. I have therefore proposed to the Ministry of Justice that the relationship between the Openness Act and the Personal Data Act be reviewed and clarified.

It has been proposed that the Personal Data Act be repealed by a new data protection act following the General Data Protection Regulation of the EU's (GDPR's) entry into force on 25 May 2018. At this stage, it is still unclear what problems the relationship between the Openness Act and future data protection regulations might involve.

### **HONOURING A REQUEST FOR ACCESS TO A DOCUMENT MAY BE DIFFICULT OR IMPOSSIBLE IN PRACTICE**

According to section 10 of the Openness Act, when part of a document is secret, access shall be granted to the public part of the document if this is possible without disclosing the secret part. Moreover, because many types of information must be kept secret under the Openness Act and certain special acts, honouring requests for access to documents has proven highly complex for authorities whose documents typically contain secret information.

It is not possible to refuse access to a document under the Openness act on the grounds of the high workload the request may cause or other resourcing issues. The only latitude that the provisions afford the authorities is an extension

of the processing time from two weeks to a maximum of one month.

In connection with a complaint on the matter regarding Supreme Administrative Court, I have considered whether the rules of procedure in the Openness Act should include provisions on exceptional workload caused for an authority by requests for access to a document. In practice a request for access to an extensive body of documents, albeit appropriately named, may prove too laborious a task owing to the necessity of anonymisation or removal of information to be kept secret, rendering it impossible to keep to the statutory time limit of one month or to provide the requested access at all.

For example, only 19% of the documents processed by the Office of the Parliamentary Ombudsman and related to the Ombudsman's oversight of legality are fully public. Approximately four-fifths of the documents must be at least partly kept secret. This means that the anonymisation of a fairly substantial volume of documents alone, which typically involves more than merely removing the names of the parties concerned, creates an enormous workload. It is possible that a single request for access to documents held by the Ombudsman can require the input of several person years.

In my view, the law should not prescribe duties for authorities that they cannot fulfil in all circumstances. Situations where compliance with the law is virtually impossible, such as the one described above, should be taken into account in the Openness Act. This problem could be addressed by, for example, extending the maximum time an authority is permitted to take in processing a request for access. An extended time limit would not alter the main principle, but would provide flexibility in exceptional circumstances.

In extreme cases, an authority should also be permitted to restrict the scope based on which the request for access is granted. This may prove problematic from the perspective of section 12, sub-section 2 of the Constitution. Everyone has right of access to public documents and recordings. As an authority may receive requests for access that cannot, in reality, be honoured, some parameters within which restrictions could be

imposed would merit consideration. The appropriate compliance with the principle of openness could be enhanced by, for example, requiring the authority to make a decision, which is open to appeal, on the restrictions to the request for access to a document, so that the decision can ultimately be forwarded to a competent court of law.

I have proposed that the Ministry of Justice consider whether the Openness Act might be amended so that the authorities can act in accordance with the law in all situations.

## CONCLUSION

Reconciling the principle of openness and various secrecy requirements is not always easy. As the aim is to ensure the openness of government activities while protecting the various needs for secrecy of individuals, corporations and authorities, regulations will inevitably be complex. Observing the Openness Act has, as a result, proved challenging for the authorities, which are not always aware or do not always comply with procedural regulations.

In some cases, the regulations on documents to be kept secret under the Openness Act are too restrictive. This leads to a situation where an authority is unable to communicate to the public on matters that would be of major public interest. Openness may also be difficult to realise by means of anonymisation, as the possibility of identification cannot be completely eliminated based on other information available.

Since many types of information must be kept secret, and since access must be granted to public sections of documents that must otherwise be kept secret, honouring requests for access to documents has proven a major challenge for many authorities. In extreme cases, honouring a request for access to a document may be impossible, particularly within the time limits allowed by law.

The Ministry of Justice is currently evaluating the proposed review of the Openness Act. As I have argued above, such a review would be justified. The introduction of the GDPR will focus the attention of the authorities even more closely on protecting personal privacy. This should not distract our attention from the principle of openness, which is one of the cornerstones of democratic society.

Deputy-Ombudsman  
Ms MAIJA SAKSLIN

## On the oversight of oversight



### THE CHANGING OPERATING ENVIRONMENT

The operations of the Parliamentary Ombudsman are affected by several ongoing transformations taking place in his environment, such as the restructuring of administration and supervision, changes in the provision of public services, and digitalisation. From the perspective of the oversight of legality, the most significant changes include the ageing of the population, the increasingly complex nature of the difficulties faced by children, changes in internal and external security, as well as changes in the climate and the environment.

In legal environments, the Ombudsman's activities are being affected by the current changes in data protection regulations and the diversification and intensification of control mechanisms based on international instruments. The international tasks of the Ombudsman (OPCAT, CRDP, The United Nations Convention on the Rights of the Child) require that supervisory measures are targeted at guaranteeing the rights of vulnerable groups, thus increasing the need for international collaboration. The operations of national preventive mechanisms and the interpretation of rights

guaranteed by international instruments can be shaped through active international dialogue. The regional government reform and the reform of health and social services currently under review will, once implemented, affect the supreme oversight of legality.

It is the duty of the Parliamentary Ombudsman in a state governed by rule of law to maintain confidence in representational democracy, the operations of public authorities and the courts of law. Confidence in the legality of measures taken by public authorities is essential to maintaining public order. The rule of law prescribes that a balance must prevail between the executive, judicial and legislative powers, to prevent the concentration and arbitrary exercise of such powers. Oversight of legality is therefore exercised outside the domain of the government and independent of it and, when necessary, the mechanism allows for intervention in cases where public authority is abused. In a well-functioning state governed by the rule of law, the supreme overseers of legality must ensure that primary supervisory systems are in place and fully operative; in other words, they must 'supervise the supervisors'.



In a welfare state, new types of duties and services are continually assigned to the public authorities. On the other hand, some duties traditionally fulfilled by the public sector are being transferred to private service providers. This has required the creation of a diverse supervisory structure. The supervisory structures required within a welfare state, and the oversight of such structures, has led to the creation of a supervision state in which the focus of the use of public authority is shifting from the actual activities to the supervision of said activities.

### ASSISTANCE TO COMPLAINANTS

The Constitutional Law Committee has expressed the wish that the Parliamentary Ombudsman develop its operations so that the complainants receive assistance without delay, especially by rectifying any possible errors, or if this is not possible, by proposing compensation for violations of rights. The Constitutional Law Committee commends the Ombudsman for refocusing its attention from the supervision of authorities' actions to the promotion of individuals' rights.

However, throughout the existence of the Parliamentary Ombudsman institution in Finland, there has been a debate on whether it has been dealing with issues that are too minor for its remit. For example, does this entail that it will no longer be possible to focus the oversight of legality on broad-ranging issues, or is intervening in small-scale matters a way for the Ombudsman to help preserve the rule of law?

Another dimension to the oversight of legality coexists with assisting individual complainants and securing the exercise of their rights. To increase their impact, the primary supervisors of legality should place a more concerted focus on the oversight of other supervisory authorities. 'Supervising the supervisors' may involve supervising the internal oversight of legality within an organisation, or the supervision of a specialist authority in charge of the oversight of legality.

The Constitutional Law Committee has also stated that other authorities exercising oversight are subject, in every case, to the supreme oversight

of legality. According to the traditional definition adopted in legal literature, the role of the Parliamentary Ombudsman involves complementing other forms of supervision and, in particular, ensuring that the system of legal remedies functions as intended.

With respect to the Parliamentary Ombudsman, primary authorities exercising oversight include the Regional State Administrative Agencies, the Finnish Food Safety Authority (Evira), the National Supervisory Authority for Welfare and Health (Valvira), the special ombudsmen and, possibly in the future, the National Supervisory Authority (Luova). Since the reform of the regional government and the related supervisory structures remain a work in progress, in the following I will mainly concentrate on the role of the special ombudsmen.

### SPECIAL OMBUDSMEN

In relation to the special ombudsmen, the role of the Parliamentary Ombudsman is that of the overseer of supervision. In practice, oversight measures are mainly taken based on complaints. Only a few complaints have been made about the actions of special ombudsmen. In practice the role of the special ombudsmen is less about serving under the supervision of the Ombudsman than providing services as an expert organisation supporting the Ombudsman in his duties related to the oversight of legality.

The duties of the Ombudsman for Children include ensuring that account is taken of the position and the rights of children in legislation and in public decision-making. He collaborates with authorities, NGOs and other actors to promote the best interest and rights of children. The Ombudsman for Children evaluates and monitors, proposes initiatives, maintains contacts with children and young people and conveys their messages to the policy-makers, and keeps children and young people as well as those working with them, authorities and the public, informed about child-related matters.

The Ombudsman for Children has no jurisdiction to handle individual complaints or per-

form inspections. Therefore, the Parliamentary Ombudsman cannot transfer a matter of legality oversight to the Ombudsman for Children, or rely on the Ombudsman for Children for exercising the oversight of legality. Hence, the Parliamentary Ombudsman is the only overseer of legality who has general powers in matters regarding children's rights.

The Ombudsman for Children has occasionally filed a complaint with the Ombudsman in a matter where he has considered it necessary to deploy the powers of an overseer of legality. However, having to resort to the complaint procedure does not, in my opinion, accurately reflect the joint role that the Ombudsman for Children and the Parliamentary Ombudsman hold in the national monitoring of the implementation of the UN Convention on the Rights of the Child. Therefore, I would, prefer a process in which the Ombudsman for Children brought any shortcomings observed to the attention of the Parliamentary Ombudsman, who could then launch an investigation, on his own initiative, into the matter to the extent he sees appropriate.

The task of the Non-Discrimination Ombudsman is to advance equality in Finland and prevent discrimination. In addition, the Non-Discrimination Ombudsman supervises the removal of foreign nationals from the country and is the National Rapporteur on Trafficking in Human Beings. She conducts studies and makes initiatives, provides consultations and statements, and promotes the dissemination of information, education and training. The powers exercised by the Non-Discrimination Ombudsman are substantial within the boundaries of her subject-matter jurisdiction. The Non-Discrimination Ombudsman has the right to access documents regardless of confidentiality rules. She also has the right to request statements from providers of public administrative services or suppliers of goods and services on matters relevant to the exercise of her duties. The Non-Discrimination Ombudsman can also perform inspections and assist individuals whose rights have been violated.

The respective jurisdictions of the Parliamentary Ombudsman and the Non-Discrimination Ombudsman partially overlap. However, the scope

of the Non-Discrimination Ombudsman's jurisdiction regarding the subjects of control is wider, as her jurisdiction covers also private entities. The range of supervisory instruments available to the Non-Discrimination Ombudsman is also wider, as the Parliamentary Ombudsman does not assist individuals whose rights have been violated. These factors may explain why the number of complaints concerning violations of the principle of equality or non-discrimination received by the Parliamentary Ombudsman is relatively low compared to that received by the Non-Discrimination Ombudsman. When complaints to the Parliamentary Ombudsman involve the principles of equality and non-discrimination, they are usually interlinked with other issues under investigation.

The Non-Discrimination Ombudsman is therefore the primary authority monitoring and safeguarding the implementation of equality and non-discrimination. The fact that these matters are mainly dealt with by the primary overseeing authority is, in my view, only a positive development. Furthermore, this may be the best alternative also from the perspective of an individual's rights, as the Non-Discrimination Ombudsman has special expertise and a mandate to assist a victim of a violation. For this reason, the Parliamentary Ombudsman should, as a rule, transfer a complaint to the Non-Discrimination Ombudsman or request a statement from her whenever the matter is related to the application of non-discrimination laws.

The role of the Parliamentary Ombudsman as an overseer of oversight is reflected in the arrangements adopted for the supervision of removal and repatriation of foreign nationals. The effective and independent monitoring of the removal and repatriation of foreign nationals, as prescribed by the Returns Directive, was specifically assigned to the Non-Discrimination Ombudsman. This was done in order to create a structure for overseeing the monitoring of the removal. The Parliamentary Ombudsman rejected the idea that he should be the primary supervisory body required under the EU Returns Directive. In order to create an effective supervisory arrangement, it is crucial to allow for the structural oversight of the monitoring of the removal and repatriation. What is more, under

the adopted arrangement the Non-Discrimination Ombudsman has the option, on her own initiative, to refer a matter involving the return flights before a supreme overseer of legality, the Parliamentary Ombudsman, for investigation.

The duty of the Ombudsman for Equality is to supervise compliance with the Act on Equality between Women and Men. He issues initiatives, statements, advice and guidelines on the implementation of gender equality. He can also take action to resolve a dispute or assist an individual who has been discriminated against, including in court, if necessary, in order to secure compensation or damages.

The Parliamentary Ombudsman rarely receives complaints regarding gender equality. However, the Ombudsman monitors compliance with the said Act by checking that the body under investigation has a valid equality plan. When there is an indication that the special ombudsman's expertise is required in a matter of oversight of legality, or the jurisdiction of, or procedures adopted by, the special ombudsman are necessary to ensure the complainant's access to their rights, complaints on issues related to gender equality should be referred to the Ombudsman for Equality. Alternatively, a statement can be requested from him. On the other hand, the Ombudsman for Equality has occasionally filed a complaint with the Parliamentary Ombudsman.

At the time of writing, the duties and role of the Data Protection Ombudsman were still being discussed by the Parliament, when enacting the law on the national implementation of the GDPR. As this example shows, in the drafting of European Union law more consideration should be given to the implications of any proposed legislation on the national oversight of legality and, in particular, the statutory position and duties of supreme overseers of legality.

In conjunction with the consideration of the government proposal for legislation on national implementation of the GDPR, the Constitutional Law Committee identified questions regarding the Constitutional status of supreme overseers of legality, the Parliamentary Ombudsman and the Chancellor of Justice, and their autonomy with regard to the authorities under their supervision.

This brought to light the fact that if the special constitutional role of the oversight of legality in a Member State is disregarded in EU legislation, it may prompt significant changes in how the oversight of legality is organised in Finland.

A review of legislation governing covert intelligence gathering and its monitoring is also underway at the time of writing. According to this law proposal, the oversight of the legality of covert intelligence gathering should fall under the remit of a new authority, the Intelligence Ombudsman. The task of the Intelligence Ombudsman would be to oversee the legality of various methods of intelligence gathering as well as the observation of fundamental and human rights. The Intelligence Ombudsman would submit an annual report on its activities to the Parliamentary Ombudsman. The Intelligence Ombudsman would have extensive access to documents and a right to carry out inspections, as well as the authority to suspend the use of intelligence gathering methods and to order the immediate destruction of any intelligence data that has been gathered illegally.

The Intelligence Ombudsman could investigate complaints and he could accept investigation requests. Since the Intelligence Ombudsman would have exceptionally broad powers, its role as a supervisory authority requires oversight. The efficient execution of such supervision requires a thorough review, by the Parliamentary Ombudsman, of the methods and resources allocated to the oversight of legality, as the issues relating to covert gathering of intelligence may be particularly problematic from the perspective of fundamental and human rights.

As I have described above, the various arrangements regarding the relationship between special ombudsmen and the Parliamentary Ombudsman under provisions and established practices of legality oversight can be complex. However, despite this complexity the role of the Parliamentary Ombudsman as the supreme overseer of legality should, in my opinion, be regarded as that of an overseer of supervision in those sectors where a special ombudsman has been appointed. In some sectors, on the other hand, emphasising the Ombudsman's role as the overseer of oversight does not result in less intensive oversight or any de-

crease in resourcing; in fact, it may have the opposite impact. The Parliamentary Ombudsman may resort to the niche expertise of the special ombudsman in investigations, either by transferring complaints or requesting statements.

Under the Parliamentary Ombudsman Act, a matter may be referred to another competent authority for investigation if the nature of the matter merits such a referral. A referral may be justified, for example, when the Parliamentary Ombudsman has no jurisdiction in the matter. The referral may also highlight the fact that other legal remedies should take priority in the case, or compensate for the Parliamentary Ombudsman's lack of specialist expertise in the matter. Referring a matter to another authority may also be justified if the other supervisory body has the authority to impose penalty payments or its mandate includes the provision of assistance to the person whose rights have been violated in a matter where compensation or damages are being sought. It is, in fact, essential from the perspective of referral that, alongside the restructuring of government and oversight, the roles of special authorities with a mandate to oversee legality are maintained and created.

## SPECIAL TASKS

The special tasks of the Parliamentary Ombudsman, based on UN Conventions, to monitor the rights of individuals deprived of their liberty and of persons with disabilities appear to be directing the operations of the Ombudsman towards monitoring the rights of individuals in vulnerable positions and away from overseeing government activities or supervision. Ensuring compliance with the Conventions is shifting the focus towards the monitoring of the rights and the treatment of individuals and, in this respect, the Ombudsman's activities are subject to direction and supervision by an international supervisory body. International guidelines have clearly influenced the emphasis of visits made by the Ombudsman, as well as their frequency and intensity.

Direct supervision performed during such visits and the hearing of individual persons generates knowledge of the effectiveness of oversight of other supervisory bodies. One aim of oversight based on visits is also to supervise the primary supervisory authorities and aim to improve their performance.

For example, the more robust supervision of the implementation of the rights of the child and emphasising the importance of hearing and including children in this process, as prescribed by international monitoring bodies, has led to an increase in the number of children and young people heard during visits and thereby improved the impact of oversight. Oversight activities have also focused on how a child's social care worker, the municipality ordering the placement of the child, and the Regional State Administrative Agency have each monitored the treatment of a child at the place of substitute care. To steer their monitoring activities, the Regional State Administrative Agencies have occasionally participated in the Ombudsman's visits to child welfare units.

Visits made to children's homes, old people's care homes, prisons and other units where people may be deprived of their liberty or where they may be subject to restrictive measures should therefore always seek to have an impact on the two levels described above. Such visits are a way of intervening in violations of an individual's rights and are also sources of invaluable information for the oversight of the primary supervisory authority.

## RESTRUCTURING OVERSIGHT

A state governed by the rule of law must ensure that its actions are legal and compliant with the principles of equality and fundamental and human rights. If no competent, special authorities existed with the power to investigate complaints, the Parliamentary Ombudsman would serve as the primary authority overseeing legality and more complaints would be filed with the Parliamentary Ombudsman. There would probably be stronger demands that oversight activities be focused on far-reaching and significant structural

issues. Furthermore, many new issues may be referred to the Parliamentary Ombudsman for legality oversight.

Wherever the regional government reform does not assign new duties to oversee legality to the regions or to the potential new National Supervisory Authority, the Parliamentary Ombudsman and the Chancellor of Justice will be the only authorities accepting complaints. It would therefore be justified to question whether the oversight arrangements provided for in the reforms are exhaustive and adequate from the viewpoint of oversight of legality.

Moreover, being able to file a complaint with the supreme overseer of legality should not replace the right to appeal against a decision. The Ombudsman cannot cancel or change a decision made by an authority in the manner available to a court of law. For example, it appears that after the regional reform, no authority will have a mandate to oversee planning and building in municipalities. Under the new system, questions that

could previously be referred to a court of law, such as insufficient background studies or the equal treatment of landowners, would in the future only be investigated by the supreme overseers of legality.

The possible creation of regions and new administrative structures, changes in the position of municipalities and their supervision, and the rising number of private service providers call for additional reform of the structures and practices of oversight. From the perspective of the Parliamentary Ombudsman's mandate, it is to be expected that these changes will increase the number of complaints addressed and require new practices. The implementation of fundamental and human rights requires a continuous review of oversight structures. Besides providing assistance to complainants and overseeing the supervisory authorities, the Parliamentary Ombudsman will increasingly have to focus on ensuring that there are well functioning supervisory authorities to oversee in the first place.

Deputy-Ombudsman  
Mr PASI PÖLÖNEN

## Proposals of the Parliamentary Ombudsman for the development of regulation



### THE CHARACTERISTICS OF THE PERSPECTIVE OF OVERSIGHT OF LEGALITY

The main duties of the Parliamentary Ombudsman are the investigation of complaints and its own initiatives and particularly the inspection of closed institutions. In these roles, the Parliamentary Ombudsman is an actor external to the administrative branch in question, supplementing the administration's own, internal oversight. The fourth basic duty is to issue statements regarding various legislative undertakings. This task involves the oversight of legality mostly in an indirect way, in that information obtained through other legality oversight activities and the positions adopted there are utilised in the issuing of statements.

The topics and quantities of complaints arriving are beyond the Parliamentary Ombudsman's control. Each complaint is important and each complaint is responded to. However, it is essential for the efficiency and correct timing of legal oversight that there is room for consideration regarding the depth and scope of the complaint investigation. For example, the Parliamentary Ombudsman can determine which of the numerous allega-

tions in the complaint will be the particular focus of the investigation and whether there is a need to hear the object of the complaint in the matter. Statements requested during legislative undertakings from the Parliamentary Ombudsman by the ministries and committees of the Parliament are, in a way, comparable to complaints: the initiative comes from "outside" but the Parliamentary Ombudsman determines what issues and how to react.

Action taken on own initiative, i.e., inspections and own initiatives are, however, investigations that are initially started by the Parliamentary Ombudsman. Thus, their quantities, objects and themes can be targeted at will and according to legal oversight grounds. The new tasks of the Parliamentary Ombudsman, based directly on the international commitments of the state of Finland, as a national preventive mechanism against torture and in the field of the rights of the disabled (see sections 3.3 and 3.4 in this annual report), and the role as part of the structure of the national human rights institution (see section 3.2), do provide external triggers for legal oversight and, thus, direct spontaneous activities. However, the Par-



liamentary Ombudsman is an independent actor also with respect to the international bodies that oversee said special tasks.

As an institution external to and independent of the different branches of state power, i.e., the legislative, executive and judicial powers, the Parliamentary Ombudsman can work flexibly in all of its duties, crossing administrative borders. The field of duties is extensive, unlike the Parliamentary Ombudsman as an authority unit. However, the organization of the Office of the Parliamentary Ombudsman is simple, and the procedures internal to the Office are open and aim to promote the transfer of information within the Office. Owing to its diverse duties and extensive right to access information, the Parliamentary Ombudsman in general receives information about the activities of the administration and legislative interpretation problems, perhaps more comprehensively than any other single actor in Finland. This is of great significance to the activities of the Parliamentary Ombudsman and, overall, to how the legality oversight view of the Parliamentary Ombudsman is formed.

I maintain that the view of the Parliamentary Ombudsman of judicial matters is unique precisely because of the multiple dimensions of the operating area of the institution. The perspective is not divided into sectors but, on the contrary, is considerably broad. This can also be seen in the legislative recommendations of the Parliamentary Ombudsman. This is one of the most significant forms of activity of legality oversight.

### STATEMENTS AND RECOMMENDED LEGISLATIVE CHANGES AS THE TASKS OF THE PARLIAMENTARY OMBUDSMAN

The Parliamentary Ombudsman is not competent to supervise the Parliament's legislative work. However, it is the Parliamentary Ombudsman's statutory duty to draw the attention of the Government or another body responsible for legislative drafting to defects in legislation or official regulations and make recommendations concerning the development of these and the elimination of the defects (Parliamentary Ombudsman Act

11.2). The Parliamentary Ombudsman's annual report to the Parliament must, for example, discuss shortcomings identified in legislation and pay particular attention to the realization of fundamental and human rights. In addition, the Parliamentary Ombudsman can issue a separate report to the Parliament on a topic the Ombudsman deems important. The Parliamentary Ombudsman can make proposals to the Parliament in both the annual report and special reports concerning the elimination of defects identified in legislation (Parliamentary Ombudsman Act 12).

The statements to be requested from the Parliamentary Ombudsman during the various stages of legislative work and the views expressed by the Ombudsman within that framework are statistically not considered legislative recommendations but, instead, statements. The statements are related to the systematic advance oversight of legislative processes and to the advance hearing conformant to the instructions regarding issuing government proposals. This process is very important. It is, however, scheduled "from outside" and, thus, poses certain resource-based challenges to how comprehensively all requests for statements can be responded to. Where possible, the aim is to bring forward considerations that are primarily derived from the constitution or fundamental and human rights norms, related to the legislative details and the presented order of enactment. Often the statements also rely on information acquired in the unique inspection work of the Parliamentary Ombudsman.

As a phenomenon closely related to the statements – and perhaps also to legislative recommendations – we should mention the Parliamentary Ombudsman's (but not the Chancellor of Justice's) authority to also otherwise communicate his or her observations to the relevant body within the Parliament if a defect relates to a matter under deliberation in the Parliament (Parliamentary Ombudsman Act 12.3). This provision means that the Parliamentary Ombudsman can, out of his or her own initiative, ask to be heard by a parliamentary committee regarding a matter being deliberated there even if the Parliamentary Ombudsman were not invited.

Actual legislative recommendations are considered to be situations where the Parliamentary Ombudsman is, out of his or her initiative, active to eliminate a defect identified in a legal norm. The nature of this activity is not proactive, as is the case with the statements, but, on the contrary, reactive to a legislative defect that has arisen afterwards. The time span is open, and the time when the need to review legislation is identified varies. It can be said that the legislative recommendations of the Parliamentary Ombudsman supplement the regular advance oversight system of the constitutional compliance (and other appropriateness) of legislation.

### ON THE NUMBER AND CONTENT OF LEGISLATIVE RECOMMENDATIONS

The number of legislative recommendations of the Parliamentary Ombudsman has been on the rise, as has the number of the decisions and decisions that have led to measures of the Parliamentary Ombudsman in general. A little over 10 years ago, an average of six legislative recommendations were issued annually (see Keinänen, Anssi – Määtä, Kalle: *Näkökulmia oikeusasiamiesinstituution vaikuttavuuteen*, 2007, p. 47). The number has clearly risen since then. In 2016, 15 legislative recommendations were issued. Last year, the Parliamentary Ombudsman (statistically) issued 20 legislative recommendations. On the other hand, as certain matters were subject to several complaints, it is more truthful to say that the Parliamentary Ombudsman issued legislative recommendations pertaining to 15 separate matters.

The background to the legislative recommendations last year was either a complaint (16) or own initiative (4). Almost all recommendations were targeted at ministry level. The matter was about flaws or defects identified in an act or decree. Recommendations were made to the Ministry of Social Affairs and Health (7), Ministry of Justice (5), Ministry of the Interior (2), Ministry of Education and Culture (1) and Ministry for Foreign Affairs (1). Four legislative recommendations were made at the agency level. In these cases, the matter was about the orders or instructions of an authority.

The legislative recommendations applied to either “pure” cases of interpretation of law, or defects in legislation or its application. As an overseer of legality, it is clear that the Parliamentary Ombudsman does not address matters of appropriateness in the recommendations. With respect to content, the legislative recommendations represent considerably different types of matters.

Last year, legislative recommendations related to the interpretation of law applied, for example, to the ambiguity of the mutual relationship between the Act on the Openness of Government Activities and the Personal Data Act, the removal of refusal of leave to appeal from a decision pertaining to the municipal supplement of home care allowance, and the payment default entries produced by credit record companies.

Legislative recommendations related to the lack of legal provisions or their inaccuracy applied, for example, to the transportation of patients referred to in the Mental Health Act, obtaining the professional title of psychotherapist, clarification of the legislation pertaining to emergency accommodation, and the revoking of the functions of a prison.

Some of the recommendations were based on shortcomings identified in equal treatment. Such recommendations applied, for example, to medical helicopter activities in Lapland, securing specialized healthcare in the treatment of a rare disease and the use of personal clothes in closed prisons. Legislative recommendations targeting the authority level applied, for example, to the need to amend the age determination process of asylum-seeking children, and the instructions from Valvira regarding the application process for professional title.

### GROUNDINGS AND IMPACT OF LEGISLATIVE RECOMMENDATIONS

A variety of factors lie behind the legislative recommendations of the Parliamentary Ombudsman. It can be a matter of a new type of situation identified through an individual complaint, where it is observed that there is no legal provision regarding the matter or that the legislation is insuf-



ficiently accurate with respect to the constitution or fundamental and human rights reasons. Receiving several complaints regarding the same matter may be a factor for deciding that an inspection is carried out, in which case the direct inspection observations may prove, for example, inconsistent policies or defects in the application of a legislative amendment, resulting in a legislative recommendation.

In addition, information from the media is of great indirect importance. News coverage regarding a malady is likely to produce complaints to the Parliamentary Ombudsman, and the outcome may be an identified need for legislative change. The Parliamentary Ombudsman may, without complaint, start an investigation out of his or her own initiative based on information present in public debate. A trigger for a legislative recommendation can also be matters observed during inspections or presented to the Parliamentary Ombudsman by the inspected object itself. In addition, statements of bodies supervising the realization of international human rights, either legally binding, such as rulings of the European Court of Human Rights, or legally nonbinding recommendations, such as European prison rules, may be used as grounds for legislative recommendations. Sometimes the recommendations are about “technical” legislative defects identified through closer inspection of an individual case.

Like other actions of the Parliamentary Ombudsman, excluding the authority of prosecution, the legislative recommendations of the Parliamentary Ombudsman are not legally binding. It is a case of discursive influence whose effect culminates in the legal impact of the justifications of the recommendation.

The formulation of the Parliamentary Ombudsman’s legislative recommendation is determined by the situation. Sometimes, the Parliamentary Ombudsman will directly state his or her view on the need to pass a law and also identify his or her understanding of the key content of the required change. On the other hand, often the solution is to communicate a specific problem to the Government and the need for legislative changes for assessment at ministries.

As a general rule, the legislative recommendations of the Parliamentary Ombudsman receive a favourable reaction. In certain matters, the development is, however, slow (see also section 3.5 Shortcomings in implementation of fundamental and human rights). For example, the Parliamentary Ombudsman recommended already in 2009 legislation concerning the restriction of the right of self-determination that takes place in geriatric care. Such legislation is still not in place.

### FOLLOW-UP HAS BEEN IMPROVED

When giving a legislative recommendation, the Parliamentary Ombudsman generally requests that the responsible party report on any actions that have been or will be taken concerning the matter. Usually the information is obtained within the requested time. The information concerning reactions to legislative recommendations is published in the annual report of the Parliamentary Ombudsman in the context of the presentation of each case. However, a response is not always obtained before the publication of the annual report.

For the more systematic follow-up of the impact of the legislative recommendations, the annual report of the Parliamentary Ombudsman could be developed in such a way that a subsequent annual report would include a retrospective summary of reactions to previously issued legislative recommendations. Such a section is not yet included in this annual report.

However, this report has now been developed in such a way that it has a new appendix section at the end with a concise listing of all legislative recommendations of the reporting period and any recommendations for rectifying a defect or malady (appendix 3). This new element is an improved implementation of the assignment of section 12 of the Parliamentary Ombudsman Act to make recommendations to the Parliament for the elimination of defects identified in legislation.





## 2 THE OMBUDSMAN INSTITUTION IN 2017





## 2.1

### Review of the institution

The year 2017 was the Finnish Ombudsman institution's 98th year of operation. The Parliamentary Ombudsman began his work in 1920, making Finland the second country in the world to adopt the institution. The Ombudsman institution originated in Sweden, where the office of Parliamentary Ombudsman was established in 1809. After Finland, the next country to adopt the institution was Denmark in 1955, followed by Norway in 1962.

The International Ombudsman Institute (IOI) currently has over 200 members. Some Ombudsmen, however, are regional or local. For example, Germany and Italy do not have a Parliamentary Ombudsman. The post of European Ombudsman was established in 1995.

The Ombudsman is the supreme overseer of legality, elected by the Parliament of Finland (Eduskunta). The Ombudsman exercises oversight to ensure that those who perform public tasks comply with the law, fulfil their responsibilities and implement fundamental and human rights in their activities. The scope of the Ombudsman's oversight includes courts, authorities and public servants as well as other persons and bodies that perform public tasks. By contrast, private instances and individuals who are not entrusted with public tasks are not subject to the Ombudsman's oversight of legality. Nor may the Ombudsman investigate Parliament's legislative work, the activities of Members of Parliament or the official duties of the Chancellor of Justice.

The two supreme overseers of legality, the Ombudsman and the Chancellor of Justice, have virtually identical powers. The only exception is the oversight of advocates, which falls exclusively within the scope of the Chancellor of Justice. Only the Ombudsman or the Chancellor of Justice can decide to bring legal proceedings against a judge for unlawful action in an official capacity.

In the division of labour between the Ombudsman and the Chancellor of Justice, however, responsibility for matters concerning prisons

and other closed institutions where people are detained without their consent, as well as for the deprivation of liberty as regulated by the Coercive Measures Act, has been entrusted to the Ombudsman. The Ombudsman is also responsible for monitoring matters concerning with the Defence Forces, the Finnish Border Guard, crisis management personnel, the National Defence Training Association of Finland as well as courts martial. For the exclusive duties of the Parliamentary Ombudsman enacted on the basis of the UN Convention, see paragraph 2.5 and sections 3.3. and 3.4.

The Ombudsman is independent and acts outside the traditional tripartite division of the powers of state – legislative, executive, and judicial. The Ombudsman has the right to obtain all information required to oversee legality from the authorities and persons in public office. The objective, among other things, is to ensure that various administrative sectors' own systems of legal remedies and internal oversight mechanisms operate appropriately.

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

The election, powers and tasks of Ombudsman are regulated by the Constitution of Finland and the Finnish Parliamentary Ombudsman Act. These provisions can be found in Appendix 1.

In addition to the Parliamentary Ombudsman, Parliament elects two Deputy-Ombudsmen; their term of office is four years. The Ombudsman decides on the division of labour between the three. The Deputy-Ombudsmen decide on the matters they are given responsibility for independently and with the same powers as the Ombudsman.

Parliamentary Ombudsman Jämskeläinen made decisions on cases involving questions of principle, the Government and other of the highest organs of state. In addition, his oversight in-



*The management team of the Office of the Parliamentary Ombudsman, from the left: Substitute Deputy-Ombudsman, Principal Legal Adviser Mr Mikko Sarja; Deputy-Ombudsman Ms Maija Sakslin; Parliamentary Ombudsman Mr Petri Jääskeläinen; Secretary General Ms Päivi Romanov; and Deputy-Ombudsman Mr Pasi Pölönen.*

cluded matters relating to courts and administration of justice, health care, persons with disabilities, foreigners, language matters and covert intelligence gathering as well as the coordination of the tasks of the National Preventive Mechanism against Torture and reports relating to its work. Deputy-Ombudsman Maija Sakslin dealt with matters such as social welfare, children's rights, regional and local government and debt enforcement. She was also responsible for military affairs, defence, the Border Guard, the Church as well as transport and communications.

Jussi Pajujoja, Doctor of Law, served as a Deputy-Ombudsman for the period of 1 October 2009–30 September 2017. Following Mr Pajujoja's second term in office, the position of Deputy-Ombudsman was assumed by Pasi Pölönen as of 1 October 2017. Deputy-Ombudsman Jussi Pajujoja, followed by Pasi Pölönen, were responsible for matters relating to the police, the prosecution service, education, science and culture, as well as labour affairs

and unemployment security. They also made decisions concerning criminal sanctions, i.e. matters relating to the treatment of prisoners, enforcement of sentences and prisoner aftercare services. A detailed division of labour is provided in Appendix 2.

If a Deputy-Ombudsman is prevented from performing his or her task, the Ombudsman can invite the Substitute for a Deputy-Ombudsman to stand in. In 2017, Principal Legal Adviser Pasi Pölönen substituted for the Deputy Ombudsman on a total of 52 work days until 30 September 2017. The Ombudsman appointed Principal Legal Adviser Mikko Sarja as the Substitute Deputy-Ombudsman as of 1 October 2017, having considered the opinion of the Constitutional Law Committee. Mr Sarja substituted for the Deputy-Ombudsman for a total of nine work days in 2017.

## 2.2

# The values and objectives of the Office of the Parliamentary Ombudsman

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

Today, the Ombudsman's tasks also include overseeing and actively promoting the implementation of fundamental and human rights. This has altered views of the authorities' obligations in the implementation of people's rights. Fundamental and human rights are relevant to virtually all cases referred to the Ombudsman. The evaluation of the implementation of fundamental rights means weighing contradictory principles against each other and paying attention to aspects that promote the implementation of fundamental rights. In his evaluations, the Ombudsman stresses the importance of arriving at a legal interpretation that is amenable to fundamental rights.

The establishment of the Finnish National Human Rights Institution supports and highlights the aims of the Ombudsman in the oversight and promotion of fundamental and human rights. Section 3 of this report contains a more detailed discussion on fundamental and human rights.

The statutory duties of the Ombudsman form the foundation on which the values and objectives for the oversight of legality, as well as the other responsibilities of the Office, are based. The core values of the Office of the Parliamentary Ombudsman were created from the perspectives of clients, authorities, Parliament, the personnel and management.

The following is a summary of the values and objectives of the Ombudsman's Office.



## The values and objectives of the Office of the Parliamentary Ombudsman

### VALUES

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

### OBJECTIVES

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

### TASKS

The Ombudsman's core task is to oversee and promote legality and implementation of fundamental and human rights. In this capacity, the Ombudsman investigates complaints and his own initiatives, conducts inspection visits and issues statements related to legislation. The special tasks of the Ombudsman include monitoring the conditions and treatment of persons deprived of their liberty, the monitoring and promotion of the rights of persons with disabilities and children, and the supervision of covert intelligence gathering.

### EMPHASES

The weight accorded to different tasks is determined a priori on the basis of the numbers of cases on hand at any given time and their nature. How activities are focused on oversight of fundamental and human rights on our own

initiative and the emphases in these activities as well as the main areas of concentration in special tasks and international cooperation are decided on the basis of the views of the Ombudsman and Deputy-Ombudsmen. The factors given special consideration in the allocation of resources are effectiveness, protection under the law and good administration as well as vulnerable groups of people.

### OPERATING PRINCIPLES

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

### OPERATING PRINCIPLES IN ESPECIALLY COMPLAINT CASES

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

### THE IMPORTANCE OF ACHIEVING OBJECTIVES

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



## 2.3

### Modes of activity and areas of emphasis

The Ombudsman's primary task is to investigate complaints. The Ombudsman investigates complaints that fall within the scope of the oversight of legality, and where there is reason to suspect unlawful conduct or neglect of duty, or if the Ombudsman otherwise deems it necessary. The Ombudsman takes measures that he deems warranted based on the complaint from the perspective of compliance with the law, protection under the law, or the implementation of fundamental and human rights. In addition to complaints, the Ombudsman can also choose on his own initiative to investigate issues that have come to his attention.

By law, the Ombudsman is required to conduct inspections of public agencies and institutions. He has a special duty to oversee the treatment of persons detained in prisons and other closed institutions, as well as the treatment of conscripts in garrisons. In his capacity as the National Preventive Mechanism against Torture (NPM), the Ombudsman also makes visits to places and facilities where individuals deprived of their liberty are or may be detained. For a more detailed discussion of the NPM, see section 3.4. One of the priorities within the Ombudsman's remit is to monitor the implementation of the rights of children and persons with disabilities.

Following a legislative amendment that entered into force at the beginning of 2014, the Ombudsman's remit concerning the special monitoring of covert intelligence gathering was extended to cover all methods of covert intelligence. Previously, the Ombudsman's special monitoring task only applied to some methods of covert intelligence gathering used by the authorities, on which the authorities had to report back to the Ombudsman. The amended legislation will expand the scope of supervision accordingly. Covert intelligence gathering is used by the police, Customs, the Border Guard and the Defence Forces.

Covert intelligence gathering involves interfering with several constitutionally guaranteed fundamental rights and liberties, such as the right to privacy, confidentiality of communications and protection of domestic peace. The use of covert intelligence gathering is usually subject to the permission of a court; this ensures that it is used lawfully. However, the Ombudsman also plays a vital role in the appropriate monitoring of the use of such intelligence gathering, which must be kept secret from the subject of investigation at the time. The oversight of covert intelligence gathering is detailed in section 4.

Fundamental and human rights are relevant to the oversight of legality not only when individual cases are being investigated, but also in conjunction with inspections and when deciding on the focus of own-initiative investigations. Emphasising and promoting fundamental rights guides the thrust of the Ombudsman's activities. In connection with this, the Ombudsman engages with various bodies, including the main NGOs. The Ombudsman addresses issues in connection with the inspections, as well as on his own initiative, that are sensitive from the perspective of fundamental rights and that have broader significance than individual cases as such. In 2017, the special theme for the monitoring of fundamental and human rights is the right to effective legal remedies. The content of the theme is outlined in section 3.7, which discusses fundamental and human rights.

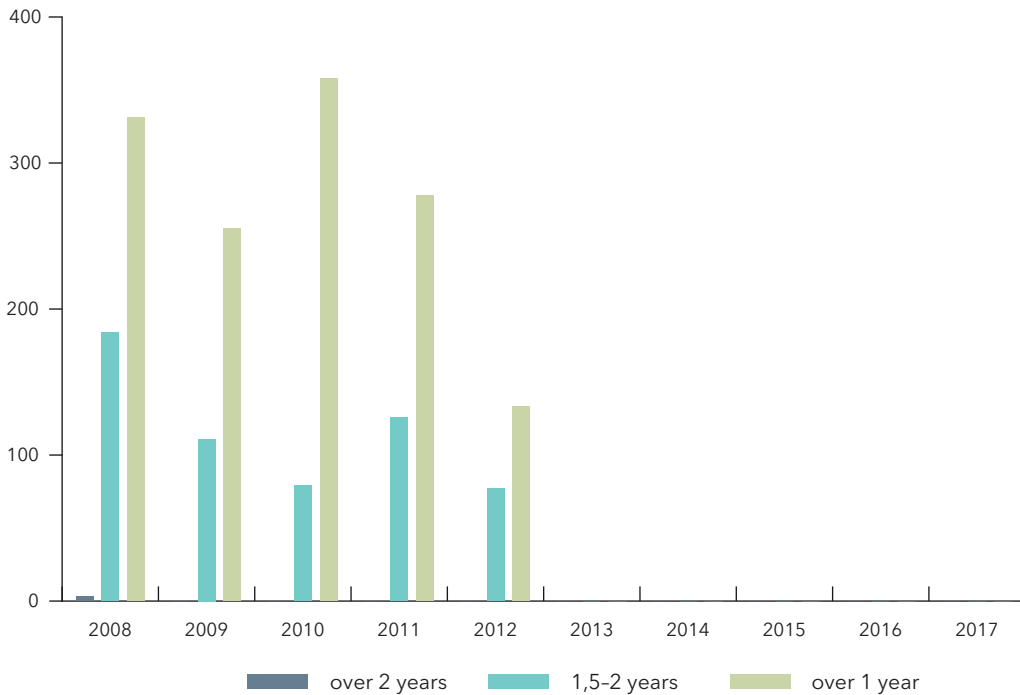
### 2.3.1 COMPLAINTS ARE PROCESSED WITHIN ONE YEAR

With the amendment to the Parliamentary Ombudsman Act, which entered into force in 2011, the oversight of legality was increased by giving the Ombudsman greater discretionary powers and a wider range of operational alternatives, and by a greater focus on the perspective of the citizen. The period within which complaints can be made was reduced from five to two years. The Parliamentary Ombudsman was granted the possibility of referring a complaint to another competent authority. The amendment of the Act also enables the Parliamentary Ombudsman to invite a Substitute Deputy-Ombudsman to discharge his or her duties as and when required.

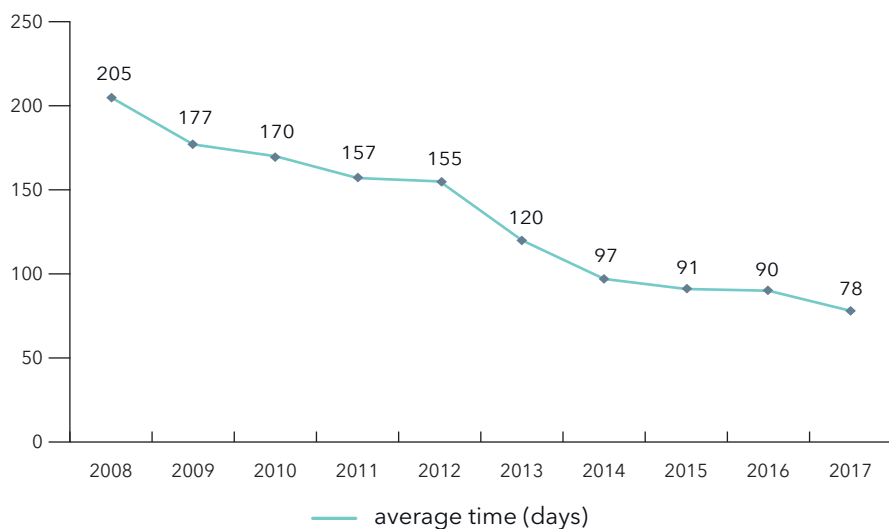
The legal reform made it possible to allocate resources more appropriately to matters in which the Ombudsman could assist the complainant or otherwise take action. The aim is to assist the complainant, where possible, by recommending that an error that has been made be rectified, or that compensation be paid for an infringement of the complainant's rights.

With the more effective processing of complaints, the Ombudsman achieved the target time – of one year for handling complaints – for the first time in 2013. The target has subsequently been met each subsequent year, including 2017, when there were no complaints older than one year pending a decision.

The average time taken to deal with complaints was 78 days at the end of the year, compared to 90 days at the end of 2016.



*Complaints that had been pending over a year in 2008–2017*



*Average time taken to deal with complaints in 2008–2017*

### 2.3.2 COMPLAINTS AND OTHER OVERSIGHT OF LEGALITY MATTERS

The number of complaints received in 2017 was 6,256. This is around 1,300 (27%) more than in 2016 (4,922). Complaints about the Social Insurance Institution KELA regarding social assistance increased by approximately 700 compared to 2016. In 2017, 6,094 complaints were resolved. The figure for 2016 was 4,839.

The number of complaints submitted by letter or fax or delivered in person has decreased in recent years, while the number of complaints sent by e-mail has increased correspondingly. In 2017, the majority of complaints, 74%, were submitted electronically.

Before the introduction of the electronic case management system, complaints received by the Ombudsman were recorded under their own subject category (category 4) in the register of the Office of the Parliamentary Ombudsman. Other communications were recorded under category 6 (“Other communications”); these included letters from citizens containing enquiries, clearly unfounded communications, matters that fell outside the Ombudsman’s remit, and letters with unclear content or letters sent anonymously. These communications were not processed as complaints. They nevertheless counted as matters relevant to the oversight of legality and were forwarded from the Registry Office to the Substitute Deputy-Ombudsman or the Secretary General, who passed them on to the notaries and investigating officers to handle. The senders would receive a response, which was reviewed by the Substitute Deputy-Ombudsman or the Secretary General.

With the introduction of the electronic case management system in 2016, communications that were previously filed under category 6 “Other communications”, are now filed under complaints. The processing of these communications, however, remains the same: they are forwarded to the Substitute Deputy-Ombudsman or Secretary General for further distribution and handling. The replies are reviewed by the Substitute Deputy-Ombudsman or the Secretary General.

Once a complaint has been filed with the Office, a confirmation of receipt is sent to the complainant within approximately one week. The



Complaints received and resolved in 2008–2017

	received	resolved	2016	2017
Complaints			4,856 4,839	4,856 4,839
Transferred from the Chancellor of Justice			66	64
Taken up on own initiative			60 71	77 81
Requests for submissions and attendances at hearings			80 82	82 77
Total			5,062 4,992	6,415 6,252

Oversight-of-legality matters received and resolved in 2016–2017

complainant also receives an immediate notification of the receipt of the e-mail.

Some complaints are handled through an accelerated procedure. In 2017, 2,884 complaints, which is 47% of the total, were handled through the accelerated procedure. The purpose of the procedure is to identify immediately on receipt the complaints that require no further investigation. The accelerated procedure is suitable especially in cases where there is manifestly no ground to suspect an error, the time limit has been exceeded, the matter falls outside the Ombudsman's remit, the complaint is non-specific, the matter

is pending elsewhere, or the complaint is a repeat complaint with no grounds for a re-appraisal. In the accelerated procedure, the complainants do not receive a notification letter. If a complaint proves unsuitable for the accelerated procedure, the matter is referred back for the normal distribution of complaints, and the complainant will receive the letter of acknowledgement from the Registry Office. A draft response is given within one week to the party deciding on the case. The complainant is sent a reply signed by the legal adviser taking care of the matter.

Anonymous messages are not treated as complaints, but the need to investigate them on an own-initiative basis is assessed.

Communications and messages that were submitted for information only, that are not considered to have been sent for the purpose of initiating action and that are in no way related to any other matter under process, are not recorded. They are, however, always reviewed by the Substitute Deputy-Ombudsman or the Secretary General. In 2017, nearly 4,370 written communications were received that were for information only.

In addition, submissions and attendances at hearings in various committees of Parliament are counted belonging to oversight of legality.

In 2017, 76% of all the complaints that arrived were related to the ten largest categories. The numerical data for the ten largest categories are provided in Appendix 3.

In 2017, a total of 81 matters investigated on the Ombudsman's own initiative were resolved. Of these, 50 (62%) led to action on the part of the Ombudsman.

### 2.3.3 MEASURES

The most relevant decisions taken in the Ombudsman's work are those that lead to him taking measures. These measures include prosecution for breach of official duty, a reprimand, the expression of an opinion and a recommendation. A matter may also result in some other measure

being taken by the Ombudsman, such as ordering a pre-trial investigation or bringing the Ombudsman's earlier expression of opinion to the attention of an authority. A matter may also be rectified while the investigation is still ongoing.

A prosecution for breach of official duty is the most severe sanction available to the Ombudsman. However, if the Ombudsman takes the view that a reprimand will suffice, he may choose not to bring a prosecution, even though the subject of oversight has acted unlawfully or neglected to fulfil their duty. He may also express an opinion as to what would have been a lawful course of action or draw the attention of the oversight subject to the principles of good administrative practice, or to aspects that are conducive to the implementation of fundamental and human rights. The opinion expressed may be formulated as a rebuke or intended for guidance.

In addition, the Ombudsman may recommend the rectification of an error or draw the attention of the Government or other body responsible for

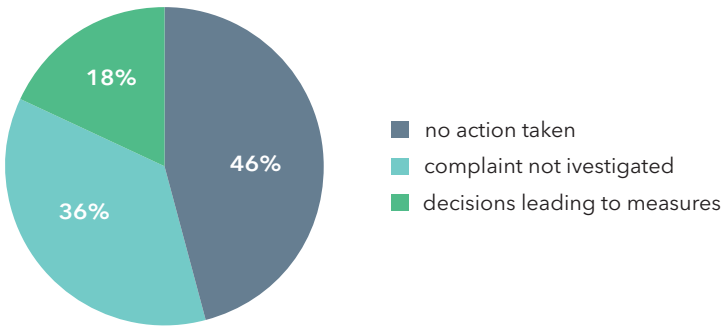


*In 2000–2017, the number of measures taken as a result of complaints increased from 320 to nearly 1,100. The number of resolved complaints within the same period increased from approximately 2,500 to over 6,000. Despite the increase in the number of complaints, the relative proportion of complaints leading to measures (measure %) has remained unchanged.*

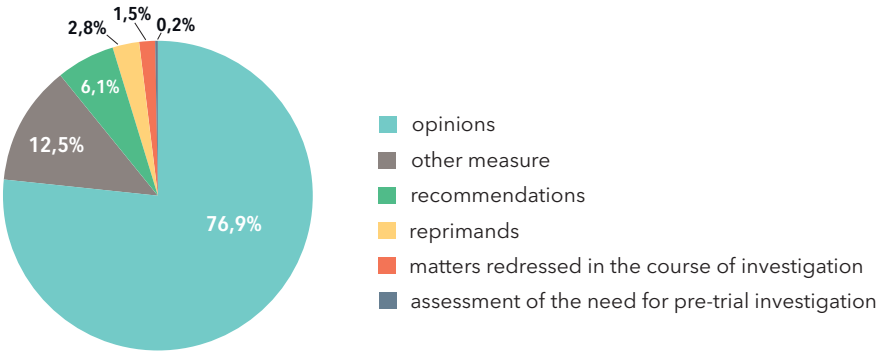
MEASURES TAKEN BY PUBLIC AUTHORITIES	Measures								Total number of decisions	Percentages*
	Prosecution	Assessment of the need for pre-trial investigation	Reprimand	Opinion	Recommendation	Rectification	Other measure	Total		
Social welfare			40	361	7	5	76	489	1394	35,1
Criminal sanctions field			7	92	4		5	108	385	28,0
Health			5	68	12	4	13	102	628	16,2
Police				79		1		80	727	11,0
Social insurance			3	59	1		5	68	474	14,3
Administrative branch of the Ministry of Economic Affairs and Employment				53			1	54	256	21,1
Administrative branch of the Ministry of Education and Culture			1	33	2		4	40	218	18,3
Local government			1	27			1	29	178	16,3
Highest organs of government							23	23	229	10,0
Enforcement (distrain)				15	1	4	2	22	152	14,5
Aliens affairs and citizenship		3	6	5	4		2	20	144	13,9
Taxation			2	11				13	101	12,9
Administrative branch of the Ministry of Justice				10			2	12	80	15,0
Administrative branch of the Ministry of Agriculture and Forestry			1	6		1	3	11	85	12,9
Administration of law				5	4	1		10	241	4,1
Customs				8	1		1	10	41	24,4
Administrative branch of the Ministry of Finance				8			1	9	44	20,4
Administrative branch of the Ministry of the Environment			1	7		1		9	117	7,7
Administrative branch of the Ministry of Transport and Communications				7			1	8	133	6,0
Prosecutors				6				6	95	6,3
Administrative branch of the Ministry of the Interior				5				5	23	21,7
Other administrative branches				3			1	4	285	1,4
Guardianship				3			1	4	82	4,9
Administrative branch of the Ministry of Defence				3				3	42	7,1
Administrative branch of the Ministry for Foreign Affairs				2				2	9	22,2
Total	–	3	67	876	36	17	142	1 141	6 175	18,5

\* Percentage share of measures in decisions on complaints and own initiatives in a category of cases

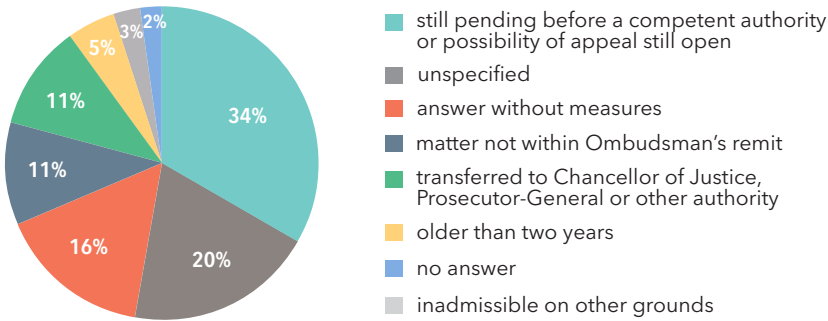




*All cases resolved in 2017*



*Decisions involving measures in 2017*



*Complaints not investigated in 2017*

legislative drafting to shortcomings that he has observed in legal provisions or regulations. The Ombudsman may also suggest compensation for an infringement that has been committed or make a proposal for an amicable solution on a matter. Sometimes an authority may preemptively rectify an error at a stage when the Ombudsman has already intervened with a request for a report. The proposals are listed in Appendix 4.

Decisions on complaints and own-initiative investigations that led to measures totalled 1,141 in 2017, which represented nearly 18% of all decisions. Approximately 36% of complaints and own-initiative cases were subjected to a full investigation; in other words, at least one report and/or statement was obtained. Of these, 36% led to a measure being taken.

In about 43% of the cases (2,607), there were no grounds to suspect erroneous or unlawful action, or there was no reason for the Ombudsman to take action. A total of 171 cases (approximately 3%) were found not to involve erroneous action. No investigation was conducted in 36% of the cases (2,225).

In most cases, the complaint was not investigated because the matter was already pending with a competent authority. An overseer of legality usually refrains from intervening in a case that is being dealt with at the appeal stage or by another authority. Matters pending with other authorities, and therefore not investigated, accounted for 12% (746) of all complaints dealt with. Other matters not investigated include those that fall outside the Ombudsman's remit and, as a rule, cases that are more than two years old.

The proportion of all investigated complaints which led to measures, when cases not investigated are excluded, was 28%.

None of the matters handled in the year under review were brought to prosecution for breach of official duty. There were three matters that merited pre-trial investigation by the police. A total of 67 reprimands were given, and 876 opinions were expressed. Rectifications were made in 17 cases while under investigation. Decisions classed as recommendations numbered 36, although opinions regarding the development of governance that count as recommendations were also includ-

ed in other types of decisions. Other measures were recorded in 142 cases. In reality, the number of other measures that the decisions lead to is greater than the figure shown above, because only one measure is recorded under each case, even though several measures may have been taken.

Statistics on the Ombudsman's activities are provided in Appendix 3.

### 2.3.4 INSPECTIONS

A total of 121 inspections were carried out during 2017. A full list of all inspections is provided in Appendix 5. The inspections are described in more detail in connection with the respective topic.

More than 60% of the inspections and visits were headed by the Ombudsman or Deputy-Ombudsmen, and the remaining 40% were conducted under Legal Advisers. A total of 70 visits were made to places and facilities where individuals are or may be kept while deprived of their liberty; 52 of these visits were unannounced. These visits were made in the capacity of the National Prevention Mechanism against Torture (NPM).

The NPM visits are made, in particular, in prisons, social welfare and healthcare units, child welfare institutions including youth homes, and residential units of intellectually or physically disabled people. Both the individuals placed in these facilities and the staff are given the opportunity to discuss issues in confidentiality with the Ombudsman or his assistant. An opportunity for a discussion is also given to conscripts during the Ombudsman's visit.

The separate annual report of the NPM details the observations listed in section 3.4 as well as recommendations given and measures taken by authorities as a result. The annual report will be published on the website of the Parliamentary Ombudsman's Office in Finnish, Swedish and English.

Shortcomings are often observed in the course of inspections, which are subsequently investigated on the Ombudsman's own initiative. Inspection visits also fulfil a preventive function.

## 2.4

# The National Human Rights Institution of Finland

Finland's National Human Rights Institution consists of the Ombudsman and the Human Rights Centre and its Delegation.

### 2.4.1 THE HUMAN RIGHTS INSTITUTION IS ACCREDITED WITH A STATUS

The Human Rights Institution and its Delegation were established under the aegis of the Ombudsman's Office with the aim of creating a structure which, together with the Ombudsman, would meet, as satisfactorily as possible, the requirements of the Paris Principles, adopted by the UN in 1993. This process, which started in the early 2000s, achieved its objective when the Finnish Human Rights Institution was awarded an A status for 2014–2019 in December 2014.

National human rights institutions must apply to the UN International Coordinating Committee of National Human Rights Institutions (ICC; today the Global Alliance of National Human Rights Institutions or GANHRI) for accreditation. The accreditation status shows how well the relevant institution meets the requirements of the Paris Principles. The highest rating, A status, means that the institution fully meets the requirements while B status indicates some shortcomings and C status suggests the sort of defects that cannot allow the institution to be regarded as meeting requirements in any way. The accreditation status is reassessed every five years.

The granting of an A status may be accompanied by recommendations on how to improve the institution. The recommendations given to Finland stressed, among other things, the need to safeguard the resources necessary to ensure that the tasks of the Finnish National Human Rights

Institution are effectively discharged. The full text of the recommendations is provided in Annex 5 to the summary of the Ombudsman's annual report for 2014.

Besides its intrinsic and symbolic value, the A status also has legal relevance: a national institution with A status has, for example, the right to take the floor in sessions of the UN Human Rights Council and to vote at GANHRI meetings. A status is considered highly significant in the UN and, in more general terms, in international cooperation. The Finnish Human Rights Institution has also joined the European Network of National Human Rights Institutions (ENNHRI). Finland's National Human Rights Institution is a member of the ENNHRI and GANHRI Bureaus.

### 2.4.2 THE HUMAN RIGHTS INSTITUTION'S OPERATIVE STRATEGY

The different sections of the Finnish National Human Rights Institution have their own functions and ways of working. The Institution's first joint long-term operative strategy was drawn up in 2014. It defined common objectives and specified the means by which the Ombudsman and the Human Rights Centre would individually endeavour to accomplish them. The strategy successfully depicts how the various tasks of the functionally independent yet inter-related sections of the Institution are mutually supportive with the aim of achieving shared objectives.

The strategy outlined the following main objectives for the Institution:

1. General awareness, understanding and knowledge of fundamental and human rights is increased, and respect for these rights is strengthened.
2. Shortcomings in the implementation of fundamental and human rights are recognised and addressed.
3. The implementation of fundamental and human rights is effectively guaranteed through national legislation and other norms, as well as through their application in practice.
4. International human rights conventions and instruments should be ratified or adopted promptly and implemented effectively.
5. Rule of law is implemented.

## 2.5

# The special duties of the Ombudsman derived from UN Conventions

Under the amendment to the Parliamentary Ombudsman Act, which came into force on 7 November 2014 (new Chapter 1(a), sections 11(a) – (h)), the Parliamentary Ombudsman was appointed as the National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The NPM's duties are described in more detail in section 3.4.

On 3 March 2015, the Parliament adopted an amendment to the Parliamentary Ombudsman Act, which entered into force by Government decree on 10 June 2016, whereby the tasks under Article 33(2) of the Convention on the Rights of Persons with Disabilities of December 2006 would fall legally within the competence of the Ombudsman and the Human Rights Centre and its Delegation. The structure, which must be independent, is tasked with the promotion, protection and monitoring of the Convention's implementation. The duties of the national structure are described in more detail in section 3.3.

## 2.6

# Cooperation in Finland and internationally

### 2.6.1

#### EVENTS IN FINLAND

Ombudsman Jääskeläinen and Deputy-Ombudsmen Sakslin and Pajuoja submitted the Parliamentary Ombudsman's annual report 2016 to Speaker of the Parliament Maria Lohela on 13 June 2017. The Ombudsman attended a preliminary debate and a parliamentary debate on the report in plenary sessions of the Parliament on 14 June 2017 and on 25 October 2017 respectively.

Several Finnish authorities and other guests visited the Ombudsman's office, and topical issues and the work of the Ombudsman were discussed with them. During the year, the Ombudsman, Deputy-Ombudsmen and members of the Office paid visits to familiarise themselves with the activities of other authorities, gave presentations and participated in hearings, consultations and other events.

The guests hosted by the Office of the Parliamentary Ombudsman in 2017 included

- 28 February The Non-Discrimination and Equality division of the National Sports Council
- 9 March Trainee judges from the District Court of Helsinki
- 16 March Representatives from PRO tukipiste, a specialist service that promotes participation and human rights of people who work in sex or erotic industry and of those who are victims of trafficking.
- 31 August Police Command students from the Police University College
- 27 September Representatives of the Office of the Non-Discrimination Ombudsman
- 21 November Legal advisers from the Criminal Sanctions Agency
- 11 December Representatives of Vankien Omaiset VAO (the national association for prisoners' families)



*Parliamentary Ombudsman Mr Petri Jääskeläinen, Deputy-Ombudsmen Ms Maija Sakslin and Mr Jussi Pajuoja handed the Ombudsman's annual report for 2016 to Ms Maria Lohela, Speaker of the Parliament (left), on 13 June 2017.*





*Parliamentary Ombudsman Mr Petri Jääskeläinen, Deputy-Ombudsman Ms Maija Sakslin and Ms Sirpa Rautio, Director of the Human Rights Centre met with Mr Michael O'Flaherty, Director of the European Union Fundamental Rights Agency, on 22 May 2017.*

Ombudsman Jääskeläinen gave a talk at the Finland 100 seminar of the Legal Affairs Committee on 9 March on “The role of the Parliamentary Ombudsman in the functional administration of justice”. Ombudsman Jääskeläinen introduced the operations of the Ombudsman at an event of the Parliament’s journalist programme on 11 October.

Deputy-Ombudsman Sakslin gave a talk at the TERVE SOS training event on 5 May at the Helsinki Fair Centre. Sakslin also spoke on social, economic and cultural rights at the seminar, “Defending Human Rights in Europe”, held at the House of the Estates on 6 June.

### 2.6.2 INTERNATIONAL COOPERATION

In recent years, the Office of the Parliamentary Ombudsman has engaged in an increasing number of international activities, partly due to the new duties in connection with the UN Conventions and the Human Rights Institution.

The Ombudsman has traditionally participated as a member of the International Ombudsman

Institute (IOI) in the events of the institute and attended the related conferences and seminars, as well as those organised by the IOI’s European chapter, IOI Europe. In 2017, IOI Europe organised the conference “IOI – Human Rights Challenges in Europe II: Populism, Regression of Rights and The Role of the Ombudsman” in Barcelona on 2–4 April. The conference was attended by Secretary General Päivi Romanov and Ombudsman Jääskeläinen, who gave a presentation on “The Finnish Ombudsman model: Combining oversight of legality and promoting Human Rights”.

The Parliamentary Ombudsman is a member of the European Network of Ombudsmen, the members of which exchange information on EU legislation and good practices at seminars and other gatherings as well as through a regular newsletter, an electronic discussion forum and daily electronic news services. Seminars intended for ombudsmen and other stakeholders of the network are organised every year. The network conference held in Brussels on 19–20 June was attended by Ombudsman Jääskeläinen; Riitta Länsisyrjä, Principal Legal Adviser and network contact persons; and Citha Dahl, Information Officer.

The Nordic parliamentary ombudsmen have convened on a regular basis every two years, at a meeting held in one of the Nordic countries. For several years, the Finnish Parliamentary Ombudsman has also engaged in dialogue with the Baltic ombudsmen. The meeting for Nordic and Baltic ombudsmen was held in Stockholm on 5–6 October. The theme of the meeting was the roles of the parliamentary ombudsmen and their duties as National Preventive Mechanisms against Torture. The meeting was attended by Mr Jääskeläinen, Ms Sakslin, Mr Pölönen and Ms Romanov from Finland. The Nordic countries have also established a Nordic network for NPMs.

The role of the NPMs was also discussed at a conference held in Strasbourg on 3–5 April, where the network for the NPMs of the EU Member States (EU-NPM Network) was established. The Finnish office was represented by Pia Wirta, Coordinator of the Finnish NPM.

Senior Legal Adviser Jari Pirjola has been Finland's representative on the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) since December 2011. This representative is elected for a term of four years. This is Mr Pirjola's second term on the Committee. On 8 July 2015, the Committee of Ministers of the European Council re-elected him for an additional term of four years.

Ombudsman Jääskeläinen attended the diplomatic dinner in the Hall of State at the Parliament on 9 October.

Deputy-Ombudsman Sakslin participated in the 10th anniversary symposium of European Union Agency for Fundamental Rights (FRA) in Vienna on 28 February–1 March. She also participated in the presentation of the FRA Fundamental Rights Report 2017 at a high-level symposium in Brussels on 28 June.

The international networks in which Finland's National Human Rights Institution participates are introduced in section 2.4.1.

## INTERNATIONAL VISITORS

During the year, the Office received a number of visitors and delegations from other countries, who came to familiarise themselves with the Ombudsman's activities. Some of these were working visits, during which the visitors were given a practical introduction to the work and procedures of the Office as well as the administration, and met employees working at the Office. One of the reasons for which the Finnish Parliamentary Ombudsman institution and its activities attract international interest lies in the fact that the Finnish institution is the second oldest of its kind in the world.

Below is a list of the individuals and delegations that visited the Office in the year under review.

- 7 March 2017 Delegation of officials from the parliament of Afghanistan.
- 27–31 March 2017 Eija Salonen, Legal Officer from the Office of the European Ombudsman
- 28 March 2017 Tunisian delegation of women civil servants
- 22 May 2017 Michael O'Flaherty, Director of FRA
- 7 June 2017 Nils Muiznieks, Commissioner for Human Rights, Council of Europe
- 15 June 2017 Animal and Plant Quarantine Agency representatives from South Korea
- 22 August 2017 Forvaltningsutvalget of Norway
- 24 August 2017 Representatives of the US Embassy in Finland
- 7 September 2017 A delegation of civil services from South Korea
- 12–13 September 2017 The Parliamentary Ombudsman of Montenegro and his delegation
- 15 September 2017 Jeannette Bougrab, Counsellor for Cultural and Scientific Affairs at the French Embassy in Finland, Director of the Finnish French Institute
- 20 September 2017 Judges and prosecutors from the European Judicial Training Network (EJNT)
- 4 October 2017 The Board of ENNHRI
- 17 October 2017 The Parliamentary Ombudsman of Turkmenistan and his delegation

- 1 November 2017 The Minister of Justice for Costa Rica
- 21 November 2017 The Anti-Corruption and Civil Rights Commission ACRC from South Korea

Events abroad as well as international events held in Finland, in which staff members from the Office were involved, are listed in Appendix 7.

### 2.6.3 OMBUDSMAN SCULPTURE

In 2009, the Ombudsman commissioned a work from sculptor Hannu Sirén to celebrate the 90th anniversary of the establishment of the Parliamentary Ombudsman institution. It is a serially produced piece used like a medal.

The Parliamentary Ombudsman may award the sculpture to a Finnish or a foreign person, authority or an organisation for commendable work that promotes the rule of law and the implementation of fundamental and human rights. The silver sculpture is presented as an award for outstanding merit.

Ombudsman Jääskeläinen presented the sculpture to Jaakko Jonkka, former Chancellor of Justice, on his retirement at a ceremony on 26 April. Mr Jonkka has served as the Chancellor of Justice, the Parliamentary Deputy-Ombudsman, prosecutor, researcher and in several other judicial roles during a career of 40 years. In his speech, Ombudsman Jääskeläinen commended Mr Jonkka for his actions and statements that have promoted the freedoms and rights of the individual, as well as the rule of law and fairness in all sectors of life, and stated that Mr Jonkka's contributions were widely recognised and highly valued.

Another recipient of the sculpture was Deputy-Ombudsman Jussi Pajujoja, who received the recognition from Ombudsman Jääskeläinen on 21 September on his appointment to a new position outside the Office. Mr Pajujoja has served as the Deputy-Ombudsman, Substitute Deputy-Ombudsman, Secretary General of the Office of the Parliamentary Ombudsman, Senior Ministerial Adviser and Deputy Head of Department as well

as an academic researcher for more than 30 years. In his speech, Ombudsman Jääskeläinen commended Mr Pajujoja for his actions and statements that have promoted the freedoms and rights of the individual, as well as the rule of law and fairness in all sectors of life. Mr Jääskeläinen emphasised Mr Pajujoja's particular merit in improving the rights and treatment of people deprived of their liberty.

Ombudsman Jääskeläinen has also presented the sculpture to long-serving officials of the Office on their retirement. He presented the sculpture to Jorma Kuopus, Principal Legal Adviser; Kaija Tuomisto, Information Officer; and Arja Raahenmaa, Office Secretary, on 10 February; and to Helena Rahko, Notary, on 8 September in recognition of their long careers in the Office of the Parliamentary Ombudsman.

## 2.7 Service functions

### 2.7.1 CLIENT SERVICE

The objective of the Office of the Ombudsman is to make it as easy as possible to turn to the Ombudsman. Information on the Ombudsman's tasks and instruction on how to make a complaint can be found on the website of the Office and in a leaflet entitled 'Can the Ombudsman help?'. A complaint may be sent by post, email or fax or by completing the online form. The Office provides clients with services by phone, on its own premises and by email.

Two on-duty lawyers at the Office are tasked with advising clients on how to make a complaint. In addition, the Legal Advisers of the Office have also provided advice on matters that concern their field of activity.

The Office's Registry receives and logs arriving complaints and responds to related enquiries, as well as documents requests and provides general advice on the activities of the Office of the Parliamentary Ombudsman. The Registry received around 2,250 calls in 2017. There were approximately 60 visits from clients and 660 requests for documents/information.

### 2.7.2 COMMUNICATIONS

The Office of the Parliamentary Ombudsman introduced a new website and Twitter account during the year under review. The new communications channels will allow even speedier and more broad-ranging communications.

In 2017, the Office issued 24 press releases outlining decisions made by the Ombudsman and brief tips on the website on 11 decisions. The Office publishes information on the Ombudsman's decisions if they are of particular legal or general

interest. The press releases are given in Finnish and Swedish and are also posted online in English.

The Office commissioned an analysis of its media visibility, which showed that the Ombudsman had been visible in the online media in 2017 in the context of 3,151 news items and articles.

A total of 200 anonymised decisions were published online. The website includes decisions and solutions that are of legal or general interest.

The Ombudsman's website is available in English at [www.ombudsman.fi/english](http://www.ombudsman.fi/english), in Finnish at [www.oikeusasiamies.fi](http://www.oikeusasiamies.fi) and in Swedish at [www.ombudsman.fi](http://www.ombudsman.fi). At the Office, information is provided by the information officers as well as the Registry and legal advisers.

### 2.7.3 THE OFFICE AND ITS PERSONNEL

The role of the Office of the Parliamentary Ombudsman, headed by the Ombudsman, is to prepare issues for the Ombudsman's resolution and manage other relevant duties and the tasks of the Human Rights Centre. The Office is located in the Parliament Annex at Arkadiankatu 3.

The Office has four sections and the Ombudsman and Deputy-Ombudsmen each head their own section. The administrative section, which is headed by the Secretary General, is responsible for general administration. The Human Rights Centre at the Ombudsman's Office is headed by the Director of the Human Rights Centre.

At the end of 2017, there were 60 permanent positions at the Office. Two of these positions were vacant at the end of 2017. In addition to the Ombudsman and the Deputy-Ombudsmen, the permanent staff at the office comprised the Secretary General, 14 Principal Legal Advisers, 15 Legal Advisers, two on-duty lawyers and the Director and three specialists of the Human Rights Cen-

tre. The Office also had an information officer, an information management specialist, two investigating officers, four notaries, an administrative secretary, a filing clerk, an assistant filing clerk, two departmental secretaries, case management secretary and seven office secretaries. In addition, a total of nine other persons worked in the Office for the whole or part of the year on fixed-term contracts.

A list of the personnel is provided in Appendix 6.

In accordance with its rules of procedure, the Office has a Management Group that includes the Ombudsman, the Deputy-Ombudsmen, the Secretary General, the Director of the Human Rights Centre and three staff representatives. The Management Group discusses in its meetings matters relating to the personnel policy and the development of the Office. The Management Team convened nine times. A cooperation meeting for the entire staff of the Office was held twice in 2017.

The Office had permanent working groups in the areas of education, wellbeing at work, and equitable treatment and equality. The Office also has a team job evaluation, as required under the collective agreement for parliamentary officials. Temporary work groups included the working group and steering group for case management and online service development projects.

The electronic case management system introduced in 2016 allows for the electronic handling and archiving of matters related to the oversight of legality and administration. This has significantly shortened handling times and the manual handling of papers at the Office. With the new system, none of the documents are archived in paper format.

#### 2.7.4 OFFICE FINANCES

The activities of the Office are financed through a budget appropriation each year. Rents, security services and some of the information management costs are paid by Parliament, and these expenditure items are therefore not included in the Ombudsman's annual budget.

The Office was given an appropriation of EUR 5,608,000 for 2017. Of this, EUR 5,328,700 was used in 2017. The cost savings were mainly due to savings in salary costs.

The Human Rights Centre drew up its own action and financial plan and its own draft budget.







# 3 FUNDAMENTAL AND HUMAN RIGHTS



## 3.1

# The Ombudsman's fundamental and human rights mandate

The term “fundamental rights” refers to all of the rights that are guaranteed in the Constitution of Finland and all bodies that exercise public power are obliged to respect. The rights safeguarded by the European Union Charter of Fundamental Rights are binding on the Union and its Member States and their authorities when they are acting within the area of application of the Union's founding treaties. “Human rights”, in turn, means the kind of rights of a fundamental character that belong to all people and are safeguarded by international conventions that are binding on Finland under international law and have been transposed into domestic legislation. In Finland, national fundamental rights, European Union fundamental rights and international human rights complement each other to form a system of legal protection.

The Ombudsman in Finland has an exceptionally strong mandate in relation to fundamental and human rights. Section 109 of the Constitution requires the Ombudsman to exercise oversight to “ensure that 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.”

For example, this is provided for in the provision on the investigation of a complaint in the Parliamentary Ombudsman Act. Under Section 3 of the act, arising from a complaint made to him or her, the Ombudsman shall take the measures that he or she deems necessary from the perspective of compliance with the law, protection under the law or implementation of fundamental and human rights. Similarly, section 10 of the Parliamentary Ombudsman Act states that the Om-

budsman can, among other things, draw the attention of a subject of oversight to the requirements of good administration or to considerations of implementation of fundamental and human rights.

For a more extensive discussion of the Ombudsman's duty to promote the implementation of fundamental and human rights, see Parliamentary Ombudsman Jääskeläinen's article on this subject in the Annual Report for 2012 (pp. 12–17).

Oversight of compliance with the Charter of Fundamental Rights is the responsibility of the Ombudsman when an authority, official or other party performing a public task is applying Union law.

Both the Constitution and the Parliamentary Ombudsman Act state that the Ombudsman must give the Eduskunta an annual report on his activities as well as on the state of exercise of law, public administration and the performance of public tasks, in addition to which he must mention any flaws or shortcomings he has observed in legislation. In this context, special attention is drawn to implementation of fundamental and human rights.

In conjunction with a revision of the fundamental rights provisions in the Constitution, the Eduskunta's Constitutional Law Committee considered it to be in accordance with the spirit of the reform that a separate chapter dealing with implementation of fundamental and human rights and the Ombudsman's observations relating to them be included in the annual report. Annual reports have included a chapter of this kind since the revised fundamental rights provisions entered into force in 1995.

The fundamental and human rights section of the report has gradually grown longer and longer, which is a good illustration of the way the em-

phasis in the Ombudsman's work has shifted from overseeing the authorities' compliance with their duties and obligations towards promoting people's rights. In 1995 the Ombudsman had issued only a few decisions in which the fundamental and human rights dimension had been specifically deliberated and the fundamental and human rights section of the report was only a few pages long (see the Ombudsman's Annual Report for 1995 pp. 26–34). The section is nowadays the longest of those dealing with various groups of categories in the report, and implementation of fundamental and human rights is deliberated specifically in hundreds of decisions and in principle in every case.

Information concerning various human rights events and ratification of human rights conventions are no longer included in the Ombudsman's annual report, because these matters are dealt with in the Human Rights Centre's own annual report.



## 3.2

# The Human Rights Centre

The Human Rights Centre (HRC) began operating in 2012. It works autonomously and independently, although it is part of the Office of the Parliamentary Ombudsman in administrative terms. The HRC's duties are laid down in the Parliamentary Ombudsman Act. According to the Act, the HRC has the following tasks:

- to promote information provision, training, education and research on fundamental and human rights, as well as cooperation in these issues
- to draft reports on the implementation of fundamental and human rights
- to propose initiatives and give statements for the promotion and implementation of fundamental and human rights
- to participate in European and international cooperation related to the promotion and protection of fundamental and human rights, and to perform other comparable tasks associated with the promotion and implementation of fundamental and human rights
- to promote, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities.

The HRC does not handle complaints or other individual cases.

### 3.2.1 THE HUMAN RIGHTS DELEGATION

The HRC has a Human Rights Delegation, which functions as a national cooperative body for fundamental and human rights actors. The Delegation deals with fundamental and human rights matters of far-reaching significance and principal importance, and approves the HRC's plan of action and annual report each year.

The term of office of the current Delegation (the second in a row) is from 1 April 2016 to 31

March 2020. The Delegation has 38 members including special ombudsmen and representatives of the supreme overseers of legality and the Sámi Parliament. The members are appointed by the Parliamentary Ombudsman and the Delegation is chaired by the Director of the HRC.

A permanent Working Committee and a permanent sub-committee, the Disability Rights Committee operate under the Human Rights Delegation.

The Delegation convened four times during the year under review. In these meetings, the Delegation discussed comparative research on the implementation of the rights of the Sámi, the status of research on fundamental and human rights in Finland, the UPR process, matters related to non-discrimination and equality, topical language issues, immigrants' legal rights and the monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities, among other topics.

On 13 December 2017, the Human Rights Delegation approved a statement according to which the Finnish Government must take rapid action to reform the Act on the Legal Recognition of the Gender of Transsexuals. The requirement for infertility should be removed from the act. Trans people's right to self-determination, protection of privacy and personal integrity should be safeguarded by law.

### 3.2.2 OPERATION OF THE HUMAN RIGHTS CENTRE IN 2017

The HRC developed its operations, with a particular focus on monitoring the implementation of fundamental and human rights. The HRC's latest task – the promotion and monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities – became

established. In accordance with its plan of action, the HRC provided education and training in the fields of fundamental and human rights through, for example, a comprehensive series of online lectures. During the year, the HRC participated in European and international cooperation through its membership of the Boards of Directors of GANHRI (Global Alliance of National Human Rights Institutions) and ENNHRI (the European Network of National Human Rights Institutions).

### EDUCATION AND TRAINING ON FUNDAMENTAL AND HUMAN RIGHTS

The HRC finalised its series of video lectures on fundamental and human rights at the beginning of 2017. A specific goal during the year was to distribute the material as extensively as possible; the videos and additional materials were downloaded more than 6,000 times. Current research on human rights education was presented, for example, at the FERA Conference on Education.

In 2017, the HRC and the Parliamentary Ombudsman launched a joint project aiming to strengthening knowledge and skills on fundamental and human rights in the field of education. During the year, the HRC and the Ombudsman made joint visits to two Regional State Administrative Agencies and three schools (in Siuntio, Kuopio and Turku). At the end of the year, the HRC and the Deputy-Ombudsman made a joint visit to the Finnish Education Evaluation Centre (FINEEC).

### INFORMATION ACTIVITIES AND EVENTS

The Human Rights Centre published press releases, statements and news on fundamental and human rights issues on its website and on the social media. In particular, freely available educational material and information activities related to theme days attracted attention.

During the year under review, the HRC organised seminars in cooperation with partners such as the Ministry of Justice, the Advisory Board for the Rights of Persons with Disabilities VANE, and

the Erik Castrén Institute. The topics covered in these seminars included the national action plan on fundamental and human rights, as well as accessibility, and refugee law.

The HRC also participated in the Educa trade fair, the largest event in the education and training sector in Finland, which attracted over 16,000 visitors in 2017. The HRC organised and coordinated a separate exhibition booth on human rights education, as well as programme on the event stage.

### PUBLICATIONS, INITIATIVES AND STATEMENTS

During year 2017, the HRC regularly published domestic and international newsletters. Furthermore, the HRC had a translation made of the first two General Comments issued by the UN Committee on the Rights of Persons with Disabilities, namely on equal recognition before the law (Article 12) and accessibility (Article 9).

The statements issued by the HRC covered topics such as the Nordic Sámi Convention, the UPR recommendations, and the implementation of the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in Finland.

### MONITORING THE IMPLEMENTATION OF FUNDAMENTAL AND HUMAN RIGHTS

In 2017, the Human Rights Centre drew up a strategic plan on monitoring the implementation of fundamental and human rights in Finland. According to this plan, the HRC will pay particular attention to themes or rights for which no special ombudsman has been appointed with respect to their implementation and monitoring. This monitoring will be largely based on cooperation and existing information, but the HRC will also prepare reports if needed.

For example, the HRC examined the implementation of legal protection, legal counselling and legal aid among asylum seekers, following the legal amendments enforced in 2016. Monitoring has revealed flaws and shortcomings at various stages of the asylum process. For example, there



are defects in the identification of vulnerable asylum seekers, and asylum seekers are not always advised to seek legal aid.

The HRC communicated extensively on individual and collective complaints that are being considered by judicial and investigative bodies that operate under the UN and the Council of Europe.

The HRC prepared a background study on trans people's right to self-determination, physical integrity and non-discrimination. The study, which will be published in 2018, presents materials, viewpoints, recommendations and legal practice related to gender recognition.

In 2017, the HRC also published a report on the views of fundamental and human rights experts on the current state of research and future research needs in this field. The study was carried out in collaboration with the Northern Institute for Environmental and Minority Law (NIEM) of the University of Lapland Arctic Centre.

### **MONITORING THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS TREATIES**

The Human Rights Centre, an autonomous body independent of the Government, participates in periodic reporting under human rights' treaties and monitors the implementation of recommendations issued by treaty monitoring bodies.

In 2017, the HRC contributed to periodic reporting on the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In its statement and comments, the HRC highlighted issues such as the legal position of the Sami, and hate speech. The HRC issued 11 proposals for recommendations, which the UN Committee on the Elimination of Racial Discrimination (CERD) took into account in its recommendations to the Finnish government.

### **UNIVERSAL PERIODIC REVIEW (UPR)**

In 2017, the Human Rights Centre participated in the third cycle of the universal periodic review (UPR) of Finland. The UPR is a peer assessment mechanism employed by the UN Human Rights Council (UNHRC). In the process, UN Member States report on the human rights situation in their countries and give recommendations to other countries once every four and a half years.

Finland received a total of 153 recommendations from 70 countries. These covered areas such as hate speech, violence against women, human rights education, the rights of asylum seekers and refugees, access of disabled people to the labour market, and removal of the requirement for inferability as a condition for the legal recognition of gender.

In June, the HRC issued an own-initiative statement on the UPR recommendations in order to draw the government's attention to recurring themes in the recommendations and to encourage it to approve certain recommendations. Finland stated that it will accept 120 recommendations in full and 6 in part, and note the remaining 27 recommendations.

In September 2017, the UN Human Rights Council adopted the outcome of Finland's UPR review. In this connection, the Human Rights Centre exercised its right to speak as Finland's National Human Rights Institution.

### **PROMOTING AND MONITORING THE IMPLEMENTATION OF THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

According to Article 33(2) of the Convention on the Rights of Persons with Disabilities (CRPD), States Parties shall designate or establish an independent mechanism to promote, protect and monitor the implementation of the CRPD. The tasks of this independent mechanism are performed by the Human Rights Centre and its Human Rights Delegation, together with the Parliamentary Ombudsman.

In 2017, the goal was to establish the HRC's role in promoting the rights of persons with disabilities in a field that includes a large number of operators. Working life and accessibility were highlighted as key themes of the year.

The HRC arranged a workshop on legal remedies, which was targeted at disability organisations. Furthermore, the HRC and the Non-Discrimination Ombudsman planned a campaign on the rights of persons with disabilities, which will be launched in 2018. The HRC also prepared an extensive online survey on the rights of the disabled in collaboration with the Finnish Disability Forum. The survey will be carried out in the spring of 2018.

The HRC participated in the drafting of a statement by ENNHRI's CRPD working group regarding the Draft General Comment on article 5 of the UN Committee on the Rights of Persons with Disabilities. The HRC also participated in the Conference of States Parties to the CRPD in New York and organised a side-event there.

During the year under review, the permanent Disability Rights Sub-Committee convened nine times to discuss topical themes and hear presentations given by external experts. The themes covered included the health and social services and regional government reform, the School Health Promotion study, hearing the views of children with disabilities, and the actualisation of self-determination within residential services for the intellectually disabled.

### **PARTICIPATORY INVOLVEMENT AND THE PERMANENT DISABILITY RIGHTS SUB-COMMITTEE**

Under Article 33(3) of the CRPD, persons with disabilities and their representative organisations must be involved and participate fully in the monitoring process of CRPD implementation. For this reason, a permanent sub-committee, the Disability Rights Committee operates under the Human Rights Delegation at the Human Rights Centre. The Sub-Committee may submit proposals and express its views to the Parliamentary Ombudsman and the Human Rights Centre on how they might develop the realisation of the rights of persons with disabilities and the performance of tasks related to CRPD implementation. The Sub-Committee can also raise issues related to the rights of persons with disabilities for the Human Rights Delegation to address.

## 3.3

# Rights of persons with disabilities

### 3.3.1 SPECIAL TASK OF IMPLEMENTING THE RIGHTS OF PERSONS WITH DISABILITIES

The ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 10 June 2016 brought the Parliamentary Ombudsman a new special task, provisions on which are contained in the Parliamentary Ombudsman Act. The tasks laid down in Article 33(2) of the CRPD are performed by the Parliamentary Ombudsman together with the Human Rights Centre and its Human Rights Delegation, which jointly constitute Finland's National Human Rights Institution.

The purpose of the CRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The leading principles of the CRPD are accessibility and the prohibition of all discrimination. The CRPD stresses the right to autonomy of persons with disabilities and their possibilities of participating in all policy-making that concerns them.

### 3.3.2 TASKS OF THE NATIONAL MECHANISM

The implementation of the CRPD cannot be promoted, monitored and protected without the participation of all Human Rights Institution actors. Promotion means future-oriented active work that includes guidance, advice, training and information sharing. The purpose of monitoring is to determine how well the rights of persons with disabilities are realised in principle and in practice. Monitoring means the gathering and further use of information related to the practical fulfilment

of the CRPD obligations with a view to remedying any defects found in this area. Protection means both the direct and indirect obligations of the state with regard to protection of persons against any violations of the rights laid down in the CRPD.

### PARLIAMENTARY OMBUDSMAN

The Parliamentary Ombudsman protects, promotes and monitors CRPD implementation within the limits of his or her specific competence. The Ombudsman's tasks include overseeing legality in the exercise of public authority and supervising (protecting) the implementation of fundamental and human rights. Over time, the Ombudsman's activities have evolved towards promoting fundamental and human rights. In decisions on complaints and during visits and inspections, instead of focusing solely on the legality of practices, an effort is made to guide authorities and other subjects of oversight towards adopting practices that implement fundamental and human rights as effectively as possible.

Oversight and monitoring are interlinked in the Ombudsman's work, as observations of inadequacies in realising the rights of persons with disabilities made in the course of the oversight of legality are also part of general follow-up of how CRPD obligations are implemented in practice. In the Parliamentary Ombudsman's legal practice, violations of fundamental and human rights should be prevented as a first priority.

For the main part, the Parliamentary Ombudsman exercises oversight of legality by investigating complaints, but the Ombudsman also examines shortcomings on his or her own initiative and when conducting inspections. In addition to the oversight of legality, the Ombudsman also serves as the National Preventive Mechanism (NPM)

under the Optional Protocol to the UN Convention against Torture (OPCAT). The NPM visits places where persons are or may be deprived of their liberty, including residential units for persons with intellectual disabilities. When performing this task, the Ombudsman may rely on the assistance of experts appointed by him, including persons with disabilities who have expertise significant for the NPM mandate. In October 2017, two members of the Disability Rights Committee of the Human Rights Delegation were given induction training as external experts for NPM inspections. Other forms of cooperation with persons with disabilities and disability organisations have been and will continue to be increased.

## HUMAN RIGHTS CENTRE

The core tasks of the Human Rights Centre include promoting fundamental and human rights and monitoring their realisation. Unlike the Parliamentary Ombudsman, the Human Rights Centre does not investigate complaints or exercise oversight of legality. Rather than being limited to the activities of the authorities, the Human Rights Centre's competence also extends to promoting and monitoring CRPD implementation in the activities of private stakeholders.

The statutory promotional duties of the Human Rights Centre include:

- promoting information provision, training, education and research activities and cooperation related to fundamental and human rights,
- making initiatives and giving statements with the aim of promoting and implementing fundamental and human rights, and
- participating in European and international cooperation related to promoting and implementing fundamental and human rights.

In the promotion and implementation of fundamental and human rights, the most important task is independent monitoring to ascertain that Finland complies with international human rights treaties, implements the recommendations and decisions issued by international monitoring bodies and enforces the judgments of the European

Court of Human Rights. Monitoring is supported by the statutory task of reporting on the implementation of fundamental and human rights.

The overarching themes of the review period were the establishment of the HRC's role in the broad field of disability rights as well as long-term operational planning. As a result of work carried out around these themes, the HRC's strategic focus areas are now more clearly in activities that produce added value in the promotion and monitoring of the rights of people with disabilities.

The strategic focus areas in disability rights adopted during the term are:

- promoting social inclusion
- promoting participation in decision making
- promoting non-discrimination
- promoting the right of self-determination
- monitoring the implementation of the rights of persons with disabilities and developing the monitoring activities

With regard to promoting social inclusion among persons with disabilities, the working life and accessibility emerged as particular themes. Campaign cooperation with the Non-Discrimination Ombudsman was launched during the period. The aim of the co-produced media campaign is to change attitudes towards persons with disabilities and increase their social inclusion. The campaign seeks to increase awareness about the rights of persons with disabilities and their status in Finnish society.

The HRC commissioned and published national-language translations of the first two general comments of the Committee on the Rights of Persons with Disabilities concerning equal recognition before the law (Article 12) and accessibility (Article 9).

The HRC organised a thematic seminar on accessibility on 1 June 2017. The seminar topics included current national legislative initiatives on accessibility, including the built environment and electronic services. The discussion was based on the CRPD Committee's general comment on accessibility. In the panel discussion, contributors stressed that it is more prudent to take proactive action to ensure accessibility than act retrospectively. The event was organised in cooperation

with the Advisory Board for the Rights of Persons with Disabilities.

During the operating year, the HRC organised a workshop on legal remedies for disability associations. The purpose of the project was to introduce participants to non-discrimination legislation, develop their competencies in this area and lower the threshold for using existing legal remedies in discrimination matters.

The HRC and the Finnish Disability Forum (Vammaisfoorumi) prepared an online survey on the rights of persons with disabilities. The survey findings will be used by the HRC in the monitoring of disability rights. The cooperation will also provide valuable information for the Finnish Disability Forum's parallel report, which is due to be submitted to the Committee on the Rights of Persons with Disabilities in summer 2018. During the year under review, the HRC prepared its first strategy paper on monitoring the implementation of fundamental and human rights. The strategy includes a separate section on monitoring the rights of persons with disabilities.

On 28 February 2017, the HRC and a representative of the Parliamentary Ombudsman met with members of the CRPD working group of the National Sports Council sub-committee on non-discrimination and equality. The discussed topics included Article 30 of the CRPD and possible interfaces where the national human rights institution could promote non-discriminative sports and physical activities for persons with disabilities.

The Disability Rights Committee of the Human Rights Delegation convened nine times during the period. In the meetings, the Disability Committee's activities were planned and outlined, discussions were held on various topics, and presentations on a range of topics were given by external experts. Expert presentations covered topics including the health, social services and regional government reform, the school health survey, the consultation of children with disabilities, and the realisation of the right of self-determination in residential services for persons with intellectual disabilities. The Ombudsman's Disability Team also took part in the Disability Rights Committee's activities.

During the operating year, the Disability Rights Committee drew up one proposal for the HRC and the Human Rights Delegation. In the proposal, the Committee expressed its concern over the fact that persons with disabilities are not sufficiently involved and allowed to participate in the regional government, health and social services reform. The Human Rights Delegation considered it important to send the Disability Rights Committee's proposal to the Ministry of Social Affairs and Health and the Advisory Board for the Rights of Persons with Disabilities for information and possible further measures.

In its own reply, the HRC considered it important to examine what the obligation to involve, as referred to in the UN CRPD, means in practice and how it should be complied with at national level. As a result of the Disability Rights Committee's proposal, the HRC decided to launch a study on the involvement obligation during 2018.

#### DISABILITY TEAM

The Ombudsman's Disability Team convened eight times. The Disability Team consisted of three experts from the Office of the Parliamentary Ombudsman and one from the Human Rights Centre. During 2017, the Disability Team worked in close cooperation with the Disability Rights Committee of the Human Rights Delegation. Matters highlighted in the Sub-Committee and Disability Team's meetings were discussed fluently on both sides, since two members of the Disability Team also served as experts in the Disability Rights Committee.

The Disability Team updated an inspection form which guides the Ombudsman's inspectors to routinely assess physical accessibility and the accessibility of information and communication systems and to generally observe the realisation of disability rights in all inspected areas. The form was also presented to the Disability Rights Committee, and the Committee members had an opportunity to comment.

Cooperation with other authorities encompassed Valvira, regional state administrative agen-

cies and the National Non-Discrimination and Equality Tribunal. Cooperation with regional state administrative agencies was related to inspections and the selection of inspection sites.

The members of the Disability Team participated in disability rights events organised by the parliamentary group on disability matters (*vammaisasian yhteistyöryhmä*, VAMYT). Two members participated in meetings of the legal team for the handbook on disability services (*Vammaispalvelun käsikirja*, maintained by the National Institute for Health and Welfare), on topics including the latest case law relating to disability services and the monitoring of the reform of the disability services act (*vammaispalvelulaki*).

During 2017, the Disability Team mapped the content of the national mechanism's task within the Parliamentary Ombudsman's office and the HRC and, in cooperation with the Disability Rights Committee, looked at possible forms of participation and cooperation. A presentation on the consultation of children with disabilities was given at a meeting of the Disability Team, which was open to all staff of the Ombudsman's office. The Disability Team submitted a proposal on website content on disability rights in connection with the redesign of the Ombudsman's website.

The members of the Disability Team participated in two research undertakings as the Ombudsman's representatives. The first was a survey of the European Fundamental Rights Agency (FRA) on independent living (CRPR art. 19) and the closure of institutions. The second was a telephone interview which mapped the implementation of non-discrimination in state-supported housing projects for persons with disabilities. The interview was commissioned by the Ministry of the Environment and conducted by the Rehabilitation Foundation in cooperation with Referenssi Oy.

The members of the Disability Team gave presentations at various events, including at the disability services conference on the topic of the rights of customers in the Parliamentary Ombudsman's case practice and legal issues relating to disabilities and age; at the personal assistance conference on the topic of personal assistance

and work, and on the topic of disability rights for a government service course on fundamental and human rights. In addition, one team member gave a presentation to the Advisory Board for the Rights of Persons with Disabilities on the topic of the CRPD and the optional protocol, and on the topic of the rights of persons with memory disorders from the oversight authority's perspective at a conference organised by the Alzheimer Society of Finland.

### INTERNATIONAL COOPERATION

The HRC engages in international cooperation in order to develop advanced core competence and identify best practices. During the operating year, the HRC attended a debate organised by the CRPD Committee on the draft general comment concerning Article 5. In addition, the HRC actively participated in the activities of the CRPD working group of the ENNHRI. The working group prepared a statement on the CRPD Committee's draft general comment on Article 5. This statement was combined with GANHRI's statement and submitted to the CRPD Committee in December 2017. In addition, the HRC submitted its own statement on the CRPD Committee's draft general comment on Article 19.

The HRC attended the Conference of States Parties to the CRPD in New York. In conjunction with the conference, on the HRC's initiative, GANHRI organised a parallel event for discussion on the participation of persons with disabilities in NHRIs' work on the promotion and monitoring of CRPD implementation. The HRC also organised a meeting for the attending NHRI representatives to discuss ways in which the rights of persons with disabilities could be made more visible in GANHRI's activities.



### 3.3.3 OPERATING ENVIRONMENT AND TOPICAL LEGISLATIVE PROJECTS

The Convention defines persons with disabilities as those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. Disability should thus be seen as interaction between a person's restricted ability, which is caused by a disorder or illness, and society.

In the 2012 government resolution on the individual living arrangements of persons with intellectual disabilities and service provision, the target was that after 2020 no person with disability should live in an institutional setting. It has been estimated that there are some 40,000 persons with intellectual disabilities in Finland. In the service structure of care for people with disabilities, a trend that favours assisted living rather than institutional care has continued throughout the 2000s.

One target in reducing institutional living was that by 2016, at most 500 people with intellectual disabilities would be living in institutions. This target was not achieved. At the end of 2016, 920 customers (1,093 in 2015) were in institutional care, of whom 795 were long-term residents (962 in 2015) (Institute for Health and Welfare statistics 42/2017, 20.11.2017). Long-term residents are deemed those placed in long-term care by a decision or those who have been in care for over 90 days.

At the end of 2016, 131 of all long-term residents were persons under the age of 18, and there were 191 children in institutional care. The numbers of long-term residents under the age of 18 have remained at similar levels for a number of years now (Care Register for Health Care, National Institute for Health and Welfare).

In 2016, 21,079 customers received personal assistance. The 2009 figure was 6,598. The service has been a subjective right since September 2009.

In 2015, a total of 100,428 customers accessed transportation services under disability services. In 2015, there were 5,737 customers in assisted living facilities for persons with severe disabilities; in

2016 the figure was 6,214. The number of service customers has increased nationally over the long term.

On the basis of the new Local Government Act (410/2015), local authorities have an obligation to establish a disability advisory council. The provisions entered into force on 1 June 2017. Each local authority must establish a disability advisory council and provide it with opportunities to have a say in the planning, preparation and monitoring of different services provided by the local authority. The council members must include persons with disabilities, their family members and representatives of relevant organisations. The disability advisory council can be a joint council of several local authorities.

The disability advisory councils are not official bodies of local government – rather, they serve as consulting and advocacy channels. The active role of the disability advisory councils is emphasised in the Local Government Act. The act also requires that the councils receive relevant information well in advance. A number of local authorities have drawn up a disability policy programme based on the principles of the CRPD. The programmes are used to steer policy at the local government level. In addition, they establish the commitments of various parties to improving the status of persons with disabilities in municipalities.

The Government issued a new decree on the accessibility of buildings (241/2017). The decree applies to planning permissions submitted after 1 January 2018. According to the Ministry of the Environment, the decree clarifies regulations concerning accessible buildings and helps to reduce inconsistencies in interpretations between different local authorities. The new decree provides dimensions for specific accessibility criteria which were previously open to interpretation.

The National Action Plan on Fundamental and Human Rights 2017–2019 was adopted by a government resolution on 16 February 2017. One of the focus areas is the right of self-determination in social welfare and health care.

The Ministry of Social Affairs and Health continues to draft legislation on the right to self-determination. In connection with this legislative reform, provisions on the right to self-determi-

nation (in act on special care for persons with intellectual disabilities) are to be transferred into a general act. Changes in legislation relating to the right of self-determination are also needed in child protection, mental health services and social work with intoxicant abusers, which were not part of the previous preparatory work on the legislation. People with memory disorders are the largest individual group concerned in the reform.

One of the key projects of Prime Minister Juha Sipilä's Government is "Career opportunities for people with impaired work capacity", which aims to significantly increase employment and retention outcomes for people with impaired work capacity in the open labour market. The key project is coordinated by the Ministry of Social Affairs and Health and consists of eight sub-projects. The project incorporates training for work capacity coordinators to help facilitate job retention and successful job placement in the open labour market. A disability or illness does not necessarily lead to even partial incapacity for work. Work capacity coordinators are experts in employment, health and social services who work to ensure that a reduced work capacity does not exclude anyone from working life.

The key project is part of the social welfare reform of the service system and legislation relating to employment support and rehabilitative work, which includes reform of the following services: employment support for persons with disabilities (Social Welfare Act), rehabilitative work and coaching for persons with disabilities (Social Welfare Act), rehabilitative work as part of special care (act on special care for persons with intellectual disabilities) and rehabilitative work (act on rehabilitative work).

The EU Disability Card will be adopted in Finland in spring 2018. The EU Disability Card can be used by persons with disabilities in Finland and other Member States as proof of disability or need for assistance. The card is voluntary and does not entitle the holder to any social security benefits.

The disability legislation reform continued as part of the comprehensive social welfare reform and the preparation of the service structure reform. The aim is to provide for special services for persons with disabilities in a new special act

which applies to all disability groups on an equal basis. The preparation of the act continues under the Ministry of Social Affairs and Health.

## STATEMENT

The Deputy-Ombudsman issued a statement on a draft government proposal to the Parliament on the act on special services provided on the basis of disability and on the amendment of the Social Welfare Act (3414/2017).

### 3.3.4 OVERSIGHT OF LEGALITY

The role of the rights of persons with disabilities has been stressed in the activities of the Office since 2014, when the Parliamentary Ombudsman's Annual Report for the first time contained a separate section on observations made in the course of the oversight of legality concerning the rights of persons with disabilities, and issues related to their rights emerged as a separate category.

Decisions on cases in this category were made by Ombudsman Petri Jääskeläinen, and the Principal Legal Adviser was Senior Legal Adviser Minna Verronen. Disability matters in social welfare were also presented by Principal Legal Adviser Tapio Rätty and Senior Legal Adviser Juha-Pekka Kontinen.

Statistics on all complaint cases are primarily compiled into categories based on the authority and administrative branch (social welfare, social insurance, health care, education and culture authorities, etc.) reviewed in the case in question. In oversight of legality, the implementation of the rights of persons with disabilities may come under review in any administrative branch. This section reviews all matters in which the implementation of disability rights was a central issue, regardless of which administrative branch the matter involved.

## COMPLAINTS AND OWN-INITIATIVE INVESTIGATIONS

The number of complaints and own-initiative investigations falling into this category on which decisions were issued was 242. The number was higher than in the previous year (171) and years before that. The Ombudsman issued a decision in seven own-initiative investigations. Three of these concerned accessibility at specific advance voting locations and deficiencies in ballot security.

A total of 62 matters led to measures (27%). The rate is higher than the average (18) of the Ombudsman's office. A reprimand was issued in two cases, and a proposal was made in one case. The Ombudsman gave his opinion on 41 cases, and 13 cases led to other measures. Due to the high number of cases that led to measures, it is not possible to give an account or mention of all decisions concerning disability rights.

Many of the decisions concerned social welfare authorities in local government. The reason is that local authorities are responsible for the provision of social services, such as special care for persons with intellectual disabilities, and services and support measures provided on the basis of disability. The social welfare category thus had the highest number of decisions concerning persons with disabilities (150; 130 in 2016). 40 decisions concerned personal assistance under the Disability Services Act, 34 cases concerned transport services and 22 cases concerned the rights of persons with intellectual disabilities.

The number of social insurance related cases resolved in the reporting year was 34, and the number of cases relating to education was 12. Cases concerning mental health rehabilitation and persons with memory disorders are discussed, respectively, in the section on health care and the section on the rights of older people, and therefore the case volumes in these categories have largely been omitted from the total number of resolved cases discussed here.

Complaints relating to service provision under the Disability Services Act concerned e.g. dereliction of duty to provide a decision on services, customer charges, the complainant's treatment in a customer service situation or residential unit, delayed processing of an application, and local au-

thorities' service provision and guidelines for implementation regarding of the Act.

Cases related to social insurance included the practices of the Social Insurance Institution as an organiser of interpretation services and a body granting benefits, including disability and rehabilitation allowances. As in the previous year, inadequacies in the implementation of legal protection, especially when the education provider and a child's parents disagree on the child's need for support in learning and school attendance and its organisation, came up in the education sector. In the health care sector, cases were related to the care and treatment of persons with disabilities, the funding of a medical rehabilitation aid, the provision of medical rehabilitation, adequate health care provision, and the consideration of disability at a prison hospital.

## INSPECTION VISITS

A higher number of inspection visits to residential units for persons with disabilities were conducted in the reporting year than in the previous years. Twenty inspections were carried out, 19 of which focused on residential units for customers with intellectual disabilities. Three units housed customers under involuntary special care (the Honkatähti intensified assisted living facility of the North Karelia joint municipal authority for social and health care, and two units of the Vaalijala joint municipal authority: Satama rehabilitation unit for adults and the Kaisla assessment and rehabilitation unit for adults).

In particular, inspection visits were made to units for persons with intellectual or severe disabilities, which also fall within the NPM's purview (OPCAT). The inspected units included both individual and joint municipal authorities and units operated by private-sector service providers (e.g. Rinnekoti-Säätiö) used by local authorities.

A total of eleven unannounced inspections were carried out. The other inspections were pre-announced, and documentary information was obtained from the sites before the visit, including entries and decisions made on restrictive measures. This provided preliminary information on the quality of the unit's activities. The sites had

been asked to inform the residents' family members and friends of the possibility of having confidential interviews with the inspectors in advance of the visit. Nine pre-announced inspection visits were made to residential units for persons with intellectual disabilities. Appendix 5 gives a list of inspected units.

Promoting accessibility and participation are cross-cutting themes of the CRPD covered in the Office's inspection activities. Article 9 of the CRPD provides for accessibility and full participation and equal access to, inter alia, physical environment. Article 19 provides for inclusion in a community and that community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs. Careful consideration and re-assessment of practices are also required under the provisions of the new act on special care for persons with intellectual disabilities. Persons with disabilities are not always able to file complaints themselves, which highlights the importance of the inspections.

For descriptions of observations made in connection with inspections under the NPM mandate, see section 3.4 p. 83.

## OBSERVATIONS ON ACCESSIBILITY AND PROMOTION OF SOCIAL INCLUSION

In inspections of different administrative branches, attention is always paid to the implementation of disability rights such as accessibility in public buildings and physical environments, and the accessibility of information and services from the point of view of various actors. Individual observations made primarily in connection with visits and inspections are discussed below.

### Child protection units

- Buildings of the Nummela youth home, the Honkalyhty special protection unit for children and the Outamo children's home did not provide unhindered access to their entrances (5681, 6546 and 5500/2017).

- At Peiponpesä (Familiar Oy) and the Lukkarila child protection unit, the entrances had ramps to facilitate wheelchair access (619 and 5727/2017).
- The Nummela youth home did not provide accessible toilet facilities (5681/2017).

### Care and assisted living facilities for older people

- The Aamurusko care home had narrow doorways, thresholds and inadequate lighting (6185/2017).
- At the Antinkoti home operated by Helsingin Seniorisäätiö, the main entrance had a steep and long ramp with a warning sign. The Deputy-Ombudsman requested the city social and health service unit to provide a statement on what measures it had taken or intended to take in order to improve the safety of the entrance ramp (4210/2017).
- The Viherlaakson Muistipalvelukeskus retirement home and its large fenced outdoor areas were found to be accessible and safe from the point of view of the mobility and living conditions of persons with memory disorders who use assistive equipment. Adequate signs and lighting were in place. Few residents knew how to use the bracelet alarm, but the bedrooms had been fitted with programmed smart devices, which alerted the nurse monitor if a resident fell in their room, spent an extended period in the bathroom or left the room at night (2065/2017).
- The Timontalo residential home and its outdoor areas were found to be accessible. The corridors had been fitted with support rails (6713/2017).
- The Marttila residential home was found to be accessible in all respects, and there was a stop outside for the local authority's transport service. The residents had alarm bracelets and room alarm devices, and the rooms also had smart floors which alert a nurse by phone if, for example, a resident falls off their bed (6712/2017).

- The details of two care homes called Timontalo and Marttila were not listed on the website of the Päijät-Häme joint municipal authority for basic public services. The Deputy-Ombudsman determined that accessibility should also apply to the accessibility of websites. The Deputy-Ombudsman advised the authority to make the websites of care homes offering 24h residential care for the elderly more accessible, clear and informative (6712 and 6713/2017).

### Residential units for persons with intellectual and other disabilities

- The entrances of two facilities, Rinnekoti-Säätiö's Turva assessment and rehabilitation unit for psychiatry of intellectual disability and the administrative building of the Vaalijala joint municipal authority, had ramps which were so steep that persons who used assistive mobility equipment were not able to ascend them without assistance (5794 and 6800/2017).
- The entrance of a terraced facility of the Kaisla rehabilitation unit of Vaalijala was not fully accessible. Persons using assistive mobility equipment were not able to enter the unit without assistance. In other respects, the inspected facilities were mostly accessible from the point of view of mobility (6800/2017).

The following observations were made at the Aurinkolahti group home of the City of Helsinki:

- The drop-off point was located in the vicinity of the group home's entrance. The pavement at the drop-off point had a rise of approx. 5 cm.
- A buzzer had to be pushed to unlock the door, and the door was heavy. The buzzer had an illuminated sign. The buzzer was placed rather high for wheelchair users (image).
- The group home had three floors. The facility had a lift with an automatic door. The lift had floor numbers which could be read by touch. The button of the exit floor was distinguishable from the other buttons. Internal doors were not clearly distinguishable from walls (4378/2017).
- The institutional care units of the Eskoo joint municipal authority for social services were



*Legal adviser pressing the doorbell at the main entrance to the Aurinkolahti group home.*

accessible by persons who use assistive mobility equipment (2398 and 2413/2017). The residential unit of the joint municipal authority was located on the third floor. The first floor of the multi-storey building was accessible by persons who use assistive mobility equipment, and the second and third floors were accessed by a lift which was too small for wheelchair users (628/2017).

- At Rinnekoti-Säätiö's Turva assessment and rehabilitation unit for psychiatry of intellectual disability and the Leivola housing units of the Kainuu joint municipal authority for social services and health care, the facilities and door access were problematic from the point of view of electric wheelchair users. At Turva, parking space for persons with restricted mobility had been reserved close to the building, but the Leivola residential unit in Sotkamo did not have designated disability parking spaces (5794 and 1193/2017).



- At the Leivola residential unit, instructions for the buttons of the lift were provided only in English. Since lift buttons can be deemed as signs referred to in the Language Act, the Ombudsman advised the facility to introduce Finnish-language instructions for the lift's functions (1193/2017).
- At Leivola, the door of the housing unit of a wheelchair user was opened from a button which was situated on the wall opposite the WC. The door opened into the room, which meant that the wheelchair user had to reverse away from the door in order to get it to open. In addition, the shower seat attached to the bathroom wall could not be adjusted to a suitable height for the resident (1193/2017).
- No information about the Leivola residential unit was provided on the website of the Kaivuu joint municipal authority for social services and health care, and no brochures about the services offered by the unit were available at the time of the inspection. The service manager later sent an electronic brochure of the unit. The Ombudsman brought to the authority's attention the fact that up-to-date information about its services must be available online and in other formats (1193/2017).
- The Ombudsman emphasised the importance of using augmentative and alternative communication methods and the fact that continuous development of staff members' communication skills plays a central role in the successful delivery of care and services. Special attention should be paid to the use of augmentative and alternative communication methods and their use should be facilitated. Each customer's service and care plan should contain details of the communication methods used by the customer (1193/2017).

### Support home

- In an inspection of a two-storey support home for homeless persons with substance abuse and mental health problems, the downstairs corridors were found to be very narrow and maze-like, and the upper floor could only be accessed by a steep staircase (4032/2017).

### Advance polling stations

The Ombudsman sent two of its officials, one of whom was a wheelchair user, to carry out unannounced inspections at advance polling stations of the 2017 municipal elections in seven municipalities (Espoo, Vantaa, Helsinki, Kirkkonummi, Nurmijärvi, Tuusula and Kerava).

- Other accessibility-related deficiencies, such as too much gravel in the passage, difficulties caused by the ramp or the shape of the passage, too-high doorsteps and too-heavy doors, were observed in some of the inspected polling stations. Furthermore, some polling stations were small, confined and noisy.
- The Ombudsman drew the inspected cities and municipalities and their central municipal election boards of the general attention about the visibility of the signs and the deficiencies in the accessibility and size of polling station facilities.
- The Ombudsman commended the fact that the advance polling stations of Espoo, Vantaa and Helsinki had, since the previous unannounced inspection, introduced so-called accessible voting booths for the users of wheelchairs, walking frames and other assistive mobility equipment. In addition, the Ombudsman was satisfied to note that the Sampola residential unit of the City of Kerava, which was inspected for the first time, had provided a so-called accessible voting booth (2164/2017\*).
- Following the inspection, the Ombudsman made a decision to investigate how ballot secrecy had been implemented by the municipalities (Kirkkonummi, Nurmijärvi and Tuusula) whose advance polling stations had not provided accessible voting booths for the users of wheelchairs and other mobility equipment and instead had provided a writing pad to be placed on the user's lap.
- The Ombudsman was satisfied to note that, according to statements received from the municipalities, by the polling day they had already arranged wheelchair-accessible voting booths and taken other measures to accommodate voters who need special arrangements. In



addition, the central municipal election boards stated that they would endeavour to take into account accessibility and ballot secrecy when choosing and organising their polling stations. Therefore the issues did not lead to any other measures by the Ombudsman, other than his drawing attention to the problems in accessibility and a smooth polling process, which were caused by the issues identified in the inspection records (2493, 2440 and 2441/2017).

### Polling station

The Ombudsman brought to the attention of the municipal executive and central municipal election board of Kolari the severe deficiencies in accessibility found at the polling station of Kolari upper secondary school. In the inspection, which was instigated on the basis of a complaint, it was found that the polling station at Kolari upper secondary school had had significant deficiencies in accessibility on the municipal election polling day on 9 April 2017. Further, the polling station had not provided an accessible voting booth. When casting their vote, wheelchair users were given a loose writing pad which was placed on their lap and supported by a polling officer (2622/2017).



*The advance polling station in Espoo had three booths, one of which was step-free and therefore accessible to anyone using a wheelchair, walking frame or other mobility aids.*

### Prison

The Deputy-Ombudsman brought to the attention of the Vantaa prison, the centre for the criminal sanctions region of Southern Finland and the central administration of the Criminal Sanctions Agency, observations about the accessibility of facilities and the accessibility of information provided on the prison's website, which were made during an inspection visit on 28 November 2017. The Deputy-Ombudsman requested a reply by



*The advance polling station in Kirkkonummi did not have a step-free booth; instead, voters were provided with hand-held writing supports.*

1 June 2018 with a description of measures to be implemented based on the observations (6206/2017).

- Among other observations, it was noted during the inspection that in the prison car park, there were two disabled parking spaces outside the gate, and they provided unobstructed access to the prison entrance. However, the Criminal Sanctions Agency's website information about the Vantaa prison did not mention the disabled parking or the fact that the prison was accessible to visitors who use assistive mobility equipment (e.g. wheelchairs).
- In the prison facilities, a deficiency was found in that there were no induction loops provided for persons with hearing impairment anywhere in the prison (e.g. in the visiting areas). A portable induction loop was not provided either.
- Several other deficiencies and areas in need of improvement were also found in the prison cell for prisoners with disabilities. The Deputy-Ombudsman advised the central administration of the Criminal Sanctions Agency to pay attention to the findings of the inspection record when planning and renovating prison facilities.

## School

- A school inspection included a classroom visit and a tour of the school facilities given by the pupils. The facilities were found to be fully accessible. The facilities had an accessible WC (4068/2017).
- Another inspection visit included a discussion about special arrangements for university students with disabilities. For example, students with dyslexia can be granted an extension in the entrance exam. At the time of the inspection, the university in question did not have any students who used wheelchairs (1007/2017).

## District court

- The court building of the District Court of Itä-Uusimaa had court rooms on three floors, but the only accessible toilet was located on the first floor. Current legislation does not necessarily require that accessible toilets be built on each floor of a public building. The building regulations do not specify precise numbers of WC facilities for persons with disabilities, but a sufficient number of facilities must be provided for users of wheelchairs and wheeled walking frames, including WCs and washrooms that are dimensioned and fitted with equipment accordingly.
- In its response to the complaint, the Ombudsman found it positive that the District Court had expressed an intent to fit appropriate accessible WC signage in the court facilities (on the third floor).
- According to the statement received by the Ombudsman, both preparatory sessions and court sessions can be practicably held in the rooms located on the first floor of the district court building. According to the Ombudsman, the court has an obligation to consider implementing reasonable accommodations if a person with disability requests well in advance that a court session be held on the first floor, where the accessible WC is located. In this case, the court must assess the possibility of relocating the session to the first floor from the point of view of space arrangements. The Ombudsman informed the chief judge of the district court about its decision (339/2017).

## Reception and customer facilities

- The Ombudsman found that the City of Oulu welfare services had not in practice provided accessible entry for the complainant at its disability service counselling unit, and therefore the provision could not be deemed adequate. The video recording supplied by the complainant showed that the door of the lift through which the unit was accessed had not been opened for the complainant because, due to

their disability, they were unable to answer the unit worker's questions through the intercom.

- The Ombudsman emphasised that unobstructed access must be provided for everyone accessing the reception and customer facilities of social welfare units regardless of disabilities or other impairments. If access to the reception and customer facilities of a social service unit requires speech-based communication, it may in practice put persons with little or no speech in an unequal position. For example, customers who are deaf or have impaired hearing may be prevented from accessing the facilities of social services independently and without assistance, if they are unable to hear spoken questions and thus unable to respond by other communicative means.
- The Ombudsman emphasised the fact that, in general, social welfare authorities must organise their reception and customer service facilities in such a way as to ensure customer privacy and confidentiality (3979/2016).

### Emergency text message service

At an event on the communicative methods and equipment of persons with disabilities, which was held at the office of the Ombudsman in October 2016, a representative of the Finnish Association of the Deaf highlighted the fact that emergency response centres did not have a specific telephone number to which emergency text messages could be sent. In contrast with the general emergency number 112, each of the six emergency response centres has its own number for emergency text messages.

The Deputy-Ombudsman took the initiative to investigate how the emergency text message service will be implemented in the new national information system for emergency centres (ERICA). Although the new shared information system could not be introduced in 2017, the national emergency text message number 112 was introduced on 1 December. The service requires pre-registration. No further action was required in the case (4942/2016).

## 3.3.5 DECISIONS

### SOCIAL WELFARE

#### Decision-making

Decisions on services and support provision under the Disability Services Act must be issued without undue delay and in any case within three months from the date of the application for a service or support measure by a person with disability or his or her representative. According to the Deputy-Ombudsman, the provision determines the maximum length of the processing time, and it cannot be interpreted to enable authorities to postpone decision-making beyond the time limit without appropriate grounds relating to the examination of the matter at hand.

In the assessment of whether the processing of an individual case was delayed, the importance of the service or support measure to the applicant also had to be taken into account. The more important the matter is from the point of view of the applicant's everyday life (e.g. subjective rights under the disabled services act, such as transport services), the more effort should be made to ensure fast processing of the application (3689/2016).

In another decision, the Ombudsman emphasised the fact that even in unclear and disputed cases, the authority must provide the customer with an appealable decision without undue delay, unless a longer processing time is needed on specific grounds. According to the Ombudsman's view, in the case in question, in which the parties could not reach an agreement in their negotiations on the physical adaptations of an apartment, the social welfare office should have issued an appealable official decision on the eligible costs and, possibly, the method of implementing the renovations, sooner than it had actually done.

The processing of the matter had lasted over four years in total, including the legal processes. The Ombudsman emphasised that the requirement on processing set out in the Administrative Procedure Act applies to all processing stages of administrative matters. It also means that

decisions, for example those of administrative courts, must be implemented without undue delay (5249/2016).

The Ombudsman drew the attention of the social welfare office to the requirement on undelayed implementation and processing of matters in a case in which the administrative court had repealed and returned to the social welfare office a case concerning personal assistance under the disability services act. However, the social welfare office had taken over three months to process the matter.

The reason for the delay in decision-making was that the social welfare office had waited for a physiotherapist's statement. The Ombudsman emphasised that, if the authority requests statements or reports, it must oversee and monitor the progress of the requests and, if necessary, specify a deadline to the external party providing the statement (3399/2016).

In the Ombudsman's view, a private sector service producer had been in breach of the act on the status and rights of social welfare clients when it had not provided a written response to a customer's objection and, instead, the managing director had had a telephone discussion with the complainant. The Ombudsman notified the private sector service producer of its view that the service producer had neglected its duty to provide a written response to an objection (140/2017).

### Transport services

The disability services act and decree do not provide a detailed definition of how transport services for persons with severe disabilities should be organised. A local authority can, for example, provide transport services in the form of individual transport by taxi or group transport, or by using various travel dispatch centres. An applicant can demand that the social welfare office organise a transport service that is suitable for his or her individual needs, and has the right to receive an appealable decision on such a claim.

The Ombudsman drew the attention of the social welfare office to the fact that, when planning and making decisions on service provision, social welfare authorities must assess the mobility and assistance needs of a person with severe disabilities on a case-by-case basis. A person with severe disabilities may also have unexpected and urgent transportation needs which require organising an express transport service.

Ultimately, these cases are about providing an individual transport service journey. Persons with severe disabilities have the right to demand this service from an authority (4268/2016).

The Ombudsman drew the attention of a city welfare service unit to the fact that a text-message-based ordering service is one way of organising transport services on an individual basis. In the Ombudsman's view, a social worker of a city welfare service unit had neglected to make temporary extension decisions concerning the individual provision and ordering of transport services for the complainant, and the decision-making process had consequently been delayed.

The Ombudsman did not deem it adequate that the provision and ordering methods had only been recorded in the complainant's transport service profile. The Ombudsman drew the attention of a city welfare service unit to its obligation to issue a decision and ensure service continuity (6/2017).

In a case concerning transport services, the Ombudsman stated that technical limitations of a customer information system must not create an obstacle to decision-making concerning temporary service provision to persons with disabilities. The validity period must be clearly stated in each decision. If a decision is issued on a temporary (fixed-term) basis, the grounds for its temporary nature must also be stated in the decision.

Since the welfare service unit in question stated that it had taken action to remedy the issues related to its customer information system and decision-making practice, the case did not require further measures by the Ombudsman other than drawing the attention of the welfare service unit

to provisions on the decision-making process and validity periods of disability services (716 and 741/2017).

The Deputy-Ombudsman noted that the disability services act and decree do not provide a definition for a one-way journey in the context of transport services. A stop made during a transport service journey can implement the purpose and objectives of the disability services act. However, the legal oversight authority cannot take a view on the types of situations that would make a stop during a service journey permissible, the duration of such stops, or how far in advance service journeys by taxi can be booked. The local authority must assess the mobility, assistance and other needs of persons with severe disabilities on an individual basis.

The Deputy-Ombudsman emphasised the fact that, due to their nature as a subjective right, transport services cannot be organised by local application guidelines in such a way that the use of transport services, and thus the mobility of a person with severe disabilities outside his or her home, would in practice be made impossible or very difficult (3689/2016).

### Customer fees

The substitute for a Deputy-Ombudsman drew the attention of a health and social service authority to the fact that a charge on transport services provided under the disability services act can only be collected based on the actual use of the service by the customer, unless otherwise provided by the act on client fees or the associated decree. The reviewed case concerned customer fees collected in connection with the school transport of a child with disability. Further, the substitute for a Deputy-Ombudsman emphasised the fact that the local authority had a duty to refund the customer for any fees collected in excess of actual use or on the wrong grounds. If the local authority refused to refund the customer following a claim, it had to issue a decision to that effect. Matters concerning customer fees are ultimately decided by the competence court of law (760/4/16).

A disability service customer had been granted transport services for a few work journeys per month in accordance with the customer's application, but the local authority's social service unit collected the price of a monthly season ticket in accordance with the regional directive. In the Ombudsman's view, the monthly fee could be considered unreasonable as defined by the decree on customer fees. As a general observation, the Ombudsman noted that, in order to implement the subjective right of a person with severe disabilities, it could be justified to offer the option of paying a reasonable fee per journey (customer-paid excess). In the Ombudsman's view, such a practice would better ensure and promote the implementation of the rights of persons with severe disabilities (5046/2016).

In an own-initiative investigation, the Deputy-Ombudsman investigated the collection practices of the transport services of five city authorities with regard to the customer-paid excess and whether discounts had been granted to transport service customers. The Deputy-Ombudsman found that the practice of some local authorities, whereby the customer-paid excess could be paid either in advance or retrospectively against an invoice at a bank, was conducive to promoting the rights of transport service customers.

Further, the Deputy-Ombudsman found that when persons with severe disabilities could choose to pay a customer fee based on actual usage instead of a monthly fee, this was also conducive to promoting the rights of persons with disabilities. In order to ensure customers' basic subsistence, a local authority has to reduce or waive customer fees in cases where the fees would result in a need for subsistence subsidy or affect the amount of subsistence subsidy due. The reduction of fees is a priority measure in the case of subsistence subsidy. Especially now that the basic social assistance is the responsibility of the Social Insurance Institution, from the point of view of customers' rights it is essential that local authorities reduce or waive customer fees in cases where the customer would otherwise require basic social assistance or where the recovery of customer fees causes the need for basic social assistance (3150/2/15).



The Ombudsman drew the attention of a city social service and health care unit to the obligation of authorities to provide information in a case where notifications about new customer fees had been published and sent to disability service customers after the fees had already been introduced and enforced in practice. The Ombudsman emphasised the need to pay special attention to information provision in cases involving changes to services that are used by vulnerable persons, such as those with severe disabilities or chronic illnesses and older people.

In the Ombudsman's view, the city authority's communications about changes to transport services and customer fees in other disability services had not been entirely consistent with good governance. The obligation of authorities to provide information and advice is especially important in cases where a change in a local authority's directive or practice has an immediate or delayed effect on the benefits or rights of social welfare customers. Timely provision of information will also enable social welfare customers to respond and, if necessary, apply for a discount or waiver from the social welfare authority as appropriate according to the act on customer fees (1463/2016).

In the Ombudsman's oversight practice, with regard to customer fees the established minimum requirement is that social welfare customers should receive an appealable decision concerning the calculation basis and amount of customer fees, at least if the customer requests it. By its own initiative, the Ombudsman investigated the decision-making practice of a city authority's disability service unit specifically with regard to customer fees collected from persons with intellectual disabilities. The Ombudsman found it positive that the social service and health care unit of a city authority stated that it had taken measures to issue appealable decisions on customer fees and development communications or guidelines concerning the fees (129/2017).

The Ombudsman drew the special attention of the Basic Care Committee to the right of social welfare customers to receive an appealable individual decision concerning a customer fee or meal

payment. The Ombudsman stressed that it is not adequate to issue a general notification about customer fees or, for example, the possibility of applying for exemption, without providing statutory instructions for appeal (6675/2016).

### Personal assistance (The Disability Services Act)

Decisions on the method of implementing personal assistance under the disability services act are made by the competent local government authority. When making these decisions, the authority must consider the opinion of the person with severe disabilities, his or her needs resulting from disability or illness, and his or her general life circumstances. However, persons with severe disabilities do not have an absolute right to have services provided according to their exact personal preferences. In the case of disputes, the decision on the method of implementing the service can be referred to a court of law.

The substitute for a Deputy-Ombudsman found that a residential service unit had neglected its duties when it had not implemented all assistance visits agreed with the complainant exactly to the agreed plan. The case did not involve just one forgotten service visit. The substitute for a Deputy-Ombudsman drew the attention of the residential service producer (residential unit) to its obligation to implement assistance service visits in a punctual manner and in accordance with the agreement (1319/2016).

Similarly, in another case, the complainant's personal assistance service had not been implemented appropriately, since the assistant had failed to visit the complainant as agreed on two occasions. The Ombudsman drew the attention of the service voucher producer to its obligation to ensure the agreed service level and punctual implementation of assistance visits. Further, the Ombudsman stressed that the local authority has the obligation to oversee the activities and service quality of its service voucher producers. A local authority must intervene in the activities and, as a last resort,



revoke the producer's authorisation if the service is not delivered according to the service level required of an equivalent municipal operator (3369/2017).

The Ombudsman stressed that a local authority must monitor the quality and provision of purchased services, if it purchases personal assistance services from a private sector producer. A local authority cannot transfer its service provision obligation to a private sector service producer or its monitoring obligation to an individual customer. In the reviewed case, a city welfare service unit had not concluded written agreements with personal assistance service producers. The Ombudsman drew the unit's attention to the local authority's monitoring responsibility and obligation to draw up written agreements for service contracts. The Ombudsman asked the unit to report by 28 February 2018 on the actions it had taken as a consequence of the decision (5170/2016).

*On said date, the service unit notified the Ombudsman that it had taken measures to draw up agreements on purchased services.*

### Persons with intellectual disabilities

Complaints relating to persons with intellectual disabilities concerned their treatment and the use of restrictive measures at residential units, customer fees, service quality and the preparation of a service plan and a special care programme.

In the Ombudsman's view, a city authority's social service and health care unit had been in breach of the act on persons with intellectual disabilities, when the revision and preparation of a child's special care programme had been delayed. The Ombudsman drew the unit's attention to the fact that failure to draw up a special care programme and revise it in a timely manner may jeopardise the rights of a vulnerable person who needs special care, for example, with regard to his or her legal protection and access to appropriate services. In practice, the complainant's child had been without a valid special care programme for over 11 months due to a delay in the review process, and

further, the preparation of the programme had been delayed by three weeks.

The disability service decision and the unit's statement did not specify why the decisions concerning the disability services of the complainant's child had been issued on a fixed-term basis. The Ombudsman stressed that when issuing a decision on a fixed-term basis, the authority must have specific grounds to do so. In the case of a subjective right with a continuous need, decisions should primarily be issued as valid until further notice. The Ombudsman drew the attention of the city authority's social service and health care unit to provisions on legitimate expectation and decision-making.

Further, the Ombudsman drew the unit's attention to the obligation to state reasons, since the decision on personal assistance did not specify why the number of service hours had been reduced from ten to five hours. In the Ombudsman's view, the grounds for reducing the number of hours should have been made clear in the decision in one way or another. The provided service plans or other documents did not comment on the reasons for reducing the hours (2084/2016).

In another decision, the Ombudsman noted the importance of ensuring regular outdoor recreation for customers if their health permits it, including when determining the conditions of involuntary special care. The Ombudsman drew the attention of a joint municipal authority to the fact that in principle, customers should have opportunities for daily outdoor recreation, including during assessment periods.

In the reviewed case, a child had been placed in an adult facility. The Ombudsman noted that, according to his opinion, in principle a child under the age of 18 should not be placed in an adult facility, unless it is exceptionally necessary from the point of view of the child's own interest. The reason given in the statement (the physical size of customers over the age of 16 and behavioural challenges) was not a valid reason for placing a child in an adult facility, because a child's care should generally be provided in a facility with other children in similar developmental stages. In the Ombudsman's view, it is an important starting point that

the care of a minor should be organised at a facility where they can spend time in the company of others of a similar age.

In the Ombudsman's opinion, the service manager of a joint municipal authority had violated the act on the rights of persons with intellectual disabilities by failing to duly send to the complainant a decision concerning restrictive measures (supervised movement) placed on the complainant's minor child. The Ombudsman stressed that the appeal period does not start until the person who has a right to appeal has been notified of the decision and the appeal instructions. Therefore and on the grounds of legal protection, all concerned parties must be notified of the decision even if the decision was made some time ago but was not communicated at the time in accordance with the law (4563/2016).

### The granting of a disability sports assistant card by a city authority

The Ombudsman found it positive that a city authority provides a card intended for special groups, which entitles assistants of persons with disabilities or long-term illnesses to free entry at indoor sports facilities operated by the city authority's physical activity services. The card promotes opportunities for persons with disabilities or long-term illnesses to participate in recreational sports and physical activities on an equal basis.

Although it is not a statutory benefit, care should be taken to ensure equal and fair practices in the treatment of applicants and when determining the eligibility criteria for the card. Since the city authority's physical activity service unit had already taken remedial action as a result of the complaint and expanded the card eligibility criteria to include a need of assistance determined by social service personnel, the case did not warrant further measures by the Ombudsman (5234/2016).

## SOCIAL INSURANCE

The Ombudsman reprimanded the Social Insurance Institution about unlawful practices in a case concerning the rehabilitation of a person with severe disabilities. In the Ombudsman's view, the Social Insurance Institution had neglected to duly process the applicant's matter when it gave the complainant conflicting information about the schedule of rehabilitation services. Further, the Ombudsman found that the Social Insurance Institution had failed to provide sufficiently clear reasons for a new decision which revised the previous decision, and had not duly consulted the complainant when revising the decision.

As a result of the case, the Social Insurance Institution stated that it would clarify its internal instructions regarding the provision of reasons and the hearing of customers in decision reviews. In addition to the failures admitted by the Social Insurance Institution, the Ombudsman found it erroneous and misleading that a note stating that the application had been received on 18 December 2014 had been included in the new decision, even though no application had been made by the complainant. In the Ombudsman's opinion, the complainant had grounds to expect that they would be entitled to lymph therapy throughout the period stated in the original decision issued by the Social Insurance Institution.

According to the Ombudsman's understanding, in order to adhere to the principle of protection of legitimate expectations, the Social Insurance Institution should have complied with its non-appealable decision at least until its new decision became final. Further, as a result of the Social Insurance Institution's conduct, the complainant had been deprived of some of the therapy sessions they had been granted by the non-appealable decision. The Ombudsman proposed that the Social Insurance Institution consider how it could recompense the complainant for the damage caused by its unlawful actions (3733/2016).

*On 15 November 2017, the Social Insurance Institution stated it had decided to pay the complainant €350 in compensation.*

In the Ombudsman's view, the Social Insurance Institution was in breach of the Administrative Procedure Act when it failed to notify without delay the second guardian of a child over 16 years of age about its decision concerning the child's disability support.

The Social Insurance Institution stated that it had clarified its enforcement instructions with regard to the sending of decisions on disability support for beneficiaries of 16–17 years of age to the effect that the decision is now sent both to the beneficiary and separately to both guardians, if the beneficiary is 16–17 years of age and the guardians live at different addresses. The new instructions took effect on 1 December 2017 (6023/2016).

### Interpreting services for persons with disabilities

The duty to provide interpreting services for people with hearing impairments, hearing and vision impairments or speech impairments was transferred from local authorities to the Social Insurance Institution on 1 September 2010. The Social Insurance Institution can organise the service either by producing it or sourcing it from external service producers. The interpreting service centre operation was transferred in-house to the Social Insurance Institution on 1 January 2014. Interpreting services for persons with disabilities are aimed at promoting the non-discrimination of persons who require interpreting services compared to people without disabilities in order to facilitate their participation, communication and interaction with other people.

A person with disability is not entitled to interpreting services if he or she already has access to sufficient and appropriate interpreting on the basis of other laws. Such laws include the Basic Education Act and the Act on the Status and Rights of Patients.

The right to an appealable decision is part of the guarantee of good governance as provided for by section 21 of the Constitution of Finland. It has been the Ombudsman's established view that

the Social Insurance Institution should issue an appealable decision when it rejects an interpreting service request of a person who is entitled to interpreting services. The written appealable decision issued by the Social Insurance Institution should contain specific information and reasons why the complainant has not been granted an interpreter in the case in question. In the Ombudsman's opinion, this obligation does not depend on the reason for the refusal, for example, if the provision of the interpreting service was not primarily the responsibility of the Social Insurance Institution in the case in question (932/4/16). Similarly, in a case where the Social Insurance Institution and a client requesting an interpreter disagree on the level of interpretation to be provided, an appealable decision should be issued if requested by the person concerned (3793/2016).

## HEALTH CARE

### Placement in a prison hospital and consideration of disabilities

Based on the statements it received, the Ombudsman was not able to unequivocally determine whether the complainant's arrival at a prison hospital had been duly noted and whether measures had been taken to provide for the complainant's basic needs. The statements showed that the number of nursing staff had been increased during weekends. Further, the complainant's severe disabilities and associated needs had been taken into account in the sentence plan. However, in the Ombudsman's view it was questionable whether sufficient preparations had been implemented in all respects.

According to the Ombudsman's understanding, in order to implement reasonable accommodation the prison hospital should have sourced a wider bed which would have allowed the complainant to turn over without difficulty. Further, the complainant should have been provided with an opportunity for hydrotherapy during their stay in the prison hospital. Hydrotherapy had been stopped due to a lack of personnel resources. The

Ombudsman brought its views about the deficiencies regarding reasonable accommodation and provision of rehabilitation to the attention and consideration of the prison health care unit (1216/2016).

The Ombudsman found that a city authority had acted wrongly when it refused to recompense an elderly person in a severe stage of Alzheimer's disease who lived in an intensified assisted living facility for the cost of hygiene overalls which the person had paid for. The Ombudsman noted that the provision of medical rehabilitation equipment is always based on the patient's medical circumstances and an individual, case-by-case needs assessment. Since the attending physician had determined the hygiene overalls necessary for the person's care, the overalls should have been issued to them as medical rehabilitation equipment (6616/2016).

## EDUCATION

### Decision on special support for a child sign language user

The Ombudsman reprimanded a city education authority whose official decisions did not specifically define special support (interpreting services) granted to two preschool-age native sign language users (twins) and how the support had been given. The guardians had requested a sign language interpreter for the children's preschool classes, but instead the interpreting service had been provided by a sign language instructor. The official decision did not determine or specify how the interpreting service for the preschool children would be organised, and therefore the complainants were, in practice, unable to appeal the decision.

The Ombudsman found that the education authority had acted in breach of the Administrative Procedure Act and the Basic Education Act. The Ombudsman therefore advised the education authority to note for future reference that any matters which are relevant to the pupil's legal protection and educational provision must be specified in the authority's decision on special support.

In the Ombudsman's view, the case constituted a serious breach, since it concerned the assessment and provision of equal participation in education for a child entitled to special support. Further, the Ombudsman drew the attention of the education authority to the fact that an education provider must organise sufficient support for learning and school attendance immediately when the need for support has been determined. The Ombudsman stressed that the authority should have made a decision on the special support interpreting service before the start of preschool since, based on the children's disability, it was evident that they would need special support at the start of preschool, and since the city authority's working group had already made a decision on the support implementation method the previous spring.

In its decision, the Ombudsman also drew the education authority's attention to the fact that, according to case law, a decision made on interpreting services in conjunction with a decision on special support has no bearing on how the decision on interpreting services can be appealed. Therefore, even though the special support provision could have been appealed to the regional state administrative agency, the decision should have included instructions for appealing the decision concerning the interpreting services to the administrative court (745/4/16).

As a general comment, the Ombudsman stressed that it is particularly important to identify the individual needs of kindergarten-age children, and to organise the appropriate support in the case of children with multiple disabilities and individual needs, in order to safeguard the right of a child to participate in early childhood education on an equal basis with other children. The Ombudsman found it unsatisfactory that, according to the statement of the city authority, sign-language early childhood education is only provided at one kindergarten, which is not suitable for children with physical disabilities.

In the Ombudsman's view, the city education authority had not been in breach of law in the matter, since the duty to provide an appealable decision on the provision of early childhood education for a child who needs special care was ambig-

uous by nature. However, as a general comment, the Ombudsman stated that in a case that is open to interpretation, it is advisable to provide an appealable decision, at least if it is requested by the person concerned (715/2016).

## CRIMINAL SANCTIONS FIELD

### The living conditions and placement of a prisoner with physical disability

The Ombudsman noted for future reference that, when a prison receives a prisoner with physical disabilities, it should immediately ascertain whether the designated prison cell has sufficient safety mechanisms for the prisoner in question, and if insufficiencies are found, determine what measures are needed to make it sufficient to meet the prisoner's needs. If access to the recreational yard requires assistance from prison personnel, in the Ombudsman's view the matter should not be left to the initiative of the prisoner; instead, the prisoner should be told upon his or her arrival that he or she can be assisted by prison personnel in outdoor recreation.

The complainant had reduced access to activities and outdoor recreation compared with other prisoners, since the prison was not suitable for wheelchair users and was not able to provide a personal assistant. The Ombudsman referred to its previous decision, in which it had found a breach of the law in a case where a prisoner who was a wheelchair user was, in practice, almost totally prevented from spending time outside the cell or participating in activities due to disability. A prisoner's restricted mobility must not lead to him or her spending the sentence under conditions that are comparable to solitary confinement. In the reviewed case, the complainant's situation appeared not to have been quite so severe, but it was nevertheless unequal to the conditions of other prisoners. For example, the prisoner should have been provided with access to the library and sports facilities as often as other prisoners – and in the case of sports facilities perhaps even more

frequently, since a key objective stated in the prisoner's sentence plan was the maintenance of their physical and mental functioning.

In a maximum security prison, the prisoner did not have adequate and equal access to activities and recreational opportunities in comparison with other prisoners. A decision was made in July 2016 to transfer the prisoner to a low-security prison, but it was not implemented until October 2016 because the criminal sanctions region in question could not provide a suitable place with appropriate accessibility until then. The Ombudsman has previously, as far back as 2014, found that from the point of view of constitutional provision of non-discrimination, it is not acceptable if a prisoner who uses a wheelchair cannot be placed in a low-security prison due to a lack of prison places with appropriate accessibility (2871/2016).

## 3.4

# National Preventive Mechanism against Torture

### 3.4.1

#### THE OMBUDSMAN'S ROLE AS NATIONAL PREVENTIVE MECHANISM

On 7 November 2014, the Parliamentary Ombudsman was designated as [the Finnish National Preventive Mechanism \(NPM\)](#) under the Optional Protocol of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Human Rights Centre (HRC) and its Human Rights Delegation, which operate at the Office of the Parliamentary Ombudsman, help fulfil the requirements laid down for the NPM in the OPCAT, which makes reference to a set of international standards known as the Paris Principles.

The NPM is responsible for conducting visits to places where persons are or may be deprived of their liberty. The scope of the OPCAT has been defined as broadly as possible. It includes prisons, police departments and remand prisons, but also places like detention units for foreigners, psychiatric hospitals, residential schools, child welfare institutions and, under certain conditions, care homes and residential units for the elderly and persons with intellectual disabilities.

The scope covers thousands of facilities in total. In practice, the NPM makes visits to, for example, care homes for elderly people with memory disorders, with the objective of preventing the mistreatment of the elderly and violations of their right to self-determination.

The OPCAT emphasises the NPM's mandate to prevent torture and other prohibited treatment by means of regular visits. The NPM has the power to make recommendations to the authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and preventing actions that are prohibited under the Convention against Torture. It should also

have the power to submit proposals and observations concerning existing or draft legislation.

Under the Parliamentary Ombudsman Act, the Ombudsman already had the special task of carrying out inspections in closed institutions and overseeing the treatment of their inmates. However, the OPCAT entails several new features and requirements with regard to visits.

In the capacity of the NPM, the Ombudsman's powers are somewhat broader in scope than in other forms of oversight of legality. Under the Constitution of Finland, the Ombudsman's competence only extends to private entities when they are performing a public task, while the NPM's competence also extends to other private entities in charge of places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

This definition may include, for example, detention facilities for people who have been deprived of their liberty on board a ship or in connection with certain public events as well as privately controlled or owned aircraft or other means of transport carrying people deprived of their liberty.

International bodies have considered it advisable to organise the work of the NPM under a separate unit. At the Office of the Parliamentary Ombudsman, however, it has seemed more appropriate to integrate the tasks of the NPM into the work of the Office as a whole. Several administrative branches have facilities that fall within the scope of the OPCAT. However, there are differences between the places, the applicable legislation and the groups of people who have been deprived of their liberty.

Therefore, the expertise needed on visits to different facilities also varies. As any separate unit within the Office of the Ombudsman would, in any case, be very small, it would be impossible to



assemble all the necessary expertise in such a unit, and the number of visits conducted would remain considerably smaller.

Participation in the visits and the other tasks of the Ombudsman, especially the handling of complaints, are mutually supportive activities. The information obtained and experience gained during visits can be utilised in the handling of complaints, and vice versa. For this reason, too, it is important that those members of the Office's personnel whose area of responsibility covers facilities within the scope of the OPCAT also participate in the tasks of the NPM. In practice, this means the majority of the Office's legal advisers, some 25 people.

The OPCAT requires the States Parties to make available the necessary resources for the functioning of the NPM. The Government proposal concerning the adoption of the OPCAT (HE 182/2012 vp) notes that in the interest of effective performance of obligations under the OPCAT, the personnel resources at the Office of the Parliamentary Ombudsman should be increased. Regardless of this, no additional personnel resources have been allocated for the Ombudsman to perform its duties as the NPM.

In the report on its visit to Finland in 2014, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended that steps be taken to significantly increase the financial and human resources made available to the Finnish Parliamentary Ombudsman in his role as the NPM. The Committee also suggested that consideration be given to setting up a separate unit or department within the Office of the Parliamentary Ombudsman to be responsible for the NPM functions.

In its recommendations issued in December 2016 on the basis of Finland's seventh periodic report, the UN Committee against Torture (CAT) expressed its concern about the Ombudsman having insufficient financial or human resources to fulfil the mandate of the NPM.

The CAT recommended that the State strengthen the NPM by providing it with sufficient resources to fulfil its mandate independently and efficiently. The CAT also recommended that

Finland should consider the possibility of establishing the NPM as a separate entity under the Parliamentary Ombudsman. The State has been requested to provide a response to the recommendations by 7 December 2017.

The Ombudsman submitted his statement on the matter to the Ministry for Foreign Affairs on 13 October 2017. In his statement, the Ombudsman says that the Office has so far received no additional human resources to fulfil its remit as the NPM, although such increases were included in the 2014 and 2016 budget proposals.

In line with the Parliament guidance restricting the creation of new government posts, the Ombudsman did not include additional human resources in the 2017 budget proposal. Instead, the Ombudsman proposed an increase in financial resourcing to allow, for example, the consultation of external experts. The Ombudsman also states that the Ombudsman's duties included inspections to closed institutions and monitoring of the treatment of persons deprived of their liberty long before the Ombudsman's designation as the NPM. The Ombudsman therefore had the resources required for these operations before he assumed the duties of the NPM.

However, more resources are required for the development of the operations. With internal organisational changes and the reallocation of resources from other oversight activities, the Office of the Parliamentary Ombudsman has been able to appoint one full-time legal adviser to coordinate the NPM's operations. A further two new posts, a coordinator and an assistant, are still needed.

### 3.4.2 OPERATING MODEL

The tasks of the National Preventive Mechanism have been organised without setting up a separate NPM unit in the Office of the Parliamentary Ombudsman. The Ombudsman has assigned two public servants at the Office to coordinate the NPM duties for a fixed term in addition to their other duties. The coordinators are responsible for the international relations of the NPM and internal

coordination within the Office. This arrangement was in force until the end of 2017.

To improve coordination within the NPM, the Ombudsman decided to assign one legal adviser exclusively to the role of coordinator. This was achieved through the reorganisation of duties, as no new personnel resources were gained. At the beginning of 2018, the role of principal legal adviser and full-time coordinator for the NPM was assumed by Senior Legal Adviser *Iisa Suhonen*. She is supported by Principal Legal Adviser *Jari Pirjola* and on-duty lawyer *Pia Wirta*, who coordinate the NPM's activities alongside their other duties, as of 1 January 2018 until further notice.

The Ombudsman has also appointed an OPCAT team within the Office. Its members are the principal legal advisers working in areas of responsibility that involve visits to places referred to in the OPCAT. The team has nine members and is led by the head coordinator of the NPM. During 2017, the OPCAT team formulated strategies by collating working methods and goals for the administrative sectors, as they realised the methods and goals in their capacity as the NPM. The strategy work is ongoing and will form the basis for the NPM's overall strategy.

In 2016 and 2017, the NPM provided induction training for external experts regarding the related visits. The NPM currently uses the services of eight external medical experts: three psychiatrists (one of whom also specialises in adolescent psychiatry), one specialist in forensic psychiatry, two specialists in geriatrics, one specialist in intellectual disabilities and one psychiatric nurse.

The NPM also employs three trained experts by experience, whose expertise will be used during visits to closed social welfare institutions for children and adolescents. The two other experts by experience represent the Disability Section of the Human Rights Centre, and their expertise will be used on visits conducted by the NPM to units where the rights of disabled people are being restricted.

During the visits conducted by the NPM, efforts have been made to engage more frequently in constructive dialogue with staff regarding good practices and procedures. Feedback on observa-

tions as well as guidance and recommendations may also be given to the supervised entity during the visit. At the same time, it has been possible to engage in amiable discussions of how the facility might, for example, correct the inappropriate practices observed.

A report is drawn up after each visit, presenting the observations made during the visit. The draft report is often sent to the facility visited to provide it with the opportunity to comment on the observations and notify of any measures taken in response. After that, the facility may also be requested to notify, by a given deadline, of any measures it will take in relation to those observations that have not yet been dealt with. If, during a visit, something has arisen that needed investigating, the Ombudsman has taken up the investigation of the matter on his own initiative, and the issue has not been dealt with further in the report.

### 3.4.3 INFORMATION ACTIVITIES

A brochure on the NPM activities has been published and is currently available in Finnish, Swedish, English, Estonian and Russian. If necessary, it will be translated into other languages as well.

Full reports on some of the visits conducted by the NPM have been made available on the public website of the Office of the Parliamentary Ombudsman. It has been agreed at the Office of the Parliamentary Ombudsman that as of 2018, all reports will be published in full, excluding details that must remain confidential. This objective will also be included in the strategy of the NPM.

The new content on the public website of the Office of the Parliamentary Ombudsman will be made available by the end of 2018. The project also includes the launch of the NPM's own website. Another objective is to communicate more actively about the visits and the related themes on the social media.

#### 3.4.4 EDUCATION AND TRAINING ON FUNDAMENTAL AND HUMAN RIGHTS

The Ombudsman and the Human Rights Centre started a joint project in 2017 to promote human rights education and training. The project is particularly targeted at the educational sector. Officials from the Office of the Parliamentary Ombudsman and experts from the Human Rights Centre toured schools throughout Finland.

The goal of the project and the inspection visits is to assess and promote education and training on fundamental and human rights at all levels of school life. Based on the experiences gained during the visits, the project team produced a training package for municipal directors of education and headmasters. The plan is to launch similar collaboration on human rights education between the NPM and the Human Rights Centre in 2018.

#### 3.4.5 COOPERATION WITH OTHER OPERATORS

In the **ADMINISTRATIVE BRANCH OF POLICING**, police prisons and inspection visits to them are regularly discussed at meetings of the National Police Board and the network for the oversight of legality within the police force. Summaries of all decisions of actions regarding the police – including those on police prisons – are sent to the National Police Board (which further distributes them among departments), the National Bureau of Investigations and the Police University College.

Visit reports are always submitted to the National Police Board and the police department in question and, when necessary, directly to the police prison. Internal oversight of legality at police departments is conducted by separate legal units. It has been emphasised that these units should also inspect the operations of the police prisons in their respective territories. Each year, the National Police Board provides the Parliamentary Ombudsman with a report on the oversight of legality within its area of responsibility.

The **DEFENCE FORCES** and the **FINNISH BORDER GUARD** also submit annual reports to the Parliamentary Ombudsman on their internal oversight of legality.

In the field of **CRIMINAL SANCTIONS**, visit reports are sent for information to the Central Administration of the Criminal Sanctions Agency, the management of the criminal sanctions region in question and the Department of Criminal Policy at the Ministry of Justice. In addition, the central and regional administrations are often requested to notify of measures taken as a result of the observations.

The Parliamentary Ombudsman receives reports on the facilities visited, drawn up for the internal oversight of legality in the criminal sanctions field. Furthermore, each month the Criminal Sanctions Agency provides the Ombudsman with its statistics on the number of prisoners and prison leave. Among other things, the prisoner statistics indicate the number of remand prisoners, male and female prisoners and prisoners under the age of 21.

The statistics on prison leave give an indication of the processing practices concerning leave applications in each prison, in other words, how many prisoners apply for leave and how often, and how much leave is granted. The visits also draw attention to the processing of prison leave applications, emphasising the importance of taking the related decisions individually and appropriately reasoned, based on the law.

In 2017, the Criminal Sanctions Agency lawyers in charge of legal oversight were invited to the Office of the Parliamentary Ombudsman to discuss collaboration and problems identified during legality oversight. The closing discussion on the visit to Vantaa Prison was attended by two representatives of the Criminal Sanctions Region of Southern Finland.

Representatives of the national association for prisoners' families (*Vankien Omaiset ry*) were invited to the Office of the Parliamentary Ombudsman in December 2017 to introduce the association and its work, as well as their experiences of the operations of the Criminal Sanctions Agency from the family perspective. The Ombudsman

also continues its collaboration and exchange of information with *Kriminaalihuollon tukisäätiö* (Krits), a nationwide non-governmental non-profit aftercare organisation for released prisoners. Krits makes visits to about ten prisons annually, and therefore holds a wealth of information on the treatment, living conditions and health care of prisoners. Krits provides valuable knowledge about the problems of which it is informed by prisoners and their families.

In the **HEALTH CARE SECTOR**, collaboration partners include the National Supervisory Authority for Welfare and Health (Valvira) and Regional State Administrative Agencies (AVI). Before visits, as a rule the competent regional state administrative agency is contacted in order to gain information on its observations about the facility in question. Other third-party operators, such as local associations for the families of psychiatric patients, may also be contacted prior to visits. The Ombudsman and the senior management of Valvira held a collaboration meeting in September 2017.

The Ombudsman also receives AVI Northern Finland's supervision plans for the Prisoners' Health Care Unit, and guidance and assessment reports following its visits. As part of this collaboration, the Ombudsman sends its own supervision plans and reports, for information, to Valvira and the Regional State Administrative Agency. The Ombudsman, Valvira and AVI Northern Finland also hold regular meetings on issues in the field of prisoner health care.

In the field of **SOCIAL WELFARE**, visit reports are generally sent to the relevant Regional State Administrative Agency for information. In 2016, Valvira published the results of the survey on the mistreatment of customers in elderly care among employees at full-time care facilities for older people. The survey revealed widespread problems among elderly care units in areas such as self-monitoring, identifying mistreatment, and intervening in cases of mistreatment.

Valvira has initiated reactive supervision in units where, on the basis of the survey, it considers it necessary to investigate whether the safety of customers has been severely compromised.

The survey results will also be of use to the NPM when selecting sites for inspection visits.

Valvira has published in 2017 a similar survey on the actualisation of self-determination within residential and institutional services for persons with intellectual disabilities. Data on the use of restriction measures and decision-making processes is essential to the NPM in its monitoring.

### 3.4.6 INTERNATIONAL COOPERATION

#### THE UN SUBCOMMITTEE ON PREVENTION OF TORTURE

The NPM's report on 2016 was submitted for information to the UN Subcommittee on Prevention of Torture (SPT). The SPT presented a number of comments and questions to the NPM on the annual report, which were addressed by the OPCAT team.

In October 2017, the NPM, headed by the Ombudsman, met SPT member Mari Amos, who is the subcommittee's rapporteur for Finland. Among other things, the parties discussed the resources of the NPM, touched upon some of the issues that the SPT had raised regarding the latest report, and prepared for the next meeting alongside the SPT.

The delegation of the Ombudsman met with SPT representatives again in November 2017, at the SPT annual meeting in Geneva. Prior to the meeting, the NPM had provided the SPT with a completed Assessment Matrix for NPMs, which was based on the "Analytical assessment tool for national preventive mechanisms" created by the STP for the use of NPMs. After the meeting, SPT provided feedback and asked some further questions. The Ombudsman gave his response to the feedback in March 2018.

## NORDIC COOPERATION

The Nordic NPMs meet regularly twice a year. The Finnish NPM hosted the January 2017 meeting in Helsinki. In addition to Finnish representatives, the meeting was attended by representatives of the Swedish, Norwegian and Danish NPMs. For the first time, a representative of the Parliamentary Ombudsman of Iceland also participated in the meeting. The topic of the meetings was inspection methods, interviewing techniques and the use of external experts. The meeting was paired with a training day on interviewing methods and using external experts. The speaker at the meeting was Dr. Clive Meux from the Institute of Psychiatry in London, UK.

The subsequent meeting was held in Oslo in August 2017, hosted by the Norwegian NPM. The topic of the August meeting was inspection visits made to units housing minors. A special theme discussed was the use of coercion and restrictive measures on minors during transport to or between institutions. The speaker at the meeting was Kirsten Sandberg, Professor of Law at the University of Oslo and a member of the UN Committee on the Rights of the Child, who gave a presentation on “The best interest of the child and reflections on the NPM work”.

## NPM COLLABORATION BETWEEN EU MEMBER STATES

The coordinator of the NPM attended a two-day meeting in Strasbourg in April 2017, on the launch of collaboration between the NPMs of the EU Member States (EU NPM Network).

## OTHER COOPERATION

In March 2017, the Ombudsman played host to a representative of the European Ombudsman, who came to find out about the work of the Ombudsman. During the visit, the representative was also introduced to the operations of the NPM.

The delegation of the Ombudsman of Montenegro paid a two-day visit to the Office of the Par-

liamentary Ombudsman in September 2017. One of the objectives of the visit was to learn about the practices of the Finnish NPM, including inspection visits made to closed institutions and psychiatric units in particular.

In the same month, four representatives of the Estonian NPM joined the Finnish NPM on a two-day inspection visit to the psychiatric care facilities run by the Päijät-Häme Joint Authority for Health and Wellbeing. During the same visit, the Estonian guests had the opportunity to visit a residential social welfare unit for people with memory disorders.

## 3.4.7 TRAINING

The NPM organised a training event for office staff and external experts on interviewing methods and the use of external experts for inspection visits in January 2017.

A legal adviser from the Office of the Parliamentary Ombudsman participated in a seminar series in January and February 2017 on the mental wellbeing of refugees, which focused on the recognition of mental health problems in refugees and the treatment offered to refugees who have experienced severe trauma. The seminar was organised by the National Institute of Health and Welfare (THL), HUH Psychiatry and the Finnish Association for Mental Health.

The revised Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules, were adopted by the UN General Assembly in December 2015. The rules are recommendations intended to ensure that all prisoners in the world are treated humanely and in accordance with generally accepted principles and practices. The Finnish translation of the rules and the introduction were published in February 2017. The publication seminar of the Finnish edition was attended by several legal advisers from the Office of the Parliamentary Ombudsman. The UN representative attending the seminar was Mr Philipp Meissner, Crime Prevention and Criminal Justice Officer.



In March 2017, the Office of the Parliamentary Ombudsman organised internal training on the removal of foreign nationals from the country and return flights. The trainers were representatives of the Helsinki Police Department and the Office of the Non-Discrimination Ombudsman. Another training event held in May focused on human trafficking, with trainers from the Office of the Non-Discrimination Ombudsman and Victim Support Finland.

A legal adviser from the Office of the Parliamentary Ombudsman participated in a seminar in Copenhagen in April 2017 entitled “The Use of Solitary Confinement as a Disciplinary Measure”, which was organised by Dignity – Danish Institute Against Torture. Another legal adviser attended the four-day training course “Detention monitoring applying the UN Nelson Mandela Rules”, held in Bristol in August 2017.

In 2017, two officials from the Office of the Parliamentary Ombudsman attended a three-day training event in Vienna, jointly organised for NPMs by the Austria NPM, IOI (International Ombudsman Institute) and APT (Association for the Prevention of Torture). The training event was a continuation of similar sessions held in previous years in Riga and Vilnius. The theme of this year’s training was “Communications skills and techniques”.

Three legal advisers attended the criminal sanctions field seminar on the theme of appeals, organised by the Criminal Sanctions Agency and the Department of Criminal Policy at the Ministry of Justice in October 2017. The target group of the meeting and training event were lawyers from the Criminal Sanctions Agency and the administrative courts, and its focus was on prisoners’ right of appeal.

In November 2017, a legal adviser attended a training course on the self-determination of persons with intellectual disabilities and the use of restrictive measures, organised by Valvira and the Regional State Administrative Agencies.

In addition, the Office of the Parliamentary Ombudsman held several information events during 2017, aimed at the entire staff and communicating the main content of the above training

events and meetings. Whenever necessary, the OPCAT coordinator also provides training for new staff members at the Office on the duties of the NPM.

### 3.4.8 OTHER ACTIVITIES

#### STATEMENTS ISSUED

In the **CRIMINAL SANCTIONS SECTOR**, statements were issued during the reporting year to the Legal Affairs Committee and the Constitutional Law Committee on the government proposal on the amendment of the Imprisonment Act, the Remand Imprisonment Act, and the Act on Enforcement of Community-Based Sanctions (HE 263/2016 vp), and on the government proposal on the Act on Enforcement of Combined Sentences of Imprisonment (HE 268/2016 vp).

#### OWN-INITIATIVE INVESTIGATIONS

##### Suicide committed by a prisoner

During a visit to Vantaa Prison, it came to the attention of the NPM that a prisoner had taken his own life a few weeks earlier. The prisoner had arrived from Mikkeli Prison by train and was awaiting further transportation to the Psychiatric prison hospital in Turku. The Deputy-Ombudsman decided to subject the matter to a separate investigation.

##### Prisoner subjected to a body cavity search at a private health clinic

As part of a complaint, it was brought to the Ombudsman’s attention that a prisoner had been subjected to a body cavity search at a private health clinic. The Ombudsman launched a general own-initiative investigation to establish whether a body cavity search constitutes an exercise of public authority that must be carried out by a physician



in a public-service employment relationship, or whether it may be carried out by a private practitioner.

### Outsourced medical services in health care services for prisoners

During an inspection visit to the resource planning unit of the Health Care Services for Prisoners (VTH), it came to the attention of the NPM that approximately half of physicians' services in outpatient care for prisoners were provided by outsourced services. The Ombudsman found it problematic that there should be such heavy and consistent demand for private agency services in the provision of health care services for prisoners. As a result, the Ombudsman launched an own-initiative investigation on the use of outsourced medical services in health care services for prisoners.

### Private transport services providers in child welfare services

In the processing of complaints and during inspection visits, it emerged that a private company was providing transportation services under very challenging circumstances for children and adolescents placed in care. This was usually in a situation where the child or adolescent had absconded from a place of substitute care. This gave rise to the suspicion that the same operator may continue operating independently in some situations, without the social services. On some occasions, children had also been transported by private security firms. Valvira has been requested to establish to what extent private companies are used as part of substitute care service provision, how these companies operate, under what circumstances the services may be used and how the operations are supervised.

### DECISION ISSUED ON OWN-INITIATIVE INVESTIGATIONS

#### The use of a restraining bed at Espoo Police Prison

Based on an observation during a visit to Espoo Police Prison, it was discovered that a restraining bed on which a person is lying face down restrained by the arms and legs was in use. The person may also be restrained by handcuffs and leg cuffs whilst strapped to the bed. The bed has an opening through which the restrained person can vomit. The person may additionally be restrained by straps fastened across their body, including the head, so that the person lies completely immobilised.

The Deputy-Ombudsman took the view that the current legislation does not allow for the use of such means of restraint in a police prison. If such restraint beds were to be used in police prisons in the future, the practice should be governed by legal provisions similar to those of the Mental Health Act. Moreover, even under such legislation, the bed should be similar to those used in medical treatment in psychiatric care, and not the type used at Espoo Police Prison. In general, the Deputy-Ombudsman did not find any just cause for the use of a restraining bed in police prisons and concurs with the opinion of the CPT that restraining beds should no longer be used in police prisons. These types of restraining measures should be strictly based on a physician's assessment and carried out by health-care professionals.

*The National Police Board reported that it had sent instructions to all police department to stop using restraining beds in police prisons. The Western Uusimaa Police Department had already stopped the use of the restraining bed prior to the instructions. The National Police Board has since informed the Deputy-Ombudsman that restraining beds are no longer used in any police prisons. According to the Ministry of the Interior, there are no plans to reintroduce restraining beds as a means of restraint in police prisons.*

### Lack of safety belts in police vans

The regulations do not, in principle, require the fitting of safety belts in the hold of a police van. Passengers transported in the hold may sustain injuries in accidents and during abrupt braking or steering, as they are not protected by seatbelts. Furthermore, passengers are often in an unfit state to control their movements. The Deputy-Ombudsman found the practice unsatisfactory.

*The National Police Board reported that, during the next round of competitive tendering on the acquisition of new police patrol vans, which will be held in 2018, the specifications for the hold would include the option of fitting safety belts.*

### Police Prison Rules at the Eastern Uusimaa Police Department

Among other issues, the Deputy-Ombudsman found that when the prison rules had been drawn up, inadequate consideration had been given to what types of orders may be given in police prison rules. As a result, some of the rules were in violation of the law. Furthermore, insufficient attention has been paid to the fact that the police prison rules form a self-standing regulation, not a collection of regulations. The issue of what types of matters may be regulated by prison rules, and what types of orders may be given on such matters, is not necessarily self-evident. The Deputy-Ombudsman therefore finds it crucial and necessary that the formulation of police pris-

on rules be placed under national guidance, rather than police departments attempting to resolve these regulatory problems on their own.

*The matter was discussed during an inspection at the National Police Board. The National Police Board will issue instructions on the content of police prison rules as soon as the amendments to the Act on the Treatment of Persons in the Custody of the Police has been approved.*

### The treatment of a prisoner who had stayed in the isolation unit for more than two years

The Deputy-Ombudsman found no sufficient or lawful reasons to segregate a person, who at his own request had lived for nearly two years and three months in the isolation unit, from other prisoners. More effective intervention should have been made in the situation, in which the prisoner was afraid of other prisoners. Unlike the ordinary prison premises, the isolation unit and adjacent exercise yard were unsuitable for long-term accommodation and the decision to place the person in segregation had not been made through due process. An own-initiative investigation was launched based on an observation made during a prison visit.

*During the visit to the Espoo Police Prison, the inspectors learnt about the restraining bed and how it is used. One of the experts agreed to be restrained on the bed during the visit.*



### Time spent outside cells

The basic principle behind regulations and international recommendations regarding prisoners is rehabilitation and the treatment that enables their social reintegration once released. Prisoners and remand prisoners should therefore be allowed to spend a reasonable amount of time, at least eight hours per day, outside their cells. During that time, they should be able to engage in rewarding and stimulating activities, such as work, training and exercise. During a visit to Riihimäki Prison, it was noted that, in certain wards, prisoners had few opportunities to spend time outside their cells in a meaningful way. The prison has since made efforts to address the situation.

The Deputy-Ombudsman has since drawn the prison's attention to the fact that, during weekends, prisoners have limited opportunities to spend time outside their cells. He also pointed out that prisoners who did not participate in activities should also be offered the opportunity to spend time outside their cells.

### Equal treatment of prisoners

The possibility of prisoners to purchase vitamins and nutritional supplements, and the right to possess them, varies between prisons. The Deputy-Ombudsman stated that the harmonisation of Prison Rules was necessary in this respect.

*The Central Administration of the Criminal Sanctions Agency reported that it was planning to establish a prison rules working group. The working group may consider the varying practices regarding the possession, purchase and storage of vitamins and nutritional supplements. The Central Administration of the Criminal Sanctions Agency appointed the Prison Rules Working Group in December 2017, which was tasked with preparing for the harmonisation of rules and practices with the aim of ensuring the equal treatment of prisoners.*

### Failures in decision-making required by the Act on Special Care for Mentally Handicapped Persons

During a visit to the Kuusanmäki Service Centre, it was noted that the unit had not made statutory decisions on matters such as restrictive equipment and clothing or supervised movement, as required by the Act on Special Care for Mentally Handicapped Persons. The Ombudsman found that the service centre had neglected its statutory duty to base the use of restrictive measures on a proper decision. Negligence in proper decision-making was prevalent throughout the Kainuu social welfare and health care district.

The Ombudsman found, as did AVI Northern Finland, that the practical implementation of statutory practices laid down in law had been overlooked and under-resourced. There were also shortcomings in communications. The Ombudsman issued a reprimand to the Kainuu social welfare and health care joint authority and Kuusanmäki Service Centre for unlawful conduct.

### LEGISLATIVE PROPOSALS

#### Detention facilities at courts of law

In conjunction with a visit to the holding facilities at the Helsinki District Court for persons deprived of their liberty, the Deputy-Ombudsman stated that there are no legal provisions regulating holding facilities at courts of law in Finland. The 2010 government proposal for an act on prisoner transport has lapsed and no similar proposal has been made since. The Deputy-Ombudsman found this problematic and expressed this opinion to the Ministry of Justice.

### Patient transport

The Mental Health Act includes no provisions on executive assistance during patient transport to destinations aside from health-care service units, or on the treatment and conditions of the patient during transport. Furthermore, the law has no provisions on the use of coercive measures by care personnel to restrict a patient's freedom of movement outside a hospital area, or in order to bring a patient to hospital from outside the hospital area. Care personnel are currently allowed to use coercive measures during transport, mainly in self-defence or as an act of necessity under the Criminal Code.

It is the opinion of the Ombudsman that the transport of a patient, their treatment and conditions during transport, and the competencies of the accompanying personnel should be specifically provided for by law. Since problems are continually arising due to the lack of applicable legislation and possible emergency situations, the Ombudsman has called for the amendment of the related legislation as a matter of urgency. The Ombudsman has therefore made a proposal to the Ministry of Social Affairs and Health that the legislation be clarified in this respect. The Ombudsman reiterated this proposal in his decision on a complaint, in which a hospital was found responsible for misconduct after contracting a private security firm to manage the security of patient transport without applying the necessary legal provisions.

### PROPOSALS ON RECOMPENSE

In his role as a supervisor of fundamental rights, the Ombudsman can make proposals concerning recompense for human rights violations. When it is no longer possible to rectify a problem, the Ombudsman may suggest that an authority make an apology to the person whose rights have been violated, or that financial compensation be considered. The proposals have led to a positive outcome in most cases.

Below is an example of a proposal on recompense made in 2017, concerning a degrading treatment of a person deprived of his liberty. For more information about proposals on recompense and the action taken as a consequence, see section 3.6.

The Deputy-Ombudsman proposed that the State pay compensation to a prisoner for inappropriate treatment that violated his dignity. The prisoner had been made to stay in an isolation cell naked and without a cover while under observation. Such conduct is particularly reprehensible due to its duration, the fact that the prisoner was held naked for five hours, and that the events took place under camera surveillance. Moreover, restraining and attaching the prisoner to the bars of the isolation cell by his arms and legs was illegal.

*In July 2017, the State Treasury decided to pay the prisoner compensation of EUR 2,500 for the violation of fundamental rights and EUR 1,000 for pain and suffering and other temporary disability.*

### 3.4.9 VISITS

Fulfilling the role of an NPM requires regular visits to sites. In some administrative branches, such as the police and criminal sanctions, regular site visits can be made. However, in the case of social services and health care, the number of units is so large that sites must be selected for visits on the basis of certain priorities.

In 2017, the number of follow-up visits was increased in order to determine how the recommendations of the NPM had been implemented in practice. The implementation of recommendations is also monitored through notifications submitted to the Ombudsman by the visited units or other authorities, regarding any changes and improvements made in their operations.

The NPM made a total of 70 visits during 2017. Of these, 52 were made unannounced.

Use of external experts has become an established practice in certain administrative branches. However, the practice of using external experts during inspection visits is still taking shape. In

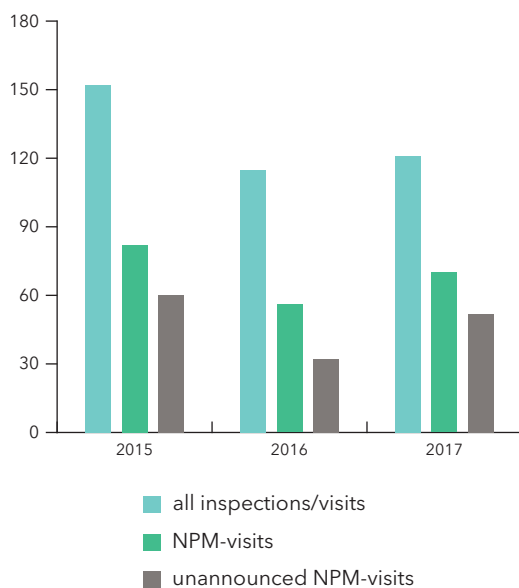
2017, external experts were involved in 19 visits. In the field of social welfare, a visit to a youth home for residents with special needs was attended by an expert by experience. In addition, a physician specialising in intellectual disabilities and an expert by experience participated in five visits made to residential care units for people with intellectual disabilities.

Since its establishment, the NPM has been increasingly focused on interviewing persons who have been deprived of their liberty during the visits. On site, the NPM has sought to interview those in the most vulnerable position, such as foreign nationals.

This has meant an increase in the use of interpreter services. Interpreters have been used on visits to prisons and detention units for foreign nationals in particular. The aim has been to create a designated “interpreter pool” for NPM visits, consisting of interpreters that are familiar with the environment and professional vocabulary used. This helps to improve the quality of the interviews.

One of the key themes for the Office of the Parliamentary Ombudsman for 2017 was efficient legal remedies. A focus area during the visits and inspections was paying attention to how well clients and their families can access the legal remedies to which they are entitled, such as reprimands, complaints and appeals. The Ombudsman has not yet set a specific theme for the visits made by the NPM. Instead, the various visits may have focused on specific issues, or certain groups of vulnerable people. Further details on the theme of fundamental and human rights are provided in section 3.7.

In the following, we have presented the special characteristics of inspection visits concerning different administrative branches; the sites visited during 2017 and the key areas on which the NPM made observations. These observations, the recommendations made on their basis and the measures taken by the authorities are described in more detail in the separate annual report of the NPM, which is available in Finnish, Swedish and English on the Office of the Parliamentary Ombudsman’s website.

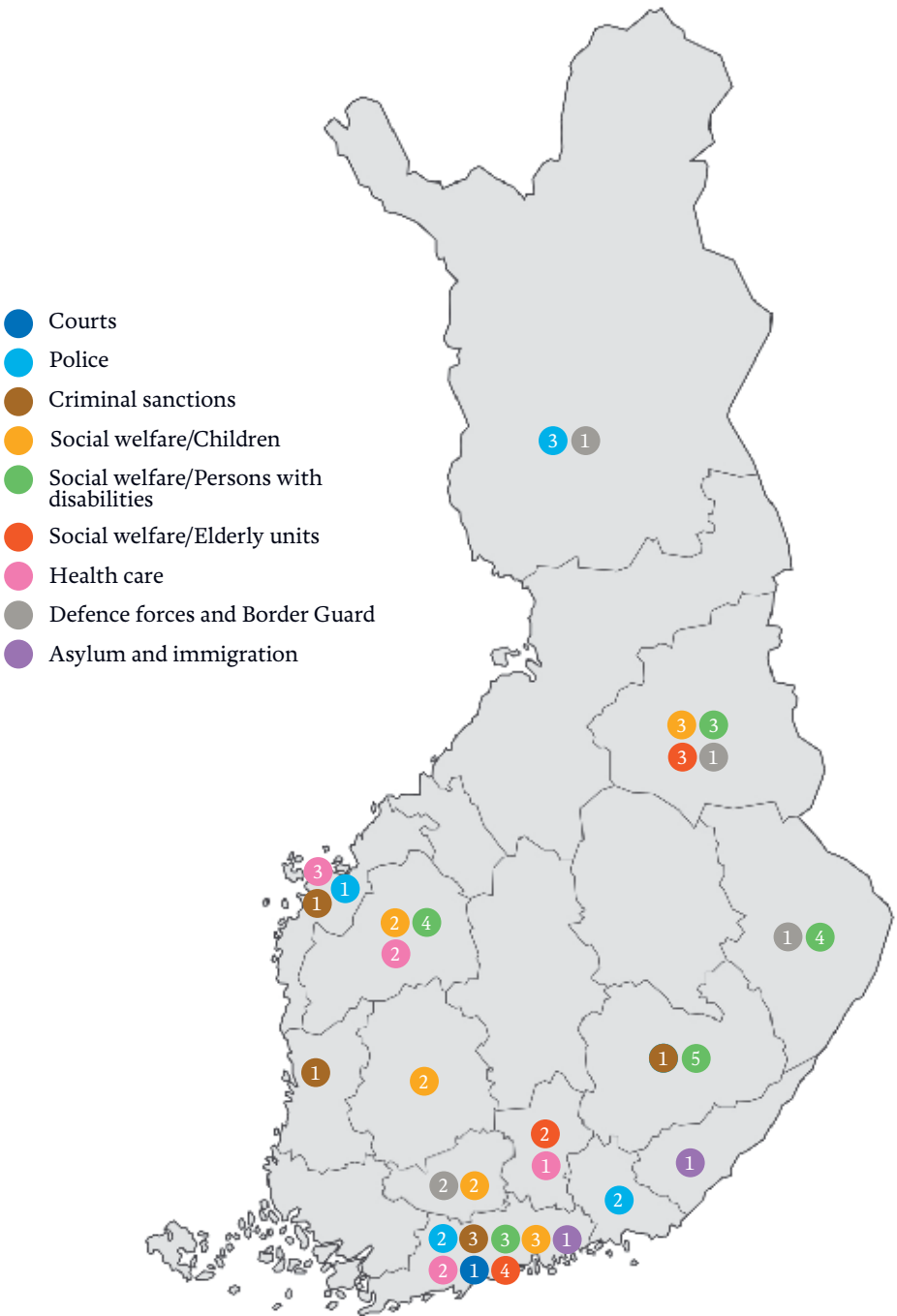


*Visits in 2015–2017.*

### 3.4.10 POLICE DETENTION FACILITIES

It is the duty of the police to arrange the detention of persons deprived of their liberty not only in connection with police matters, but also as part of the activities of the Customs and the Border Guard. Most apprehensions, over 60,000 every year, are due to intoxication. The second largest group is formed by persons suspected of an offence. A small number of people detained under the Aliens Act are also held in police prisons. Depending on the reason, the duration of detention may vary from a few hours to several months. There are approximately fifty police prisons in Finland, and their size and occupancy rates vary widely. The largest police departments are currently undergoing a renovation programme.

In addition to the Ombudsman, on numerous occasions the international bodies have criticised the holding of remand prisoners on police prem-



*NPM visits in 2017. A full list of all visits and inspections is provided in Appendix 6.*



ises, in particular, as they are not fit for long-term accommodation. In recent years, fewer than one hundred remand prisoners have been held on police premises on a daily basis.

The Remand Imprisonment Act has been amended so that remand prisoners may not be kept in a police detention facility for longer than seven days without an exceptionally weighty reason considered by a court. Furthermore, provisions on an enhanced travel ban and house arrest during investigations have been added as alternatives to remanding prisoners in custody under the Coercive Measures Act. The amendments will enter into force on 1 January 2019.

The rationale presented on a government proposal (HE 252/2016 vp) also refers to the opinions expressed by the CPT and the Ombudsman, that police facilities are unfit for accommodating remand prisoners. The long-term goal must therefore be to gradually abandon the practice of holding remand prisoners at police facilities. In 2017, the Deputy-Ombudsman recommended that four police prisons (Vaasa, Porvoo, Kotka and Kouvola) discontinue the practice of holding remand prisoners on their premises. In connection with two police prisons (Inari and Sodankylä), the Deputy-Ombudsman has further stated that their premises and security arrangements are suitable for short-term accommodation only.

The Act on the Treatment of Persons in Police Custody is also currently under review. Following the Act's amendment, the National Police Board will update its own guidelines on the treatment of persons in police custody, and determine any general matters possibly provided for in the rules on custody facilities (a rules template).

In practice, this will mean that police departments must review and update the rules for police prisons. In anticipation of this process, the Deputy-Ombudsman has recommended that police departments familiarise themselves with his decision of September 2017 (1154/2016\*), detailing the matters that should be considered when drawing up rules for a detention facility. The decision are available in Finnish on the Ombudsman's website [www.oikeusasiamies.fi](http://www.oikeusasiamies.fi).

The NPM aims to make regular visits to at least the police prisons of the largest police departments. Every visit to a police department by the Deputy-Ombudsman will also include a visit to the police prison. In addition, the Deputy-Ombudsman will perform extended inspection tours of a number of police prisons. The themes of the visits are partly determined by the topics of complaints received, but a special focus will be given to the most vulnerable groups, such as foreign nationals and minors.

Based on the NPM visit reports submitted to it, the National Police Board completed a list of development needs and distributed the list among all police departments during November 2017. Overall, follow ups on recommendations have shown that the issues raised by the NPM have been taken seriously and addressed accordingly. The letter sent by the National Police Board to police departments also indicates that it is assuming its expected active role in the supervision of police prisons. Collaboration between the National Police Board and its legality oversight is described in detail in section 3.4.5.

In 2017, eight inspection visits were made to police prisons. In addition, the visit to Espoo police prison included a visit to the sobering-up station; the findings of this visit are explained under the section on visits to health-care facilities. The police prisons visited by the NPM in 2017 were:

- Espoo police prison (42 cells), Western Uusimaa Police Department
- Vaasa police prison (32 cells), Ostrobothnia Police Department
- Porvoo police prison (22 cells), Eastern Uusimaa Police Department
- Kotka police prison (25 cells), Southeastern Finland Police Department
- Kouvola police prison (25 cells), Southeastern Finland Police Department
- Rovaniemi police prison (22 cells), Lapland Police Department
- Sodankylä police prison (7 cells), Lapland Police Department
- Inari police prison (4 cells), Lapland Police Department



*The outdoors area at  
Kouvola Police Prison.*

Three of the visits were made to sites where the previous visit had been made within a year and where one of the aims was to follow-up on the practical implementation of the Deputy-Ombudsman's recommendations (Espoo, Vaasa and Porvoo).

Visits to police prisons are usually made unannounced. In 2017, two of the visits were pre-announced (Sodankylä and Inari). This was necessary in order to ensure that someone would be on duty to receive the inspectors. As a rule, the Sodankylä and Inari detention facilities are empty, and therefore no officers are on site. An external expert on forensic psychiatry was involved in the visits to the Espoo police prison and the City of Espoo sobering-up station. These visits were made during the evening.

The key findings and recommendations concerned the following aspects:

- police officers guarding the detention facility
- the treatment of a detained minor
- the detention of remand prisoners in a police prison
- the participation of criminal investigators in the detention operations
- the information received by persons deprived of their liberty regarding their rights and the conditions of the detention facility
- knowledge of decision-making and appeals processes
- protection of privacy and confidentiality
- restrictions on communications
- outdoor exercise and outdoor exercise facilities
- alarm systems in cells
- treatment and conditions, including
  - washing facilities
  - the appropriate storage of foodstuffs given to persons in custody
  - the condition and cleanliness of bed linen and towels
- health-care provision at police detention facilities

### 3.4.11 DEFENCE FORCES, BORDER GUARD AND CUSTOMS DETENTION FACILITIES

In 2017, the NPM conducted four visits to the **DETENTION FACILITIES OF THE FINNISH DEFENCE FORCES**. All of the visits were made unannounced. The visits were made to the facilities of the Armoured Brigade in Hämeenlinna and Riihimäki, the Kainuu Brigade and the Sodankylä facility of the Jaeger Brigade.

At the time of the visits, no persons deprived of their liberty were being held in the detention facilities. In general, the detention facilities are rarely used: in the last six months, only one person had been detained in the Riihimäki facility; the highest number of detainees was in the Kainuu Brigade, where 13 persons had been detained in the previous 10 months. The most common grounds for detention were intoxication and desertion.

The treatment of person deprived of their liberty in Defence Forces facilities is governed by the Act on the Treatment of Persons in Police Custody. During these visits, attention was paid to the conditions and treatment of those deprived of their liberty, their access to information, and their security.

**THE FINNISH BORDER GUARD** currently uses 15 closed spaces for the detention of persons deprived of their liberty. The facilities are typically shared by the Border Guard and Customs. **CUSTOMS** also has facilities for its exclusive use in three locations. These detention facilities are used for short-term detention before transferring persons to a police prison, detention unit or reception centre. The treatment of persons deprived of their liberty at Customs or Border Guard facilities is governed by the Act on the Treatment of Persons in Police Custody. The duration of detention in these facilities varies from one to several hours. The maximum detention time is 12 hours in all cases.

The locations, standard and furnishing of the facilities vary. The Border Guard Headquarters have approved the rules for Border Guard's detention facilities and issued regulations for detention

facilities. Similarly, Customs has approved of the detention facilities used by it and issued its own rules for its detention facilities. The scope of the Customs rules for detention facilities has been under an own-initiative investigation by the Ombudsman.

The NPM made a pre-announced visit in March 2017 to the detention facilities at the Nii-rala border-crossing point run by the North Karelia Border Guard District. The facilities are shared with Customs, in such a manner that one of the detention rooms is primarily reserved for persons detained by Customs. The Customs detention facilities did not, however, fulfil the regulations at the time of the visit, and all persons detained by Customs were taken to the detention facilities of the police.

The plan was to renovate the facilities to meet the regulations and serve Customs by December 2017, when the rules for the detention facility and material for persons in custody were scheduled for publication. The idea is that, from that point onwards, Customs will be responsible for the supervision of detained persons deprived of their liberty in matters falling under the jurisdiction of Customs.

### 3.4.12 THE CRIMINAL SANCTIONS FIELD

The Criminal Sanctions Agency operates under the Ministry of Justice and is responsible for the enforcement of sentences to imprisonment and community sanctions. The Criminal Sanctions Agency runs 26 prisons. Prisoners serve their sentences either in a closed prison or an open institution. Of Finnish prisons, 15 are closed and 11 open institutions. In addition, certain closed prisons also include open units. The focus of inspections is mainly on closed prisons. The average number of prisoners in 2017 was approximately 3,000.

Six prison visits were made in 2017, of which one was made to an open prison (Kerava). The visit to Mikkeli Prison was a follow-up of the visit of November 2016, during which grave legal violations had been observed. The Vantaa Prison visit included an accessibility assessment and a visit



*At Mikkeli Prison, the eastern exercise yard of the old section (pictured) has been taken into use and the western exercise yard has been extended.*

to the VTH Vantaa health clinic. All of the visits were pre-announced, except for one. The visited prisons and their capacity:

- Vantaa Prison (232 places)
- Kerava Prison (94 places)
- Vaasa Prison (59 places; 3 for women and 12 in men's open prison)
- Mikkeli Prison (110 places)
- Satakunta Prison, Köyliö Unit (76 places)
- Vantaa Prison (183 places)

In addition, unannounced inspections were made of the detention facilities for persons deprived of their liberty and of their transportation at the Helsinki District Court.

The following list includes key aspects on which the inspection visits focused in 2017:

- the treatment of prisoners and the general atmosphere in the prison
- information given to the prisoners
- the position of female remand prisoners
- the position of minor prisoners
- the position of foreign prisoners
- the segregation of remand prisoners from other prisoners
- accessibility in prison
- conditions in isolation units
- conditions and use of the temporary cells

- visitor practices
- facilities for child visitors
- exercise yards and access to outdoor exercise
- prisoner transport conditions
- the participation of supervision personnel in the distribution of medicines

### SUPERVISION AT MIKKELI PRISON

The follow-up visit to Mikkeli Prison was conducted in order to review the measures taken to implement the Deputy-Ombudsman's recommendations and what areas require further development. During the visit, the operations of the Region Centre of the Criminal Sanctions Region of Eastern and Northern Finland were reviewed from the perspective of legality oversight.

The Deputy-Ombudsman stated that the Region Centre had neglected its duty to oversee the legality of the prison operations. The Deputy-Ombudsman stressed that the Region Centre must step up its legality oversight activities and provide the legal guidance and support required by the prison management.

Since the previous visit, significant changes had been made at the prison. As a result, relations between the prisoners and the staff appeared to have improved and the general atmosphere was

calm and more open. The issue of placing remand prisoners in wards had been successfully addressed. The remand prisoners also had sufficient opportunity to prepare for their trial. The prison had begun issuing administrative decisions, complete with instructions on how to appeal. The Prison Rules and practices regarding leave, disciplinary measures and visitors were now similar to those of other prisons.

Certain areas of the prison's operations still required further development, such as the operations of the reception ward and decisions on the possession of property. The prison has also yet to build a suitable gym. Since the issuance of new recommendations based on the follow-up visit, the following measures have been taken:

- the Region Centre of the Criminal Sanctions Region has organised a training event for prison personnel on the appeals process and acceptable grounds for decisions on the possession of property.
- the reception ward was reorganised, and its staff have received more training
- in recruitment, attention has been paid to the educational background of Senior Criminal Sanctions Officials to ensure that they have the necessary readiness to perform the administrative duties included in their managerial role
- preparations to introduce unsupervised visits were made
- access to exercise and the use of the gym were increased and new exercise equipment was purchased a new, permanent role was established for managing the prisoners' exercise activities
- guidelines were issued on the use of isolation cells

### VISIT TO THE DETENTION AND TRANSPORTATION FACILITIES OF PERSONS DEPRIVED OF THEIR LIBERTY AT HELSINKI DISTRICT COURT

The inspectors paid attention to the condition and appearance of the cells and the size, alarm systems and lighting conditions in rooms used as temporary cells. In addition, attention was paid to the arrangements and lack of suitable spaces for meetings between persons in custody and their legal counsels.

#### 3.4.13 ALIEN AFFAIRS

There were approximately 13,500 asylum seekers in Finland at the end of 2017; they were housed in 56 reception centres. Under section 121 of the Aliens Act, an asylum seeker may be held in detention for reasons such as establishing his or her identity or enforcing a decision on removing him or her from the country. There are two detention units for foreign nationals in Finland, one in Joutseno and one in Metsälä, Helsinki.

The detention unit at the Joutseno Reception Centre operates under the Finnish Immigration Service. The Joutseno Reception Centre had 30 places at the beginning of 2017, and by the end of 2017, 38 new places had been added. The most recent new places were added in January 2018. The Metsälä Detention Unit was operated by the City of Helsinki up to the end of 2017. On 1 January 2018, the Unit was transferred under the management of the Finnish Immigration Service. The Metsälä Detention Unit has 40 places; following the renovation of the unit, which was still ongoing at the end of 2017, its capacity was reduced to 30 places.

The reception centres have not been considered part of the remit of NPM supervision, and inspections at the sites have been made under the mandate of the Ombudsman. However, the situation may change as a result of the amended Aliens Act. Regulations on the residence requirement and new protection measures related to the residence requirement applicable to children entered into force at the beginning of February 2017. A



foreign national who has sought international asylum may be ordered to live at a specific reception centre and to report to the reception centre from one to four times a day.

The criteria for placing an adult under a residence requirement are less strict than those for detention. Furthermore, a child must remain within the area of the reception centre in question. The criteria for placing a child under the residence requirement are the same as for the detention of a child, which makes the procedure an alternative to detention.

The Ombudsman does not oversee return flights in its role as the NPM, although this would fall under its jurisdiction. This is because the Non-Discrimination Ombudsman has been assigned the special duty of overseeing the removal of foreign nationals from the country. However, the Ombudsman has received complaints, such as the conduct of the police, regarding issues related to return flights for asylum seekers.

Some residents in reception centres and detention units may be victims of human trafficking, and recognising such residents is a challenge. A system of assistance for victims of human trafficking operates in connection with Joutseno Reception Centre. According to a press release by the Finnish Immigration Services, 127 new customers, representing 31 nationalities, were accepted by the system of assistance in 2017. Fourteen of the customers were minors. The number of customers of the assistance system grew by more than in any previous year. In total, the assistance system had 322 customers at the end of 2017.

The aim is to make regular visits to both detention units. The NPM visited the Joutseno Detention Unit in February 2017 and the Metsälä Detention Unit in December 2017. In addition, the Deputy-Ombudsman made an unannounced visit to the residential unit for unaccompanied minors in Kajaani.

### JOUTSENO DETENTION UNIT

The two-day visit to the Joutseno Detention Unit was pre-announced. An external expert in forensic psychiatry participated in the visit. During the visit, detained residents were interviewed with the assistance of Russian, Arabic, Turkish and Dari interpreters. The visit also included an introduction to the assistance system for victims of human trafficking.

Since the previous visit, the situation at the centre had changed in that it was now continuously at full capacity. Some foreign nationals were therefore being held in the detention facilities of the police. Another noteworthy observation was that an increasing number of the detained foreign nationals had arrived straight from prison. In many cases, the process of removing the person from the country had not been initiated while they were serving their sentence, but only after their release. This is not an acceptable practice, as it prolongs the actual period of detention.



*A view from the Joutseno Detention Unit.*



Some issues observed during visits, regarding the treatment and conditions of those under detention, are listed below:

- general atmosphere in the unit
- the awareness of the detained foreign nationals of their legal status
- the provision of sufficient legal advice
- camera surveillance in the seclusion room
- health examinations of the newly detained person
- acknowledging the “quiet customers” in health care

### METSÄLÄ DETENTION UNIT

The visit to the Metsälä Detention Unit was made unannounced. The focus of the visit was two-fold. Firstly, the visit was a follow-up on the previous visit of December 2016. The City of Helsinki Social Services and Health Care Division had reported to the Ombudsman in May 2017 on the measures raised in connection with the initial visit.

On this occasion, the aim was to observe how well the Ombudsman’s recommendations had been implemented in practice. The second main focus of the visit was on health care. As a general observation, the detained persons interviewed by the NPM said that they were treated well at the detention unit.

Some issues observed during visits, regarding the treatment and conditions of those under detention, are listed below:

- the awareness of the detained foreign nationals of their legal status
- the provision of sufficient legal advice
- outdoor exercise yards
- the quality of indoor air
- the reliability of surveillance cameras
- activities supporting the life-management skills of the detained persons must be organised
- health examinations of the newly detained person
- recognition and treatment of victims of torture
- the need for psychiatric/psychological services

### 3.4.14 CHILDREN’S UNITS WITHIN SOCIAL WELFARE SERVICES

Substitute care referred to in the Child Welfare Act is organised for children who have been taken into care, placed as an emergency measure, or placed under a temporary court order (children aged 0–17 years) in institutions, family homes operating under a statutory licence, and in foster care. According to statistics compiled by the National Institute for Health and Welfare (THL), 6,300 children (mainly those taken into care) had been placed in institutions or similar places in 2016, 2,000 children had been placed in professional foster care and 7,000 were in foster family care.

Under the Child Welfare Act, only children placed in an institution or similar place (including emergency placement) may be subjected to the restrictive measures referred to in legislation. Substitute care may be provided by units owned by municipalities, or the municipality responsible for the placement may buy substitute care services from units maintained by private service providers. Valvira only holds records on private providers of substitute care. The total number of such units is 110 (69 service providers).

Visits by the NPM have been made to institutions or similar units. However, restrictive measures as referred to in the Child Welfare Act are also probably used in substitute care provided in private foster homes. The situation regarding the supervision of foster family care under the mandates of the NPM or Ombudsman is indirect. The Ombudsman does have the opportunity to oversee foster care providers through the processing of complaints. All other supervision of foster families falls under the remit of local authorities, whose social service workers have the right to visit private homes.

As a rule, during visits to child welfare institutions the aim is to hear resident children before interviewing the personnel of the unit. The children interviewed are assured that they can contact the NPM if they are subjected to disciplinary or other similar measures following the visit. The personnel are also reminded that any reprisals against the children are prohibited.

The visits are, as a rule, unannounced and usually last one day. The NPM team typically spends 10–11 hours on site. If the institution is paired with a school or if any issues arising during the visit so demand, the visit lasts two days, with the second day of the visit taking place within a week. The second day of the visit is pre-announced, and the children who have been interviewed earlier are also notified.

This has proved a useful practice, as by the second day, the children are more familiar with the NPM team and may encourage children who were unwilling or unable to speak to the team on the first day to agree to be interviewed. The additional, second-day visits are regarded as part of the visit and are not recorded as separate visits.

The visits focus on any restrictive measures to which the children may be subjected and the related decision-making process – including hearing the child and justifying the decision to use restrictions. In particular, the boundary between the restriction on movement and the right or restriction of communication seems unclear for many within the field of institutional substitute care. Nearly all institutions have had failures in informing children of decisions concerning them. There is also a lack of awareness of the difference between restrictive measures and acceptable child-rearing methods. Restrictions may be imposed on the children as part of their normal upbringing, but most such restrictions require an administrative decision.

During visits, it has been noted that arrangements for the psychiatric care of a child and collaboration between the institution, social services and health care are not always made in a manner that would be in the best interests of the child. Attention is also paid to the children's school attendance and the interest taken by local authorities in the tuition provided at the institution.

All visit reports are sent to the unit in question and the local AVI, which is responsible for the regional guidance and supervision of social services. The report is also occasionally sent to Valvira, which is responsible for the national guidance and supervision of social services. A copy is always sent to the local authorities in the municipality responsible for the placement of the child.

The Deputy-Ombudsman had also found it necessary to inform the social workers in charge of the placed children of the observations and recommendations made as a result of the visit. In addition, the Deputy-Ombudsman has required that social workers discuss the content of the report with the placed child.

The institutions tend to have a constructive attitude to the Deputy-Ombudsman's opinions and comply with the recommendations given. In most cases, they react to the observations and recommendations promptly, either while the visit is ongoing or upon receiving a draft copy of the visit report.

One example of this is an institution where the documentation of restrictive measures was incomplete or nonexistent. The director of the unit reported that documentation and its importance had been discussed with the staff immediately after the visit and the making of administrative decisions on restriction had been practiced. Staff will receive regular training in the future, to ensure that similar shortcomings in documentation can be avoided.

The NPM made 12 visits to child welfare units in 2017. In the case of one of the institutions, the initial visit was followed by a repeat visit after a couple months. All of the visits were made unannounced. The follow-up visit was pre-announced.

Owing to the nature of the institutions, visits were also made outside office hours, for example on a Sunday. An external expert (a specialist in adolescent psychiatry) participated in one of the visits, which was made to a child welfare unit for children and adolescents suffering from neuropsychiatric disorders. In addition, one of the visits to a youth home for residents with special needs was attended by an expert by experience. The sites visited were:

- Peiponpesä, Hyvinkää (21 places, private services provider)
- Outamo children's home, Lohja (37 places, run by local authorities)
- Lukkarila children's home, Peräseinäjoki (7 places, private service provider)
- Nummela youth home, Lapua (4 places, private service provider)

- Harjulakoti, Kajaani (7 places, private service provider)
- Salmila children's home, Kajaani (14 places, run by local authorities)
- Kimppa children's and youth home, Paltamo (7 places, private service provider)
- Villa Junior, Ylöjärvi (7 places, private service provider)
- Honkalyhty, child welfare unit for children with special needs, Kangasala (7 places, private service provider)
- Varatie Tervakoski, Janakkala (16 places, private service provider)
- Tukikoti Tasapaino, Forssa (7 places, private service provider)

Listed below are key aspects on which the NPM focused during visits to child welfare units in 2017:

- adequate staffing
- general atmosphere in the unit
- the treatment of the child
- information given to the children
- grounds for decisions on the use of restrictive measures
- the use of restrictive measures
- the use of upbringing methods
- the role of social workers in the lives of the placed children
- the adequacy of neuropsychological services
- the protection of the child's privacy in health care
- the handling of the child's money

### 3.4.15 UNITS FOR OLDER PEOPLE WITHIN SOCIAL WELFARE SERVICES

The goal is that older people can live at home with the support of the appropriate home-care services. When this is no longer possible, the elderly person moves into an institution or full-time care or residential unit, where they receive care round the clock, including terminal care. There are some 2,000 care units providing full-time care for older people in Finland.

Visits are primarily made to closed units providing full-time care for people with memory dis-



*The lounge at the Salmila children's home in Kajaani.*

orders. Furthermore, NPM makes visits to psycho-geriatric units, where restrictive measures, such as locking the doors, using “back-zip” overalls, and chemical and other forms of restraint, may be used. The aim is to visit care units run by both private and public service providers within a given municipality. This allows for detecting any differences in the standard of care.

Social welfare and health care units, including services for older people, are under a statutory obligation to produce a self-monitoring plan. Such a plan includes all key measures taken by the service provider to monitor their operative units, the performance of their staff and the quality of the services they provide. Staff members have a statutory obligation to report any deficiencies in the care provided. The self-monitoring plan prohibits all reprisals against whistle-blowers.

Visits to care units for older people always focus on the use of restrictive measures and their

duration, documentation and the related decision-making. Another central theme involves ascertaining whether the care and treatment received by customers are respectful of their dignity. This aspect is particularly relevant when assessing the level of personal hygiene and arrangements for terminal care.

The purpose of the visits is to assess the level of health care and pain management, as well as physiotherapy/rehabilitation, oral hygiene and health care, nutrition and hydration, personal hygiene and the amount of outdoor exercise received by customers. The number of staff and the suitability of the facilities are also assessed. In addition, the NPM examines how the customers' right to self-determination and privacy are guaranteed. Attention is also paid to the general appearance and atmosphere of the unit, the quality of indoor air, accessibility and the availability of suitable stimuli. The inspectors review the training of the staff and the validity of fire safety and rescue plans.

The tone of the visit reports is qualitative, because the units are homes for their residents, who may be spending the final years of their lives in them. All reports are published on the website of the Ombudsman. The purpose of the publication is to inform the general public that the operations

of a certain unit are being monitored. The reports also provide residents, family members and staff with important information on the observations made during the visit.

It may also be requested that the visit report be made available to the public on the noticeboard of the unit for a period of one month. The aim is that residents, family members and other stakeholders are able to draw attention to any shortcomings that have been overlooked and report these to the authorities.

The recommendations presented in the reports are usually promptly implemented. The social welfare boards report having taken measures to improve the protection of privacy or increase the number of staff in terminal care. The NPM has also noticed a positive development trend in the standard of treatment and living conditions of the elderly. For example, the protection of privacy has improved: most residents in care homes for older people now have private rooms and bathrooms. The standard of care has improved, and less medication is used.

The quality of food, the cleanliness of the facilities and the quality of indoor air have also improved. The most common deficiencies observed during visits involve lack of outdoor exercise, poor



*Antinkoti offers residential care with round the clock services for customers with memory disorders. Pictured is a spacious balcony with its many plants at Antinkoti.*

oral health, and lack of rehabilitation and activities. There have also been deficiencies in terminal care.

All inspection visits made to care units for the elderly in 2017 were made under the NPM mandate. A total of nine visits were made in 2017. All visits were made unannounced. Five of the units were run by private service providers. The sites visited were:

- Viherlaakso service centre, Espoo (48 long-term residents, run by local authorities)
- Taavin muistipalvelukeskus, Espoo (46 residents, run by local authorities)
- Antinkoti, Helsinki (94 residents, run by a foundation)
- Kannelkoti, Helsinki (93 residents, run by a foundation)
- Arvola-koti, Kajaani (54 residents, run by an association)
- Menninkäinen care home, Kajaani (30 residents, run by a private family business)
- Aamurusko care home, Suomussalmi (14 residents, run by a foundation)
- Marttila serviced housing, Orimattila (45 residents, run by a joint authority)
- Timontalo serviced housing, Nastola (24 residents, run by a joint authority)

The key aspects on which the NPM focused during visits to care units for older people in 2017 are listed below:

- the atmosphere in the unit and the attitude of staff towards the residents
- the use of restrictive measures
- protection of privacy
- the availability of terminal care
- use of toilets
- oral health
- opportunities for outdoor exercise
- accessibility of premises and services
- maintenance of functional capacity
- physician's services

### 3.4.16 VISITS ON OTHER SOCIAL WELFARE UNITS

The Ombudsman also carries out inspection at service centres and other bases for homeless substance abusers and mental health patients. The customers of these units form an exceptionally vulnerable group, which is why the Ombudsman finds it essential to review the conditions in which these persons live, what services they are offered, and how they are treated. The inspections were made under the mandate of the Ombudsman because, as a rule, the residents of the units may not be subjected to restrictive measures.

The units inspected during 2017 were all run by the City of Helsinki: The Hietaniemi services centre (60 places), the Kulosaari support facility (22 places), and the Pakila support facility (28 places).

All visits were made unannounced. None of the inspections led any action being taken. Regarding the Hietaniemi Service Centre, however, the Deputy-Ombudsman stated that, when emergency accommodation is being arranged, those requiring and using the service should be provided with an appropriate place to sleep. The services provided (sleeping in dormitories, sometimes on a mattress) were suitable for accommodation only in exceptional circumstances, when other spaces were unavailable.

### 3.4.17 RESIDENTIAL UNITS FOR PERSONS WITH INTELLECTUAL AND OTHER DISABILITIES

According to a goal of the 2012 Government resolution on individual housing and services for persons with intellectual disabilities, no person with a disability should be living in an institution after 2020. It has been estimated that there are some 40,000 persons with intellectual disabilities in Finland. According to a statistical report compiled by THL (42/2017), there were 920 customers with intellectual disabilities in institutional care at the end of 2016 (191 of whom were minors). The number of long-term residents was 795 (131 of whom



were minors). Long-term residents refers to clients for whom a decision has been made on long-term care or who have been in care for more than 90 days.

The total number of units falling under the remit of the NPM – units where residents may be subjected to restrictive measures – is 856. Of these, 830 units offer full-time care (397 are run by private service and 433 by public service providers). In addition, 920 persons live in 26 units.

On visits to units providing institutional care and housing services for persons with disabilities, special attention is paid to the use of restrictive measures and the relevant documentation, decision-making, and appeals procedures under the provisions of the Act on Special Care for Mentally Handicapped Persons, which entered into force on 10 June 2016. According to the preliminary work on the Act, the restrictions must be highly exceptional and used only as a measure of last resort.

If a person in special care repeatedly requires restrictive measures, it should be assessed whether the unit they are currently residing in is suitable and appropriate for their needs. The practices of the unit should always be assessed as a whole. Restrictive measures should only be resorted to when this is necessary in order to protect another fundamental right that takes precedence over the fundamental right subject to restriction. It follows from this principle that restrictive measures should never be used for disciplinary or educational purposes.

The purpose of the visits is to assess the use of restrictive measures as well as the living conditions and the accessibility and feasibility of the facilities, while appraising the attainment of the disabled residents' right to self-determination and the availability of adequate care and treatment.

With the ratification of the UN Convention on the Rights of Persons with Disabilities (10 June 2016), the Parliamentary Ombudsman became part of the mechanism referred to in Article 33(2) of the Convention designated to promote, protect and monitor the implementation of the rights of persons with disabilities. For this reason, the Ombudsman also paid attention to the implementation of the rights specified in the Convention on

his visits. This special duty of the Ombudsman, as well as observations on accessibility, are discussed in more detail in section 3.3.

In 2017, 19 residential units for persons with intellectual and physical disabilities were visited. One of the units was a full-time residential unit for disabled persons. The other sites were units for persons with intellectual disabilities. There were disabled residents under involuntary special care in three of the units visited. Most of the visits (11) were made unannounced. Three of the units were run by private service providers. One of the visits was made during the evening. The sites visited were:

- Sirkunkuja residential unit (14 places), Kainuu social welfare and health care joint authority, Kajaani
- Leivola serviced housing (13 places), Kainuu social welfare and health care joint authority, Kajaani
- Pikkupihlaja institutional care unit (6 places), Eskoo social welfare joint authority, Seinäjoki
- Kotomarkki and Helakoti residential service units for persons with intellectual disabilities (20 and 21 places), Eskoo social welfare joint authority, Seinäjoki
- Tuulentupa and Neliapila institutional care units (19 and 20 places), Eskoo social welfare joint authority, Seinäjoki
- Vanamo children's and youth home (12 places), Eskoo social welfare joint authority, Seinäjoki
- Aurinkolahti group home (13 places), City of Helsinki Social Services and Health Care Division, Helsinki
- Turva, psychiatric examination and rehabilitation unit for persons with intellectual disabilities (8 places), Rinnekoti Foundation, Espoo
- Annala group home for children with intellectual disabilities (10 places), Rinnekoti Foundation, Espoo
- Koivukäärre residential unit for disabled people (8 places), Betania children's home foundation, Suomussalmi
- Honkatähti intensified support unit (20 places), North Karelia social welfare and health care joint authority (Siun Sote), Joensuu



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- A wooden sensory board with a curved top and bottom. It features a central vertical track with five circular discs: a red one at the top, followed by a yellow one with a blue star, a blue one with a yellow star, a red one with a yellow spiral, and a yellow one with a blue spiral. To the left of this track are a yellow ring and a blue ring. To the right is a red ring. At the top, there are three colored balls (red, yellow, blue) and a small wooden shelf. On the far left and right, there are chains with small wooden blocks and a red ring.

### 3.4.18 HEALTH CARE

In the health care sector, the accurate number of health care units that fall under the NPM's mandate is unavailable. Information has been requested from the Ministry of Social Affairs and Health (1164/2016). According to the response, there are 50 psychiatric units in which coercion is used. One indication of this is provided by the statistics of the National Institute for Health and Welfare, according to which there were 26,561 patients in specialised psychiatric care in Finland in 2013, with a total of 38,000 inpatient stays.

Key observations made on visits to residential units for persons with intellectual and other disabilities:

- 108

Owing to the large number of sites to be visited, certain prioritisations must be made with regard to the allocation of resources. The NPM has therefore mainly elected to visit the units where most coercive measures are taken, and where the patient material is most challenging. These include the State psychiatric hospitals (Niuvanniemi and the Old Vaasa Hospital) and other units providing forensic psychiatric care. The aim is to make regular visits to these units, which in practice means a visit every couple of years.

State psychiatric hospitals provide treatment for most forensic psychiatric cases in Finland, in addition to whom the units treat difficult-to-manage patients transferred from other psychiatric units. The terms of treatment of forensic and difficult-to-manage psychiatric patients are longer. The aim is also to make regular visits to units that care for difficult-to-manage minors (units in Tampere and Kuopio). Otherwise, the selection of sites will depend on when the place was previously visited and the number of complaints made about the unit.

As a rule, visits to units providing health-care services are always attended by an external medical expert. Of the 2017 visits, only the one to the Vantaa prisoner health-care clinic was made without a medical expert present. Involving a medical expert in the visits has made it possible to address the use of restrictive measures from a variety of angles and to explore ways of preventing their use. As in the case of the social services, the intention is to carry out visits to health-care units in 2018, accompanied by experts by experience.

The NPM made a total of eight visits to health-care units in 2017. In addition, as part of the preparation for visits in Ostrobothnia, the NPM conducted an inspection at the social welfare and health-care division of AVI Western and Inland Finland. Only the visit to Päijät-Häme Joint Authority for Health and Wellbeing was pre-announced. This decision was made because the inspection team included

a delegation from the Estonian NPM, which required some special arrangements from the unit as well.

Otherwise, the visits were made either completely unannounced or the unit was given prior notice of the NPM's arriving within a certain period of time, but not the exact date. The units visited by the NPM were:

- Old Vaasa Hospital (155 beds)
- The psychiatric ward of Vaasa Central Hospital (68 beds)
- Psychiatric unit for the Southern Ostrobothnia Hospital District (88 beds)
- Psychiatric wards of Päijät-Häme Joint Authority for Health and Wellbeing (72 beds)
- The Vantaa clinic of the Health Care Services for Prisoners (VTH)
- Emergency care unit at Vaasa Central Hospital
- Emergency care unit at Seinäjoki Central Hospital
- City of Espoo sobering-up station

Listed below are the key aspects on which the NPM focused during their visits to health care units in 2017:

- general atmosphere in the unit
- reporting on mistreatment
- the placement of patients



*A patient room at the adolescent psychiatric ward of Vaasa Central Hospital.*

- meeting rooms for family members
- opportunities for outdoor exercise
- issues related to restrictive measures, such as
  - reduction of restrictive measures
  - guidelines on the use of restrictive measures
  - the use and conditions of seclusion facilities
  - involuntary medication
  - debriefing on the use of restrictive measures with the patient
  - agreeing on restrictions
  - restrictive measures aimed at a child
  - restrictive measures with no basis in the Mental Health Act
- procedure in admitting patients for observation
- protection of privacy
- information for patients and their families
- somatic examinations on arrival
- the arrangements for functional rehabilitation

### SECURE ROOMS IN EMERGENCY CARE UNITS

As in previous years, the Ombudsman felt it was important to visit the **EMERGENCY CARE UNITS OF SOMATIC HOSPITALS**, which use secure rooms for the seclusion of patients brought to emergency care services who, for example because they are aggressive or confused, cannot be placed among other emergency patients. This situation is a problem because there is no legislation on seclusion in somatic health care.

However, secluding a patient may sometimes be justified under emergency or self-defence provisions. Such situations tend to involve an emergency, during which it is necessary to restrict the patient's freedom in order to protect either his or her own health or safety, or those of other persons. The Ombudsman has required in his legal practice that the legal provisions and ethical norms governing the actions of physicians and other health care professionals must also be taken into account in these situations, and, as a result, the application of two parallel sets of standards.

Furthermore, the procedure may not violate the patient's human dignity. Having appropriate equipment in the seclusion room is of major importance when assessing whether a patient's seclusion has, as a whole, been implemented in a manner that qualifies as dignified treatment and high-quality health and medical care. The criteria laid down in the Mental Health Act for the seclusion of a psychiatric patient are also applicable as minimum requirements for secure rooms in somatic hospitals. A patient placed in a secure room must be continuously monitored. This means that the patient must be monitored by visiting the seclusion room in person and observing the patient through a video link with image and audio. Appropriate records must be kept of the monitoring at all times.

The different emergency care units have numerous security rooms, which are regularly used. Regardless of this, patients rarely complain to the Ombudsman about their placement in a secure room, or their treatment while in seclusion. Attention is also paid to the privacy of the patient in urgent-care facilities. The Ombudsman has stressed the importance of ensuring, by various means including spatial design, that patients' details are not disclosed to third parties in the hectic environment of an emergency room. The Ombudsman finds it important that the protection of privacy is raised as a topic in staff training and that due attention is paid to the matter in the execution of daily duties.

The NPM visited the urgent care unit of two central hospitals in 2017. Both visits were made unannounced and during the evening. An external expert participated in the visits.

### PRISONERS' HEALTH CARE

Health care for prisoners was transferred to the administrative branch of the Ministry of Social Affairs and Health at the beginning of 2016. Health Care Services for Prisoners (VTH) operates in connection with the National Institute for Health and Welfare (THL). At the same time, the powers of Valvira and the Regional State Administrative Agencies were expanded to cover

the prisoners' health care organisation. In practice, the supervision has been centralised in AVI Northern Finland, which conducts guidance and assessment visits to the outpatient clinics and hospitals of the Prisoners' Health Care Unit on its own, or together with Valvira. By the end of the year, 13 of these units had been visited. The objective is that AVI will have visited all of the VTH units by the end of 2018.

The NPM visited the Vantaa unit of VTH in 2017. Because the visit was combined with the inspection visit to Vantaa Prison, the NPM team had the opportunity to interview prisoners before visiting the clinic on the health care they had received. In addition, the resource management of the VTH unit was inspected, under the leadership of the Ombudsman, in 2017. The Ombudsman pointed out, for example, that a person who has been placed under observation due to suicidal thoughts should undergo a medical examination as soon as possible, even if the prisoner was met only briefly before being placed under observation.

### SOBERING-UP STATIONS

In 2017, the NPM also visited a sobering-up station run by the local authorities. The visit was combined with the visit to Espoo police prison, as detailed in the above section on visits to police prisons. The visit was made in the evening, with the participation of an external expert. The visit mainly focused on the role played by sobering-up station staff when managing persons deprived of their liberty and held in the police detention facilities. The NPM was particularly interested in their role in situations where the staff at the police prison used the restraining bed.

The police prison discontinued the use of the restraining bed after receiving the Deputy-Ombudsman's opinion, due to which the Ombudsman no longer had any reason to evaluate practices related to the use of the bed. Instead, the Ombudsman gave an opinion on the protection of the privacy of those deprived of their liberty and the documentation of their injuries. The Ombudsman also stressed that it was unacceptable that customers of the sobering-up station were unaware of their legal status i.e. that they were not being held in custody by the police and were free to leave at their own discretion.

## 3.5

# Shortcomings in implementation of fundamental and human rights

The Ombudsman's observations and comments in conjunction with oversight of legality often give rise to proposals and expressions of opinion to authorities as to how they could promote or improve the implementation of fundamental and human rights in their actions. In most cases, these proposals and expressions of opinion have influenced official actions, but measures on the part of the Ombudsman have not always achieved the desired improvement. The way in which certain shortcomings repeatedly manifest themselves shows that the public authorities' reaction to problems highlighted in the implementation of fundamental and human rights has not always been adequate.

Since 2009, upon the suggestion of the Constitutional Law Committee (PeVM 10/2009 vp), the Ombudsman's Annual Report has contained a section outlining observations of certain typical or persistent shortcomings in the implementation of fundamental and human rights. In accordance with a recommendation by the Constitutional Law Committee (PeVM 13/2010 vp), this section is a permanent feature of the Ombudsman's Annual Report.

Since 2013, this section has been presented as a list of ten critical problems identified in the implementation of basic and human rights in Finland. The list was first presented in 2013 by the Ombudsman at an expert seminar on the evaluation of Finland's first national action plan on fundamental and human rights, and was thereby integrally linked to the implementation of the action plan. As the same ten problems consistently appear on the list each year, a revised list has been published in subsequent years describing potential changes and progress made in each area.

When evaluating the list, it should be borne in mind that it includes typical or ongoing problems

that have been identified specifically through the observations compiled by the Ombudsman under his remit. The Ombudsman mainly obtains information on failures and shortcomings through complaints, inspection visits and his own initiatives. However, not all fundamental and human rights problems are revealed by the Ombudsman's actions.

The Ombudsman's oversight of legality is primarily based on complaints, which typically concern individual cases. Broader phenomena (e.g. racism and hate speech) do not clearly come up in the Ombudsman's activities. What is more, some matters that reflect shortcomings are directed towards other supervisory authorities, such as special ombudsmen (e.g. the Non-Discrimination Ombudsman). Because some problems rarely surface in the Ombudsman's activities, they have not been included on the list (e.g. the rights of the Sámi people).

The list may also exclude obvious fundamental and human rights problems, if they have not been brought to the Ombudsman's attention (e.g. the ECHR's opinion that the requirement for infertility as a precondition for the legal recognition of the gender of transgender people constitutes a violation of a person's right to privacy). Some problems may have been excluded from the list because they concern civil matters or the actions of private individuals, which fall, at least partly, outside the jurisdiction of the Ombudsman (e.g. violence against women).

For the above reasons, the list cannot provide an exhaustive picture of the various problems involved in the implementation of fundamental and human rights in Finland.

There can be several reasons for possible defects or delays in redressing a legal situation. In general, it is fair to say that the Ombudsman's



statements and proposals are complied with very well. When this does not happen, the explanation is generally lack of resources or defects in legislation. Delays in legislative measures also often appear to be due to insufficient resources for law drafting.

Some of the listed issues, such as shortcomings in the conditions and treatment of elderly people, will probably never be entirely eliminated. This does not mean, however, that we should stop making every possible effort to remedy the situation. Most of the listed problems could be eliminated through sufficient resourcing and legislative development. In fact, significant improvements have been made with regard to some issues. Unfortunately, the problems have also increased in some areas.

### 3.5.1 TEN KEY PROBLEMS IN FUNDAMENTAL AND HUMAN RIGHTS IN FINLAND

#### SHORTCOMINGS IN THE CONDITIONS AND TREATMENT OF THE ELDERLY

Tens of thousands of elderly customers in Finland live in institutional care and assisted living units. Shortcomings are continuously being identified in relation to nutrition, hygiene, change of diapers, rehabilitation and access to outdoor recreation. These shortcomings are often due to insufficient staffing, which may also lead to excessive use of medication.

Measures limiting the right to self-determination in the care of the elderly should be based on law. However, the required legislative foundation is entirely lacking.

There are also shortcomings in service arrangements, safety, access to outdoors and support services.

Even if an elderly person is no longer able to cope with living at home regardless of the various services provided, the authorities may not necessarily decide to arrange the person's care and treatment in a residential unit. The authorities may also fail to make a decision on the arrangement of housing services. As a result, the right to bring

the issue of the extent of a municipality's obligation to arrange services before a court is not honoured.

Resources for internal oversight of the public administration are insufficient. Regional state administrative agencies have no realistic means of supervising care provision comprehensively. The means of supervising home care services are inadequate. The only means of supervising such services in practice are the authorities' self-monitoring and ex post supervision.

#### SHORTCOMINGS IN CHILD WELFARE SERVICES

The general lack of resources allocated by municipalities to welfare services and, in particular, the poor availability of qualified social workers and the high turnover of employees impact negatively on the standard of child welfare services.

The supervision of foster care under child welfare services is insufficient. The child protection authorities at municipal level do not have enough time to visit foster care facilities and are insufficiently familiar with the conditions and treatment of children. The regional state administrative agencies do not have enough resources for inspections.

The supervision of foster care in private families, which is the responsibility of the municipalities, is inadequate; the supervision of foster care in private homes do not have adequate powers for the regional state administrative agencies.

Repeated changes in the place of substitute care may compromise the secure growth environment and stable relationships that are particularly important to children placed in care. In child welfare services, insufficient attention is paid to choosing the right substitute care place for the most disadvantaged children and those who are most difficult to treat.

Moreover, children's right of access to information is not sufficiently observed. Children who have been placed in care are often unaware of their rights, the rights and obligations of the institution or the duties and responsibilities of their case worker.



The right of children placed in institutional care to meet their care worker in person is not observed as provided under the Child Welfare Act. The children are often left without the support of their case worker, which is guaranteed to them by law.

Decisions on restrictive measures are not issued through appropriate procedures, as prescribed by the Child Welfare Act. Units providing substitute care and social workers within the customer municipality have taken the view that children's basic rights can be restricted on educational grounds. The distinction between normal, acceptable boundaries and the restriction of a child's fundamental rights has been obscured.

The customer plans include deficiencies, even though they are a key instrument in the arrangement of social welfare services, decision making and the enforcement of decisions. Customer plans are not always drawn up for parents whose children are placed in substitute care in support of their parenting.

Mental health services for children and the youth are insufficient. There are gaps in the reconciliation of child welfare services and paediatric psychiatric care. On some occasions, no suitable place of substitute care can be found for children suffering from severe behavioural disorders, whether in a children's home or psychiatric hospital.

### **SHORTCOMINGS IN GUARANTEEING THE RIGHTS OF PERSONS WITH DISABILITIES**

Equal opportunities with regard to participation are not being realised for persons with disabilities. There are shortcomings in the accessibility of premises and services, and the implementation of reasonable accommodation.

The policies for limiting the right to self-determination vary in institutional care. While the amendment to the Act on Special Care for Persons with Intellectual Disabilities (381/2016) has helped to improve the situation, the practical application of the law is still marred by significant lack of awareness, and shortcomings and failures.

Statutory service plans and special care programmes are not always drawn, are inadequate, or there are delays in their preparation. Decisions regarding services and the implementation of such decisions are often delayed without just cause.

Application practices regarding disability services are inconsistent between municipalities, and the adopted policies may prevent customers from accessing statutory services.

### **POLICIES LIMITING THE RIGHT TO SELF-DETERMINATION IN INSTITUTIONS**

Measures limiting the right to self-determination may lack legal grounds and be solely based on "institutional power", for example. Limiting measures may be excessive or inconsistent. The supervision of policies limiting self-determination is insufficient, and the controllability of such measures is affected by shortcomings, particularly in cases where there are no procedural guarantees of protection under law.

For example, the required legal framework for care of the elderly and somatic healthcare remains non-existent.

### **PROBLEMS WITH LEGAL ASSISTANCE FOR FOREIGNERS AND THE VULNERABILITY OF UNDOCUMENTED IMMIGRANTS**

The unprecedented number of asylum seekers and restrictions in the provision of legal assistance has resulted in a situation where fewer asylum seekers receive legal assistance during the first stage of their process. This may be problematic from the perspective of legal rights and create difficulties in resolving the matter, including at the appeals stage.

Owing to lack of legal advice, detained foreigners are often unaware of their legal rights and their own position.

Shortcomings and ambiguities have been identified in meeting the basic needs of immigrants without documentation, such as social and health

services. A government bill was submitted to Parliament in 2014 (HE 343/2014 vp) that would have improved the right to health services of specific groups among undocumented immigrants (including pregnant women and minors), but the bill lapsed.

More decisions to end reception services are likely to be issued, as more negative decisions on asylum applications are issued to asylum seekers whose removal from the country is impossible. Local authorities have adopted different policies on what types of social and health services are still offered to persons whose reception services have ended.

### FLAWS IN THE CONDITIONS AND TREATMENT OF PRISONERS AND REMAND PRISONERS

For many prisoners, lack of activity is a serious problem. Some prisoners have to spend 23 hours per day in their cells. The Council of Europe anti-torture committee (CPT) recommends that prisoners be allowed to spend at least eight hours per day outside their cells.

Remand prisoners are still detained to an excessive extent in police prisons. According to international prison standards, crime suspects should be kept in remand prisons rather than police detention facilities, where conditions are suitable only for short stays and where remand prisoners are at risk of being put under pressure. The CPT has been strongly criticising Finland for this practice for more than 20 years, most recently in 2016, based on an inspection visit made by CPT in Finland in 2014.

An improvement in the situation can be expected now that Parliament has passed the bill, in January 2018, on the organisation of and alternatives to remand custody (HE 252/2016 vp). The Remand Imprisonment Act, for example, was amended so that the maximum period that a remand prisoner may be held in a facility managed by the police will be further shortened and the criteria for detention will be more stringent.

Confining prisoners in cells with no toilet is against the international standards of prison ad-

ministration and may violate the human dignity of the prisoners. Cells with no toilets are still in use in Hämeenlinna Prison. Plans for building a new prison in Hämeenlinna are underway; once the new prison is ready, the no-toilet cells will be discarded. However, the building project has been delayed in comparison to its original schedule.

### PROBLEMS IN THE AVAILABILITY OF HEALTH SERVICES AND THE RELEVANT LEGISLATION

There are shortcomings in arranging statutory health services. For example, there are problems with the distribution of care supplies and the handing over of assistive devices for medical rehabilitation. For financial reasons, sufficient quantities of supplies and assistive devices are not always distributed.

There are shortcomings in the healthcare of special groups, such as prisoners and undocumented immigrants.

Some emergency care units have secure rooms, in which aggressive and intoxicated patients can be placed. There is no legislation governing the use of secure rooms. The grounds for and the duration of loss of liberty, the person making the decision, the decision-making process and the legal protection of patients should be provided for in legislation in compliance with the criteria for restricting basic rights.

The Mental Health Act has no provisions on the use of coercive measures by care personnel to restrict a patient's freedom of movement outside a hospital area, or to bring a patient to the hospital from outside the hospital area. Nor does the Mental Health Act include any provisions on patient transport to destinations aside from health-care service units, such as courts of law, or on the treatment and conditions of the patient during transport or the competencies of the accompanying personnel. The lack of a legislative framework repeatedly results in situations that are problematic and potentially dangerous.

Private security guards may be used in psychiatric hospitals, in duties for which the security guards are not authorised.

Medicolegal death investigations are repeatedly delayed by up to a year after the statutory three-month time limit for documentation. The Ombudsman has drawn attention to such delays for more than ten years.

### **PROBLEMS IN LEARNING ENVIRONMENTS AND DECISION-MAKING PROCESSES IN PRIMARY EDUCATION**

The right of schoolchildren to a safe learning environment is not always observed.

Bullying at school is still commonplace, although research shows there has been an improvement in this respect in recent years. The means available for schools to identify and intervene with bullying are not always sufficient.

Indoor-air problems in schools, which present a significant risk not only to health but also to children's equal access to education, are frequently reported. There are significant differences between municipalities. Some have effective working groups on indoor air, while others do not even have guidelines in place on how to proceed in the event of a problem.

The administrative procedures and decision making of local education authorities and educational institutions have presented problems concerning legal protection. For example, decisions open to appeal are not issued on applications for special support, the parties concerned are not heard, or the decisions are otherwise noncompliant with the Administrative Procedures Act.

### **LENGTHY HANDLING TIMES OF LEGAL PROCESSES AND SHORTCOMINGS IN THE STRUCTURAL INDEPENDENCE OF COURTS**

Delayed trials have long been a problem in Finland. This has been identified in both the national oversight of legality and in ECHR case law. Despite some legislative reforms that have improved the situation, trials can still be unreasonably prolonged. This can be a serious problem, particularly in matters that require urgent handling. In

criminal cases, the total duration of the process depends on the length of the pre-trial investigation, which may be exceptionally long in many complex cases, such as financial crime.

The cost of a trial and legal fees may be prohibitive from the perspective of legal rights.

With respect to the structural independence of the courts, the fact that the court system is led by a ministry is problematic. The Ministry of Justice project to establish an independent national courts administration is making progress. The new administrative body is likely to affect positively the structural independence of courts. The large number of temporary judges and that, in practice, local councils select jury members for District Courts on the basis of political quotas, are problematic from the perspective of the independence of courts.

Continuous under-resourcing undermines the operation of the courts.

### **SHORTCOMINGS IN THE PREVENTION OF AND RECOMPENSE FOR FUNDAMENTAL AND HUMAN RIGHTS VIOLATIONS**

There are significant gaps in the general awareness of fundamental and human rights, and their implementation and promotion are not always given due attention by the authorities. Training and education in fundamental and human rights is not sufficiently arranged, although progress has been made in this area.

International human rights treaties are not ratified quickly enough in Finland. This, in turn, slows down the creation of structures and procedures aimed at securing the rights guaranteed by the treaties.

The legislative foundation for the recompense for basic and human rights violations is lacking. Substantive amendment of the Tort Liability Act (the liability of public officials in basic or human rights violations) has not been initiated.

### 3.5.2 EXAMPLES OF POSITIVE DEVELOPMENT

This section of Parliamentary Ombudsman's reports for 2009–2014 has included examples of cases in different branches of the administration where, as a result of a statement or proposal issued by the Ombudsman or otherwise, there has been favourable development with respect to fundamental or human rights. The examples have also described the impact of the Ombudsman's activities. This section of the Annual Report no longer includes details on these cases.

For the Ombudsman's recommendations concerning recompense for errors or violations and measures for the amicable settlement of matters, see section 3.6. These proposals and measures have mainly led to positive outcomes.

## 3.6

# The Ombudsman's proposals concerning recompense and matters that have led to an amicable solution

The Parliamentary Ombudsman Act empowers the Ombudsman to recommend to authorities that they correct an error that has been made or rectify a shortcoming. Making recompense for an error that has occurred or a breach of a complainant's rights on the basis of a recommendation by the Ombudsman is one way of reaching an agreed settlement in a matter.

Over the years, the Ombudsman has made numerous recommendations regarding recompense. These proposals have, in most cases, led to a positive outcome. In its reports (PeVM 12/2010 vp and 2/2016 vp), the Constitutional Law Committee has also taken the view that a proposal by the Ombudsman to reach an agreed settlement and effect recompense is in clear cases a justifiable way of enabling citizens to achieve their rights, bring about an amicable settlement and avoid unnecessary legal disputes. The grounds on which the Ombudsman recommends recompense are explained more extensively in summary of the annual reports of 2011 (page 84) and 2012 (page 65).

Under the State Indemnity Act (*laki valtion vahingonkorvaustoiminnasta*, 978/2014), the majority of claims for damages addressed to the State are processed by the State Treasury. The act is applied to the processing of a claim for damages from the central government if the claim is based on an error or neglect by a central government authority. According to information obtained from the State Treasury, a total of 678 claims for damages were submitted in the reporting year. Most of these cases were initiated as claims for damages filed with the State Treasury or the relevant authority. Two cases were initiated as a result of a proposal for recompense made by the Parliamentary Ombudsman.

The State Treasury issued a total of 780 decisions and paid approximately EUR 550,000 in

recompense. A significant share of these, more than 390 decisions and some EUR 330,000 of the recompense paid, concerned the administrative branch of the Ministry of Justice, and, in particular, financial losses incurred in guardianship services. They included failures to apply for social assistance, care and housing allowances, and collection charges resulting from late payments as well as extra costs arising from uncanceled electricity, telephone and other subscriptions. In addition, one case of misconduct was revealed in a public guardianship office, where a public guardian secretary transferred funds from the clients' accounts to their own account. The State Treasury compensated the clients for the funds illegally transferred from their accounts. In a number of cases, recompense was paid for appeals and other costs resulting from the failure of a public legal aid office to carry out an assigned duty or an incorrect procedure at the District Court. Both proposals concerning recompense made by the Parliamentary Ombudsman to the State Treasury led to the payment of compensation.

During the year under review, the Ombudsman issued 11 recommendations for recompense, and a settlement was reached with regard to two previous recommendations. In addition, the Social Insurance Institution of Finland, in its response to the recommendation for recompense issued by the Deputy-Ombudsman in a decision on a matter detailed below, that it paid compensation for illegal delay in the processing of social assistance matters in approximately 146,000 cases. The customers affected received automatic payment advice by mail. The payment advice specified the amount of compensation paid and provided instructions on how to file a free-form written claim for damages. The compensation was paid from 22 May 2017 onwards.

In addition, during the handling of complaints, communications from the Office to authorities often led to the rectification of errors or insufficient actions and, therefore, contributed to an amicable settlement. In numerous other cases, guidance was provided to complainants and authorities by explaining the applicable legislation, the practices followed in the administration of justice and oversight of legality, and the means of appeal available.

### 3.6.1 RECOMMENDATIONS FOR RECOMPENSE

The following gives an overview of the recommendations for recompense made by the Ombudsman during the year under review. Some of the cases are still pending response from the authorities.

#### RIGHT TO PERSONAL LIBERTY AND INTEGRITY

The police had delivered the complainant's son to a health centre in August 2016, based on a warrant for apprehension that had been issued in 2012 and had not been cancelled. The complainant claimed recompense of EUR 100 for loss of liberty and distress and of EUR 50 for costs and loss of time.

The Deputy-Ombudsman requested the police department to evaluate the reactions of the police to such an old warrant and to give their opinion on the claims for recompense made. The police department found the complainant's claims justified and reasonable and reported that they were prepared to pay the recompense. The Deputy-Ombudsman found it unnecessary to take any further action in the matter and stated that, under the State Indemnity Act, the competent authority for addressing a matter of personal injury was the State Treasury. In this case, it was reasonable for the police department to contact the complainant and, if necessary, the State Treasury (3526/2016).

*The police department reported to the Deputy-Ombudsman that they had discussed the matter of compensation with the State Treasury and con-*

*cluded that the police department should pay the damages. The police department subsequently paid the complainant the claimed recompense of EUR 150.*

A prisoner's human dignity had been violated when he had been detained in an isolation cell without any clothes. The violating and reprehensible nature of the incident was further exacerbated by the fact that the complainant was not even given a blanket, and instead, was made to stay in the isolation cell fully naked for seven and a half hours. The complainant had also been subjected to restraining measures that, with regard to their grounds and method, were noncompliant with the law.

The conditions of the complainant during observations were in violation of the regulations and his human dignity, although they were apparently not found to be in violation of Article 3 of the European Convention of Human Rights (ECHR) on the prohibition of torture. According to the Deputy-Ombudsman, the complainant had been subjected during his observation to treatment that was in violation of sections 7 and 10 of the Constitution of Finland as well as Article 8 of the ECHR. The Deputy-Ombudsman proposed that the State pay compensation to the complainant for inappropriate treatment that violated his human dignity (346/4/16).

*The State Treasury paid the complainant a total of EUR 3,514.58 as recompense for pain and suffering as well as the costs incurred by filing the complaint, including interest on arrears, totalling EUR 4,521.05.*

The Administrative Court had dismissed a decision placing the complainant in involuntary treatment owing to insufficient grounds. The complainant's loss of liberty had, therefore, not taken place in accordance with a procedure "prescribed by law", as required in Article 5, section 1 of the European Convention of the Human Rights. Under section 5 of the same Article, everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.



In his request for information to the hospital district and hospital the Ombudsman stated that, according to section 22 of the Constitution, it is the duty of the public authorities to guarantee that everyone's basic rights and liberties and human rights are observed. The Ombudsman also referred to the Turku Court of Appeal decision, according to which the State was obliged to pay recompense to a patient for their loss of liberty during involuntary treatment after the Administrative Court had overturned the order to treatment.

Based on the information received, the hospital fees of the complainant had been waived, at the complainant's request, for the duration of the involuntary treatment. The Ombudsman therefore found that the matter required no further recommendations for compensation on his part (187/4/16).

## PROTECTION OF PRIVACY, PERSONAL DATA AND SANCTITY OF THE HOME

### Unlawful house search

A house search had been carried out in a complainant's home on the grounds of suspected unlawful use of narcotics. The house search did not meet the legal requirements. Moreover, no acceptable reasons were given for restricting the right of the complainant's spouse, who had been in the apartment, to be present during the search. The sanctity of the complainant's and their spouse's home had therefore been violated in breach of the Constitution of Finland and the ECHR (877/4/15).

A house search had been carried out in a complainant's home at 6 a.m. and again at 9 a.m. on the same day without a special reason as required by law. Furthermore, the latter house search had been carried out without anyone having actually made a decision on the search. The search had not been carried out in full compliance with the procedures laid down by law to ensure the legal protection of the target of the search. (2773/4/15).

*The State Treasury issued decisions on 11 and 19 July 2017 based on the recommendations for recompense made by the Deputy-Ombudsman in 2016 on the cases. In its decisions, the State Treasury re-*

*ferred to the Helsinki Court of Appeal judgments of 30 June 2017, in which the amounts of compensation for unlawful house searches had been assessed. According to the first decision, the house search had not appeared to cause particular suffering, and it had not been brought to light that the conduct had had any further tangible repercussions that should be taken into consideration when determining the amount of compensation. On these grounds, the State Treasury found that a reasonable amount of recompense for suffering due to a violation of the sanctity of the home and privacy, payable to the complainant and their spouse, was EUR 500 per person.*

*In the second decision, the State Treasury found that the purpose of the police, when conducting the house searches, was to bring a defendant in a criminal matter to court. The house searches were brief, and there was no indication that they would have aroused the attention of neighbours or even come to their knowledge. It was also stated in the decision that there had been no particular suffering or practical repercussions that should be taken into consideration when determining the amount of recompense. The State Treasury found that reasonable compensation for the violation of the sanctity of the home and privacy was EUR 1,000.*

### Unauthorised disclosure of patient records

The patient records of the complainant had been shared by a hospital within a certain hospital district with the local authority health care provider in the same area in 2014. A local authority health care unit may, according to the Health Care Act, use records created in the hospital district unless the patient has prohibited the use of data in the records. The complainant had prohibited the use and sharing of their patient records in 2011 within the hospital district. The sharing of records with the local authority health care unit would therefore have required the complainant's consent (withdrawal of prohibition). Since the complainant's consent had not been obtained, the conduct was unlawful.

In the case-law of the European Court of Human Rights, the disclosure of patient records without legal cause constitutes a violation of the

patient's right to privacy. In its judgment *Y.Y. v Russia* (23/02/2016), the European Court of Human Rights considered that the applicant must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation (Section 67 of the judgment). The Ombudsman recommended that the hospital district compensate the complainant for a violation of their right to privacy (5655/2016).

*The hospital district paid the complainant EUR 500 in recompense on the grounds that a hospital within the hospital district had shared confidential information with a local authority health care unit. According to the hospital district's report, the complainant had also received a further compensation of EUR 400 for another unlawful disclosure of records.*

## RIGHT TO SOCIAL SECURITY

### Delay in the processing of social assistance matters

The granting of basic social assistance was transferred to the Social Insurance Institution of Finland (Kela) as of 1 January 2017. By the end of March 2017, the Office of the Parliamentary Ombudsman had received more than 400 complaints on the provision of social assistance under Kela. The complaints were mainly to do with Kela exceeding the legal time limit for processing applications, problems in online services and congestion in customer services. Many of the letters of complaint voiced a concern about how financial losses, such as late payment charges, due to the delays in Kela's processes would be taken into consideration.

The Deputy-Ombudsman recommended that Kela, as the authority responsible for providing social assistance, should assess at its discretion, on what grounds, by what methods and how much it could compensate its customers for direct financial losses resulting from its illegal conduct and for the violation of rights (1301/2017).

*Kela informed the Deputy-Ombudsman that it would pay compensation to those who have been*

*awarded social assistance, whose decision was issued later than within the statutory seven business days, for EUR 25–150, depending on the length of the delay. Compensation was paid in approximately 146,000 cases based on delayed processing. Kela also reported that it would separately compensate for customers' late payment and payment reminder charges that had been caused by the late handling of the customer's bill.*

### Kela's procedures in the provision of pharmacy vouchers

The complainant had been awarded a pharmacy voucher for February, but as a result of a software error, the voucher had expired earlier than the date provided on the decision on social assistance. In this situation, the complainant had paid for the medicines that had should have been covered by the pharmacy voucher. The Deputy-Ombudsman requested information from Kela on the measures it had taken to compensate the complainant for the possible losses incurred (1437/2017).

*According to the information received from Kela, the complainant had sent a receipt to Kela, indicating that they had purchased medicines from a pharmacy at the end of February 2017. Kela paid the costs of medicines, EUR 47.33, as basic social assistance, and the complainant was also paid recompense in EUR 25 for delayed processing of basic social assistance.*

### Kela's conduct in returning enclosed documents

The complainant had repeatedly requested Kela to return original documents submitted to it by the complainant. The documents had been returned only two months from the initial request. According to the Deputy-Ombudsman, Kela had, in doing so, violated the service principles laid down in the Administrative Procedure Act. If the complainant had suffered financial losses or other damages due to Kela's conduct, Kela should assess

the ways in which it might provide compensation for the possible damages caused (1883/2017).

*According to Kela's report, the complainant had been provided with instructions on how to file a claim for compensation, but the complainant had not made any claims.*

### The use of back-zip overalls in medical rehabilitation

The Ombudsman found that the distribution of assistive devices for medical rehabilitation should always be based on the medical assessment of the patients, as well as an individual needs assessment made on a case-by-case basis. Since the patient's physician had considered that the back-zip overalls were a necessary device, the patient should have been granted the use of the overalls as an assistive rehabilitation device. Because the patient had had to pay for the cost of the back-zip overalls (EUR 225.43), the Ombudsman recommended that the local social and health care authorities consider compensating the patient for the cost of purchasing the overall (6616/2016).

*The city's department of social welfare and health care responded that the city had reimbursed the patient for the cost of the back-zip overalls.*

### Fees charged for form B

According to the complainant, the health centre charged a fee for issuing form B in relation to an illness, such as form B for sick leave or rehabilitation allowance.

The Ombudsman had, in two of his previous recommendations, expressed his view on the non-chargeability of form B. He had stated that form B, issued in primary health care for medical rehabilitation and adaptation training, is a medical statement related to the treatment of an illness, and no charges may therefore be collected for it in primary health care. The documents did not reveal whether or not the complainant had paid the possible fee for a form B required for sick leave. The matter concerned a statement related to the

treatment of an illness, for which no fees may be charged in primary health care. The Ombudsman recommended that the health centre repay the customer the fee, if it had been charged from the customer (1304/4/16).

*According to the information provided by the chief physician of the health centre, the health centre has updated its guidelines regarding charges for medical statements and from that date onwards, form B has been issued free of charge. The complainant had been invoiced for a form B in early 2015 in accordance with previous guidelines, and the complainant had paid the invoice. According to the regulations of the health centre, fees for statements charged before the issuing of new guidelines are not repaid.*

## PROTECTION UNDER THE LAW

### Processing of a visa application

The Embassy of Finland had acted incorrectly when rejecting the visa applications of the complainant's brother. The complainant's brother had a valid residence permit for Finland, and he had lived in the country for 18 years. Therefore, he had a legal right to stay in Finland under the Aliens Act. According to the complaint, the incorrect conduct of the embassy had resulted in adverse consequences for his brother, such as loss of rental housing and the right to study. The complaint did not give information on whether the brother was still in Africa or whether his situation had already been rectified. The Ombudsman recommended that the Ministry for Foreign Affairs find out the whereabouts of the brother and after this, at its discretion, submit a recommendation for compensation to the State Treasury (5000/2016).

*The Ministry for Foreign Affairs reported to the Ombudsman that the embassy had interviewed the brother of the complainant on the matter of financial damages resulting from the rejection of the visa application. Based on the guidelines issued by the State Treasury, the person shall file the claim for*

*damages himself, and the embassy had provided him with advice on the matter. The person had also been granted a visa for the purpose of returning to Finland.*

### Passing a conversion sentence

The complainant had been given a conversion sentence for a fine, which according to the law may not be converted to imprisonment. The mistake had been noticed only after the process and the erroneous decision had been overturned. According to the complainant, he had already been under a warrant for apprehension and responding to the matter had taken time.

The Ombudsman stated that the unlawful conduct at the District Court had led to bringing the matter to a conversion sentencing process, including the passing of a conversion sentence and thereby the risk of unlawful deprivation of liberty. The incidence clearly constituted a violation of rights. The Ombudsman requested that the State Treasury contact the complainant in a suitable manner and settle the matter as provided in the State Indemnity Act (1546/2016).

*The State Treasury awarded the complainant recompense of EUR 40 for a violation of basic rights. With a subsequent decision, the State Treasury also reimbursed the complainant for telephone costs arising from resolving the issue, totalling EUR 50.*

## 3.6.2 CASES RESULTING IN AN AMICABLE SETTLEMENT

In many cases, communication from the Ombudsman's Office to the authority during the handling of complaints led to the rectification of the error or insufficient action and, therefore, an amicable settlement. Examples of such cases are presented below.

### PRE-TRIAL INVESTIGATION

The complainant reported an offence to the police concerning a lorry driver, because he, according to his account of the events, had almost been run over by the lorry at a pedestrian crossing. The officer in charge of the investigation terminated the process after a few days. The office explained his decision on the basis of lacking sufficient information on the case or any knowledge of the identity of the driver.

The Deputy-Ombudsman stated that terminating a pre-trial investigation must be based on acceptable reasons. It must not be used as an avenue for relieving the police of cases. The workload of the police or the shortage of investigators do not, as such, constitute acceptable grounds for terminating investigations and terminating investigations may not be used as a method of prioritising criminal cases. According to the Deputy-Ombudsman, establishing the identity of the driver would not in this particular case have created a significant workload.

The police department informed the Deputy-Ombudsman that it would continue the investigation. The Deputy-Ombudsman thus considered it sufficient to draw the attention of the investigator in charge to his views for future reference (260/2017).

An assistant enforcement officer at the Enforcement Office had received a phone call from a debtor whose enforcement affairs she had managed. After not achieving the result they had been hoping for from the telephone conversation, the debtor had made several death threats against the officer and used offensive and inappropriate language. The assistant enforcement officer had reported the incident to the police.

The officer in charge of the investigation decided to terminate the investigation on the grounds that no criminal offence had been committed. In the decision, the act had been evaluated as constituting an illegal threat. According to the Deputy-Ombudsman, no consideration had been given in the decision to whether or not the criteria for violent resistance to a public official had been met in addition to, or instead of, an illegal threat.

According to the police department, the investigator in charge had since reported that the investigation of the offence would be continued based on its decision. The Deputy-Ombudsman found the decision to continue the investigation justified and saw no need for further measures (731/2017).

### RECTIFYING A DECISION ON SOCIAL ASSISTANCE

The complainant's application for social assistance on the basis of costs arising from exercising their right of access to their child had been rejected. An error had been made in the processing of the application, which according to the information provided by Kela had been rectified following a request for information sent by the Office of the Parliamentary Ombudsman. Kela reported that the decision would be rectified and the costs arising from exercising the right of access to a child will be acknowledged. Since Kela has admitted to the error and has apologised to the complainant for the inconvenience caused, the matter merited no further measures by the Deputy-Ombudsman (4657/2017).

### UPDATING GUIDELINES

Following the Ombudsman's request for information, the department of education and culture of a local authority reported that the eligibility criteria for the exercise assistant pass have been amended as indicated in the complaint. As the matter had been rectified, the matter merits no further measures by the Ombudsman (5234/2016).

A complainant had received incorrect advice from the health centre and, as a result, had had to pay the excess for an ultrasound examination at a private health clinic. Based on the report submitted on the case, the guidelines will be clarified, the complainant will be contacted, and the excess they had paid will be reimbursed. No further action by the Ombudsman was thus necessary in this case (6705/2016).

### PUBLICATION OF PERSONAL DATA ONLINE

According to the website of a local authority, the public agenda and records of proceedings are published on the city website as soon as they are ready. The minutes are stored on the Internet for five years. The records of a committee meeting from 2013, in which the complainant's claims for a revised decision were processed, was still available on the city website in 2017.

The Office of the Parliamentary Ombudsman contacted the communications unit of the local authority, referring to the provisions under the Local Government Act on notifications to the municipality's residents, enacted on 1 June 2017. According to the preparatory documents for the legislation, the grounds and need for the local government to process personal data on the public network terminates at the same time as the period for claims for a revised decision and appeals against a municipal decision ends. It follows that the local government must remove personal data from the Internet at the end of said period.

The communications unit of the local government informed the Office that the records of proceedings in question would be immediately removed from the website. The local government will also reassess the way it publishes records of final protocols on its website, particularly how long they are available online. No further action by the Deputy-Ombudsman was thus required in this case (3919/2017).



## 3.7

### Special theme for 2017: Right to effective legal remedies

#### INTRODUCTION

The Ombudsman's special theme for 2017 was the continuation of the theme selected in 2016, "Right to effective legal remedies". It stems from the provision in Article 13 of the European Human Rights Convention, under which everyone whose rights and freedoms are violated shall have an effective remedy before a national authority. Article 47 of the EU Charter of Fundamental Rights also requires that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal. Under section 21 of the Constitution of Finland, everyone has the right to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice and have his or her case dealt with appropriately and without undue delay.

When assessing the effectiveness of legal remedies, the European Court of Human Rights has required that the remedy is also effective in practice. While the authority providing legal protection does not necessarily have to be a judicial authority, the authority's competence and the guarantees of legal protection offered by it have a bearing on the assessment of whether or not the remedy is effective. Even if a single legal remedy did not fully meet the requirements of the article, an aggregate of several remedies may do so. A legal remedy may be a preventive remedy, which prevents the violation of a right or its continuation, or a compensatory remedy, which can provide adequate redress for a violation that has already occurred.

The effectiveness of a legal remedy includes the possibility of revising a decision or receiving redress for violations of rights. In the Parliamentary Ombudsman's legal practice, violations of

fundamental and human rights should be prevented as a first priority. The Ombudsman's recommendations on recompense are discussed in chapter 3.6.

A complaint filed with the Parliamentary Ombudsman does not, at least on its own, constitute an effective legal remedy referred to in the ECHR. For this reason, emphasis in work related to this theme has been on ensuring that an authority actively guides interested parties in the use of the actual legal remedies to which they are entitled. While inspecting and visiting sites, in particular, the inspectors have verified how the site ensures that individuals are informed of the legal remedies available to them and that they have access to these remedies in practice. In particular, attention has been paid to the following questions:

- Is information about available legal remedies provided?
- Is the interested party issued with a statement of reasons referred to in the Administrative Procedure Act with the decision, including appeal instructions?
- Are requests for documents or information responded to in accordance with the Act on the Openness of Government Activities and the Personal Data Act?
- In what ways are individuals advised about the use of legal remedies and, if necessary, assisted?
- Is the language legislation complied with in the provision of information and decision-making? Are translations and interpretation services into other languages provided for?
- Is the legal remedy effective? Is the process simple, expeditious and affordable? Are individuals entitled to compensation if a violation of rights is found to have taken place?



Below are some examples of problems relating to the accessibility and effectiveness of legal protection as observed in inspections and complaint cases, and of the measures carried out by the Ombudsman and other authorities in order to improve the situation.

### PROVISION OF INFORMATION ABOUT LEGAL REMEDIES

According to the Act on the Openness of Government Activities, authorities must publicise their activities and services, as well as the rights and obligations of private individuals and corporations in matters falling within their field of competence. The content and form of publication is determined by the specific information need. In particular with individuals who have been deprived of their liberty, their legal protection requires that information about legal remedies available to them must be provided efficiently.

In some cases, inspections of police prisons have shown that warders were not familiar with the appeal provisions of the act on the treatment of persons in police custody, or that no measures had been taken to prepare for possible appeal situations (e.g. 1382/2017).

The National Police Board stated that it had sent a letter in November 2017 to police stations emphasising the fact that police prison personnel must be familiar with the decision-making and appeal procedures required by law, and that forms relating to the appeal process must be available at each police prison. The National Police Board had drawn up an appeal form template and enclosed it with its advisory letter.

In inspections, it has been consistently recommended to psychiatric hospitals that they should distribute information on patients' rights to the patients and their families in plain language and both orally and in writing (e.g. 2148/2017).

In inspections of child welfare units, it has been emphasised that every child, regardless of his or her age, has the right to receive information about, inter alia, the rights and obligations of an authority or a body authorised by an authority

(e.g. a child welfare institution), the ways in which the child can present his or her own opinions or views, and their bearing on the matter, and, most importantly, what rights the child himself or herself has in the matter (e.g. 7024/2017).

Information materials must be available in different languages as needed. Due to the special task of the state psychiatric hospital as the provider of care for Swedish-speaking patients, it must adhere to the principle provided for in section 32 of the Language Act which requires that notices, public announcements and proclamations as well as other information by an authority of a bilingual municipality shall be issued in Finnish and Swedish (2147/2017).

In an inspection of the Lapland Police Department, it was found that a document on the rights and obligations of individuals who have been deprived of their liberty was available in numerous and in some cases rare languages, but not in the Sámi language. Taking into account the provisions of the Sámi Language Act, the Deputy-Ombudsman deemed it justified that the document in question should be available also in the Sámi language (6795/2017).

### RIGHT TO AN APPEALABLE DECISION

The right to an appealable decision is part of the guarantee of good governance as provided for by section 21 of the Constitution of Finland. If an authority fails to make a decision, the matter cannot be appealed or brought before a court of law. Comments issued with regard to the decision-making obligation are discussed below. Problems were found particularly in connection with services such as education and social services. There have also been failures in the issuance of statutory decisions concerning the restriction of the right of self-determination of patients and clients. In addition, there are frequent problems in the way that information requests under the Openness Act are handled.

## Education and social services

In a number of complaints concerning the education sector, the complainant had not been advised to apply for a particular service, or no appealable decision had been issued on an application, or the decision did not otherwise meet the requirements of the Administrative Procedure Act. Complaints were made in connection with e.g. school transportation, the provision of special support, and the right of information of a child's joint guardians. As in the previous year, incorrect procedures were found in connection with a number of such cases (e.g. 1145/2016).

In cases where the obligation to issue a decision was open to interpretation, the Ombudsman recommended that an appealable decision be provided so as to enable the matter to be brought before a court of law. In one case, a child's parents had requested that the kindergarten provide an employee fluent in sign language. However, decisions on the implementation of child day care are non-appealable, whereas a matter concerning an assistant requires an administrative decision. The Ombudsman found that in a case that is open to interpretation, it is advisable to provide an appealable decision, at least if it is requested by the person concerned (715/4/16). Similarly, in a case where the Social Insurance Institution and a client requesting an interpreter disagree on the level of interpretation to be provided, an appealable decision should be issued if requested by the person concerned (3793/2016).

From the point of view of non-discrimination, the Deputy-Ombudsman found it problematic that a decision cannot be appealed in cases where the Social Insurance Institution grants municipal home care allowance on the basis of an agreement concluded with the municipality, whereas in cases where the decision is made by a municipal authority, the applicant can appeal up to and including to the Supreme Administrative Court. For that reason, the Deputy-Ombudsman submitted to the consideration of the Ministry of Social Affairs and Health whether the law should be amended so that an appealable decision can be requested from

the municipal authority also in those cases which are decided by the Social Insurance Institution (1792/2/13).

## Limitations of the right to self-determination

Children aged 12 or older have an independent right to appeal a decision on their involuntary admission in psychiatric care or on restrictive measures placed on them in hospital care. For that reason, measures concerning children of this age cannot be based solely on the guardian's consent; instead, they require a decision under the Mental Health Act which must be communicated to the child in question (2148/2017).

In cases where the basic rights of a person residing in an assisted housing facility are restricted, care must be taken to ensure that he or she has access to adequate legal remedies. In one such case, the Deputy-Ombudsman referred to the decision of the Supreme Court (2013:142), which found that since the person in question had no access to other effective legal remedies or other means to take the case to a court of law, the Administrative Court, which, according to the judicial system is usually the competent court in administrative complaints on decisions to restrict contact, should not have decided against reviewing the complainant's claims (699/4/16).

## Processing of a request for information

Legal protection issues related to the publicity of documents cropped up repeatedly during the reporting year, similarly to previous years. Authorities do not always comply with the procedure enacted by the Openness Act when processing requests for information. The most common shortcoming is the failure to notify the applicant of his or her right to an appealable decision when a request for information is refused. There are also problems with regard to compliance with the statutory processing periods (a maximum of 2 weeks or 1 month).

The conduct of a chief executive of local government did not fulfil the requirements of the Openness Act, when he refused a request for certain documents and did not notify the applicant who requested the information by email of the right to appeal the decision, and failed to ask whether the applicant wanted to refer the matter for a decision by a competent authority (430/2017).

The Ombudsman has consistently taken the view that, even when refusing to provide a document in a manner requested by a complainant, the authority must provide the reason for the refusal and ask if the applicant wants to refer the matter for a decision by a competent authority. In the review year, the Ombudsman again reiterated this view, including in a case where information had been requested in electronic format (5203/2017) and in a case where the complainant had wanted to copy documents by photographing them (2585/2016).

The abovementioned cases relate to the Openness Act. Individuals can also request to see their own information on the basis of the right of inspection provided by the Personal Data Act. If an authority refuses to give information in a manner requested by the data subject, it must issue a certificate of refusal under the Personal Data Act. The certificate enables the data subject to use the legal remedies provided by the Personal Data Act (642/2016).

### Other matters

In a case concerning the legal nature of the medicinal products list drawn up by the Finnish Medicines Agency Fimea, the Deputy-Ombudsman found that a person whose interest, right or obligation is concerned can request that Fimea include a particular substance or product in the list and has the right to receive an appealable administrative decision in the matter. This also applies to cases in which the person concerned claims that a listed substance should not be considered a medicinal product under the Medicines Act (4503/2/14)

### PROVISION OF REASONS FOR A DECISION

According to section 21(2) of the Constitution, the right to receive a reasoned decision is one of the guarantees of a fair trial and good governance. The obligation to provide reasons is further governed by provisions of the Code of Judicial Procedure, the Criminal Procedure Act, the Administrative Judicial Procedure Act and the Administrative Procedure Act. It is not adequate to provide the decision alone: the concerned parties have the right to know the reasons and process by which the decision was reached.

The reasons must include the main facts of the case and the relevant provisions and regulations. The decision should be written in as plain a language as possible. Reasoning is important from the perspective of both implementation of the interested parties' protection under the law and general trust in the authorities as well as in terms of oversight of official actions.

In an inspection of a rehabilitation unit for people with intellectual disabilities, it was found that decisions on restrictive measures did not refer to the provision of law that provided the grounds for the decisions. The inspectors stated that an administrative decision should specify the restrictive measure in question (e.g. supervised movement) as well as the specific act and provision on which the decision is based (5794/2017).

In inspections of psychiatric hospitals, it has been recommended that the grounds for a decision concerning admission for observation of a patient should be noted in the patient record so as to clearly state how the physician concluded that the prerequisites of involuntary care as provided for by the Mental Health Act have been met. Admission for observation refers to a decision whereby a patient is deprived of his or her liberty for up to four days. The decision cannot be appealed separately, but the legality of the measure can be investigated in a complaint procedure. An effective investigation requires that adequate grounds for the decision have been provided (e.g. 5042/2016).

In a case concerning early childhood education, the decision by an official of a city's educational administration on the provision of special

support to a child did not specify how the interpreting service for a child who used sign language would be organised. The complainants were thus unable to appeal the decision in practice (745/4/16).

In the field of criminal sanctions, the Ombudsman has frequently had to draw attention to incomplete or insufficient reasons being provided in connection with decisions concerning prisoners. There are still cases where no reasons are provided other than a copy of the wording of the abstract of the applicable rule of law, even though it does not fulfil the requirement for a statement of reasons. Reasons which are classified as secret must also be recorded, and filed in a way that enables them to be found in connection with the decision. In addition, prisoners must be informed if, due to reasons of secrecy, not all reasons are disclosed to them, and that they can make a document request concerning the omitted reasons.

## NOTIFICATION OF A DECISION

According to section 54(1) of the Administrative Procedure Act, an authority shall serve its decision without delay on the party concerned and on other known persons who have the right to request an administrative or judicial review of the decision. According to section 54(3), a document is served in the original or as a copy. The latter provision has not always been adhered to by care institutions.

A complainant's minor daughter had been placed under supervised movement by the decision of a unit for people with intellectual disabilities. As the child's guardian, the complainant should have been notified of the decision. The Ombudsman stressed that the appeal period does not start until the person who has a right to appeal has been notified of the decision and the appeal instructions. Therefore, all concerned parties must be notified of the decision even if the decision has been made some time ago but not communicated at the time in accordance with the law (4563/2016).

In an inspection of a child welfare unit, the unit stated that it always asked each child whether he or she wanted to keep the decisions concerning restrictive measures placed on him or her, or to have them filed in his or her folder. The majority of children did not want to keep the decision documents in their rooms. However, from the point of view of a child's legal protection, a copy of the decision should be given to the child even if he or she does not wish to have the original in his or her possession. This ensures that the child can later re-read the decision, reasons and appeal instructions (5861/2017).

Similarly, in an inspection of a psychiatric hospital, it was found that patients had not been given copies of decisions committing them to involuntary treatment unless they had specifically asked for them. This practice was found to be a violation of law (5042/2016).

A hospital records department had recorded as received a decision by the Administrative Court which had been sent with an acknowledgement of receipt to a psychiatric ward patient. The procedure did not fulfil the requirement of the Administrative Procedure Act whereby an acknowledgement of receipt must indicate when the decision has been served to the recipient i.e. the patient. If a decision cannot be served in a way that enables the patient to personally acknowledge receipt, it is the Ombudsman's view that a written certificate of service should be drawn up, indicating the person effecting the service, the person to whom the document was handed over, and the date of service (4536/2016).

## ADEQUACY OF APPEAL INSTRUCTIONS

A city welfare service unit did not enclose appeal instructions with its decisions on compensation claims. The Deputy-Ombudsman found that, according to recent practice of the Supreme Administrative Court, decisions concerning the civil law contracts of a local authority can also be appealed by the procedure of appeal against the decision of a municipal authority as provided for by the Local Government Act (4661/2016\*).

As part of its duty of oversight of legality, the Deputy-Ombudsman found that the appeal instructions enclosed with decisions of municipal social care services often lacked information about whether an appeal would incur a fee. According to the act on court fees (tuomioistuinmaksulaki), decisions on social care services do not incur a fee, but decisions on customer payments in social care do. The Deputy-Ombudsman sent a copy of its decision to the Ministry of Justice so as to encourage the ministry to consider making judicial matters concerning customer payments in social care free of charge (4789/2017).

### ADVICE AND ASSISTANCE

According to section 8 of the Administrative Procedure Act, an authority shall, within its competence, provide its customers, as necessary, with advice on dealing with administrative matters and respond to questions and enquiries concerning the use of its services. Advice on dealing with administrative matters includes information about the required procedures relating to different stages of the process and, for example, the possibility of appeal. When assessing the necessity of advice, attention should be paid to the individual's actual capabilities to successfully deal with the matter. However, the advice obligation under the Administrative Procedure Act does not include assisting the customer, for example, by way of drawing up documents on the customer's behalf.

According to the Deputy-Ombudsman, a municipal authority's decision on a compensation claim must include appeal instructions concerning claims for a revised decision as well as instructions on appealing to the Administrative Court. In addition, it is good governance to provide advice about the possibility of bringing a civil law compensation claim matter to a district court by an application for a summons (2802/2017\*).

Prisons do not have the legal competence to make a decision on a compensation claim submitted by a prisoner. Compensation claims against the Criminal Sanctions Agency are processed by the State Treasury. In one such case, either the

prison should have referred the compensation claim to the Treasury or, depending on the form or content of the claim, it should have advised the prisoner to make a claim (5671/2016).

The District Bailiff's reply to a customer had been misleading and insufficient and not in accordance with the advice obligation provided for by the Enforcement Code. The Bailiff does not jeopardise its impartiality by determining what legal remedies a complainant has in connection with an enforcement procedure. The conduct was particularly condemnable since the complainant may have come to a wrong conclusion about the action he or she has to take in order to bring the matter concerning the legality of an enforcement order before a competent court of law (3949/2016).

The patient ombudsman has the duty to advise patients and assist them in submitting complaints to the health care supervisory authority. In an inspection of a psychiatric hospital, it was found that the patient ombudsman rarely visited the hospital, which is situated separately from the other wards of the central hospital. The Ombudsman recommended that the patient ombudsman should frequently visit psychiatric wards to meet with patients (2148/2017).

### DISCHARGE OF THE LEGAL PROTECTION AUTHORITY'S DUTIES

According to section 21 of the Constitution, a case must be dealt with by a legally competent court of law "without undue delay". The same obligation is also provided for by section 23(1) of the Administrative Procedure Act. The latter's section 49e states that a request for an administrative review shall be considered urgently. Further, Article 6 of the European Convention of Human Rights states that everyone is entitled to a hearing "within a reasonable time" by a tribunal established by law.

Delays in hearing are often caused by insufficient resources. It is the Ombudsman's established view that a reference to a general workload is not a sufficient explanation for exceeding the reasonable processing time.

Long processing times by the Consumer Disputes Board were highlighted by a number of complaints. The Ombudsman found that, despite recent development projects and additional resource allocations, the Consumer Disputes Board was still not able in all cases to meet the statutory 90-day requirement within which a recommendation should be issued. In the Ombudsman's view, the number of cases in which the statutory period had been exceeded was not inconsequential (4079/2017).

In an inspection of a prisoners' health care unit, it was found that one person was responsible for the complaints-handling process. It was not possible to establish during the inspection how cases are dealt with when the responsible employee is on leave or off work due to illness. In the Ombudsman's view the situation was particularly vulnerable, and it advised the unit to ensure that the cases were not the responsibility of a single person and that other employees receive training on how to process complaints (5195/2017).



## 3.8

### Statements on fundamental rights

This section discusses some of the statements on fundamental rights made during the course of the Ombudsman's oversight of legality. The section focuses exclusively on individual decisions that involve a new aspect of fundamental rights, or are significant in principle in some other way. Such cases are also referred to in section 3.6, in which the Ombudsman's decisions, including a recommendation for compensation, were discussed.

#### PROMOTION OF EQUALITY THROUGH REASONABLE ACCOMMODATION

A District Court building had courtrooms on three floors, but an accessible toilet was provided only on the first floor. The current legislation does not, as such, require that an accessible toilet be built on all public floors in a public building.

However, from the perspective of reasonable adjustments to be made in individual cases for a person with disabilities, the Ombudsman concluded that if a person with disabilities arriving at a court session requests that the District Court make due and appropriate alternative spatial or accessibility arrangements, the District Court may be obliged under the Non-discrimination Act, the UN Convention on the Rights of Persons with Disabilities and, ultimately, sections 6 and 22 of the Constitution to make any due and appropriate adjustments necessary in the given situation for a person with disabilities to be able, on an equal basis with others, to conduct their affairs in a court of law.

In practice, this could mean that, provided that a person with disabilities requests, in good time before the court session, that the session be held on the first floor of the building, where the accessible toilet is located, the court must consider making spatial arrangements to move the session to the first-floor courtroom (339/2017).

#### EQUAL TREATMENT OF THE ELDERLY IN THE PROVISION OF A PNEUMOCOCCAL VACCINE

The City of Helsinki decided to limit the provision of pneumococcal vaccine to over-65 residents who were customers of Home Care Services. All other residents over 65 years of age were excluded from free vaccination. The city thereby placed its over-65 residents in a different position, depending on whether or not they were customers of Home Care Services. In the view taken by the City, the requirement for equal treatment of residents had not been violated, because providing a free vaccination to over-65 customers of Home Care Services was in line with the national recommendations approved by the National Institute for Health and Welfare.

Section 6, subsection 2 of the Constitution does not prohibit all types of different treatment between groups of people, even if such differentiation is based on a reason specifically referred to in the non-discrimination provisions. The critical consideration is whether or not the different treatment can be justified in a manner acceptable from the perspective of the system of basic rights. According to section 11, subsection 1, different treatment does not constitute discrimination if the treatment is based on legislation, otherwise has an acceptable objective and the measures for attaining the objective are proportionate.

The Ombudsman found that the city could have justified the different treatment of its over-65 residents in the provision of pneumococcal vaccinations in a manner that would be acceptable under the system of basic rights and section 11, subsection 1 of the Non-discrimination Act, by referring to the recommendations issued by the National Institute for Health and Welfare. However, it appeared that the city was operating under a misapprehension, as the National Institute for Health and Welfare has not issued such recommendations (5897/2016).

## EQUALITY IN COLLECTING A HEALTH CENTRE FEE

The City of Helsinki had decided that a customer who was not a resident of Helsinki, who had selected a health centre in Helsinki as their place of treatment based on statutory freedom of choice, should be charged the health centre fee, while residents of Helsinki are not charged the fee.

The Ombudsman stated that different treatment based on place of residence constitutes discrimination on the basis of personal characteristics, as prohibited in section 8 of the Non-discrimination Act. According to section 11, subsection 1 of the same act, different treatment does not constitute discrimination if it is based on the law and the treatment has an acceptable aim.

Since different treatment between health centre customers based on their place of residence is not based on the law in the aforementioned case, the Ombudsman found the decision to be in violation of the Non-discrimination Act (4122/2016).

## TRANSPORT OF A PSYCHIATRIC PATIENT

The provisions under section 22 d of the Mental Health Act on the limitation of the freedom of movement restricts the right of personal liberty and integrity provided for under section 7 of the Constitution. As restrictions to basic rights must be interpreted narrowly, the Ombudsman found that the powers of care personnel provided for in the section (“a patient may be prohibited from leaving the premises of the hospital or the premises of a certain care unit”) are literally applicable within the hospital premises only.

The law has no provisions on the use of coercive measures by care personnel to restrict a patient’s freedom of movement outside a hospital area, or to bring a patient to the hospital from outside the hospital area.

Nor does the Mental Health Act include any provisions on executive assistance during patient transport to destinations aside from health-care service units, such as courts of law, or on the treatment and conditions of the patient during transport.

The Ombudsman has put it to the Ministry of Social Affairs and Health that the transport of a patient, their treatment and conditions during transport, and the competencies of the accompanying personnel, should be explicitly provided for by law. Since problems and potential emergency situations are continually arising due to the lack of applicable legislation, the Ombudsman has called for the amendment of the related law as a matter of urgency (2459/2016).

The Ombudsman found that using a guard from a private security firm to supervise the transport of a patient would require express legislation.

According to section 7 of the Constitution, the personal integrity of the individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. Furthermore, under section 124 of the Constitution, a public administrative task may only be delegated to organisations other than public authorities by an Act or by virtue of an Act. In some cases, restrictions of basic rights may involve the significant exercise of public powers, which may never be delegated to a private service provider under section 124 of the Constitution.

The hospital therefore acted incorrectly when entrusting the supervision of patient transport to a private security firm without a legal basis for doing so. The Ombudsman told the Ministry of Social Affairs and Health once again that the latter should take measures to resolve the legislative issues related to the supervision of psychiatric patient transport (3445/2016).

## USE OF A RESTRAINING BED AT A POLICE PRISON

The Deputy-Ombudsman finds that the current legislation does not allow for the use of a restraining bed in a police prison. When restrained in this manner, the person is strapped by the arms and legs and face down onto the bed. The bed has an opening through which the restrained person can vomit. The person may additionally be restrained by straps fastened across their body,

including the head, so that the person lies completely immobilised.

Since the use of a restraining bed is a drastic departure from personal liberty and integrity safeguarded under section 7 of the Constitution, it should be provided for in legislation in a similar manner as the restraining of mental health patients is provided for in the Mental Health Act. Moreover, even under such legislation, the bed should be similar to those used in medical treatment in psychiatric care.

In general, the Deputy-Ombudsman did not find any just cause for the use of a restraining bed in police prisons and concurs with the opinion of the Committee for the Prevention of Torture (CPT) that restraining beds should no longer be used in police prisons. Restraining measures should be strictly based on a physician's assessment and carried out by health-care professionals (2236/2016).

### IDENTIFICATION OF A FINNISH CITIZEN

The Finnish Embassy in Ethiopia had declined to issue passports to children, who could not be identified reliably as required by the Passport Act. For this reason, the children could not travel to Finland.

The Ombudsman found it highly problematic, in the light of the freedom of movement guaranteed by section 9 of the Constitution, that the reliable identification of the children, who were reported to be Finnish citizens residing abroad, could not be resolved in a manner required by the Passport Act. The Ombudsman has requested the Ministry for Foreign Affairs and the Ministry of the Interior to consider whether resolving this issue requires legislative measures, such as provisions on using DNA testing (4654/2016).

### THE POSSIBILITY TO SMOKE WHILE UNDER INVOLUNTARY TREATMENT

The prohibition of smoking is relevant from the perspective of the right to personal liberty and privacy guaranteed under sections 7 and 10 of the Constitution (e.g. Constitutional Law Committee 21/2010). While in involuntary psychiatric treatment, a patient's circumstances are similar to those of a prisoner incarcerated in a closed prison. According to the Imprisonment Act, prisoners must be provided with the opportunity to smoke in a designated space or otherwise, if smoking is not allowed in the residential quarters. According to the Ombudsman, similar arrangements should be made for psychiatric patients undergoing involuntary treatment (3556/2016).

### PUBLICATION OF PERSONAL DATA ONLINE

The Finnish Competition and Consumer Authority had published the names of private individuals on its websites in connection with a matter processed at the Market Court. The Deputy-Ombudsman stated that an issue regarding the publication of the name of a private individual must be assessed from the aspect of the right to privacy guaranteed by section 10 of the Constitution. The point of departure is that the use of public authority must always be based on jurisdiction that can be traced back to legislation adopted by Parliament. One of the preconditions for restricting fundamental rights is that the restriction is provided for in the law. Laws, in turn, are subject to the requirement of precision and accuracy.

The provisions under the Government Decree on the Finnish Competition and Consumer Authority on communication and publication of information had to be reviewed in the light of the Act on the Finnish Competition and Consumer Authority. According to the general regulations on jurisdiction, the tasks of the Finnish Competition and Consumer Authority can be provided for in closer detail in a decree.

The Deputy-Ombudsman found that the enabling provisions were not sufficiently accurate

and precise to enable personal data to be published on an open information network, pursuant to the provisions under the issued decree. The Act of the Finnish Competition and Consumer Authority includes no provisions on the purpose of the publication of information, or on the publication of information in general. The only context in which using the publication of private details as a method of securing compliance of business owners with the Consumer Ombudsman's statement is referred to is the rationale for the act that entered into force prior to the regulations on fundamental rights, and which includes the same provisions.

The Deputy-Ombudsman found the justifications for publishing personal data under the provisions of the act highly debatable. Even inferring the intentions of the legislator from the wording of the rationale in the 1977 government proposal is not a sustainable solution, given the constitutional reform instituted since then, and the change in method of publication to an open information network. The Deputy-Ombudsman stated that, overall, publishing names over an open information network should be provided for in greater detail by law. Owing to the lack of regulation, the Finnish Competition and Consumer Authority should have refrained from publishing the names of the complainants (1089/4/16).

#### **SENDING A PERSONAL ID NUMBER BY E-MAIL**

According to the Deputy-Ombudsman, the duty of care in the processing of personal data requires that authorities do not request a customer to send personal data, protected under section 10 of the Constitution, by a method that may put that data at risk of disclosure to third parties. Unsecured e-mails are problematic from the data protection perspective. The Deputy-Ombudsman therefore found that an authority may never actively request a customer to send their personal ID code using the unsecured email address provided by the authority (2455/2016).

#### **REMOVING GRAFFITI FROM A GRAFFITI WALL MAINTAINED BY A LOCAL AUTHORITY**

The mayor of a city had ordered a graffiti work to be removed from a graffiti wall maintained by the city. The work included facial portraits of three persons involved in the operations of a company owned by the local government and the text "Hävetkää!" ("Shame on you!"). The graffiti referred to a confidential internal auditing report that dealt with the use of funds in the company and that had been leaked to the press. The persons depicted in the graffiti had been mentioned in the audit report and the related newspaper article.

According to the Ombudsman, the local government had violated the graffiti artists' freedom of expression, which is protected under section 12 of the Constitution. The measures were, as such, based on the law and acceptable grounds, which involved protecting the dignity of the persons depicted in the graffiti. However, the persons depicted are in a special position entailing that the bounds of acceptable criticism are less restricted for them than those applied to ordinary residents of the municipality. The critique expressed by artistic means in the graffiti had not only referred to the news reports on the matter, but also a theme that was of national interest and importance. The graffiti artists had participated in the public debate on the matter.

The persons had not been depicted in a visually demeaning manner, and had not been accused of a criminal offence. The work represented an ethical and moral statement, which could have been formulated justifiably, based on news reports on the matter. Violating the graffiti artists' freedom of expression was not therefore a necessary measure under the circumstances, within a democratic society (1206/2016\*).

### HEARING OF AN ASYLUM SEEKER IN CONNECTION WITH DETERMINING THEIR AGE

An unaccompanied minor seeking asylum was referred to forensic examination to determine their age over nine months after arriving in the country. No hearing was held for the asylum seeker concerning the findings of the examination before they were registered as an adult. The duties of the representative appointed for the asylum seeker were terminated at the moment of registration, and the minor asylum seeker was moved to a reception centre for adults. Later, the asylum seeker was found to be minor based on an identification document.

Under this practice, adopted by the Finnish Immigration Authority, both the interpretation of the forensic examination results and the registration were concluded before the asylum seeker was heard.

The right to be heard is one of the tenets of good governance under section 21, subsection 2 of the Constitution. The Ombudsman stressed that, while the decision on the age of the asylum seeker is not an administrative decision open to separate appeal, the immediate repercussions of the decision, the best interests and legal protection of children as well as compliance with the rules of good governance entail that an asylum seeker should be heard before a final decision is made in a situation where their age is about to be corrected, and the person declared an adult based on an age-determination examination. The mandate of the representative cannot therefore be terminated before a hearing on the matter has been carried out (1487/2017).

### INFORMATION ON A DECISION BASED ON THE ALIENS ACT

The Aliens Act guarantees the right of the party concerned to be notified of any decision concerning them through interpretation or translation. However, the law does not specify which of these methods takes priority, and the choice of method is at the discretion of the authority. This choice is,

however, governed by the general obligation arising from section 22 of the Constitution to select a method that best guarantees the observance of basic rights. It is therefore of primary importance to ensure that the right of the person concerned to appeal against the decision is not preempted by practicalities related to the use of language. In this respect, using written translation would be a better solution.

The Ombudsman found that, from the perspective of protection under the law, as guaranteed under section 21 of the Constitution, a public authority must establish the first language and language skills of the party concerned before issuing a notification, and must provide the notification directly as a translation or with the assistance of an interpreter (5223/2016).

### LEGAL RIGHTS REGARDING THE ELECTRONIC ENTRANCE EXAM FOR UNIVERSITIES OF APPLIED SCIENCES

The electronic entrance exam has not compromised the equal treatment of applicants, as the opportunity to participate in the electronic entrance exam has been offered in similar terms to everyone willing to take it. The electronic entrance exam can be taken irrespective of place of residence and helps avoid extra costs for applicants who, for example, would otherwise have to travel to sit the exam in person. Another purpose of the electronic entrance exam is to ensure that applicants who have completed vocational secondary level education have the same opportunities to obtain a tertiary education at a university of applied sciences as those who have completed general upper secondary school, and in this way to speed up the transition from secondary to tertiary level.

The electronic entrance exam was taken in unsupervised conditions, which made it possible for someone else taking the examination on behalf of the applicant. This presented a problem from the perspective of applicants' legal rights. The Deputy-Ombudsman did not have the legal grounds to find that the possibility of fraud would take precedence over the factors in favour of the elec-

tronic entrance exam, when reviewing the matter in a manner that would prevent the future use of the electronic entrance exam. According to the Deputy-Ombudsman, the entrance exam should, however, be organised in a manner that would minimise the risk of misconduct compromising the legal rights of applicants. (1211/4/16\*, 1324/2016, 2518/2016 and 2522/2016).

### **NOTIFICATION ON CHANGES IN SERVICES**

The Ombudsman emphasised that notifications on any changes in the services provided for vulnerable individuals, such as people with severe disabilities or long-term illnesses, and old people, should be made with particular care. This concerns situations where, for example, the local government raises the fees charged for services or otherwise reorganises their service provision.

The public authorities must also ensure that the instructions, guidelines and information it issues are sufficiently clear and accurate, and do not impede or restrict the enforcement of the customers' rights. According to the Ombudsman, these requirements are governed by the rules of good governance and duty of care as provided for under sections 21 and 22 of the Constitution respectively (1463/2016).



## 3.9

# Complaints to the European Court of Human Rights against Finland in 2017

A total of 181 new applications were brought against Finland at the European Court of Human Rights (ECHR or the Court) in 2017 (196 in the previous year). No responses to new complaints have been requested from the Finnish Government in over two years, not in 2016 or 2017. At the turn of the year, there were only 14 (85) pending cases, and of these only two were Chamber cases.

Applications must be submitted by using the form drawn up by the ECHR Secretariat, complete with the required information and copies of all supporting documents. The Court will not examine a complaint that does not contain the requisite information or documents.

The decision on the admissibility of an application is made by the ECHR in a single-judge formation, in a Committee formation or in a Chamber formation (7 judges). The Court's decision may also confirm a settlement, and the case is then struck out of the ECHR's list. Final judgments are given either by a Committee, a Chamber or the Grand Chamber (17 judges). In its judgment, the ECHR resolves an alleged case of a human rights violation or confirms a friendly settlement.

An overwhelming majority – approximately 95 percent – of applications are declared inadmissible. In 2017, a total of 217 (157) complaints concerning Finland were declared inadmissible or struck out of the list of cases. Since Finland became a party to the European Convention on Human Rights, a total of 5,176 cases concerning Finland have been declared inadmissible.

In 2017, the number of rulings delivered by the Court in cases concerning Finland continued to be low. The Court delivered only two judgments (1 in the previous year) and no decisions (2 in the previous year).

In addition, the Court delivered 18 (24) decisions on requests for interim measures, of which none were admitted (one was admitted in 2016).

By the end of 2017, Finland had received a total of 188 judgments from the Court, and 103 applications had been decided following a friendly settlement or a unilateral declaration by the Government. The total number of ECHR rulings against Finland during Finland's membership is considerably high at 140 (approximately 75 percent of all rulings).

Whereas Sweden, Norway, Denmark and Iceland have been State Parties to the ECHR for considerably longer than Finland, the Court has only ruled against them in a total of 121 cases. In 2017, the other Nordic countries were subject to 13 rulings (10) of which five (5) were against them.

### 3.9.1 MONITORING OF THE EXECUTION OF ECHR JUDGMENTS AT THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

The Committee of Ministers of the Council of Europe monitors the execution of ECHR judgments. The committee monitors three aspects of execution: compensation payments, individual measures and general measures following a judgment. The monitoring primarily takes place by diplomatic means. Where necessary, the Committee of Ministers can refer a question of execution to the ECHR for confirmation.

Within six months of the ECHR judgment becoming final, the states shall submit either an action report or an action plan comprising a report on any measures that have been taken and/or that are being planned. The reports are published on the Committee of Ministers' website.

In the review year, one new monitoring case was initiated (the judgment referred to in the next chapter). A total of 42 (41) judgments concerning Finland were being monitored.

### 3.9.2 JUDGMENTS IN THE REVIEW YEAR

In one of the two judgments delivered in the review year the Court found a violation of rights.

The Grand Chamber's judgment in *Satakunnan Markkinapörssi Oy and Satamedia Oy* (27 June 2017) concerned freedom of speech and the duration of court proceedings. The Grand Chamber held the Chamber's judgment (see Parliamentary Ombudsman's summary 2015 p. 131) and ruled that freedom of expression had not been violated as a result of restrictions placed on the publication of tax information. Conversely, the duration of court proceedings, over six and a half years in two court instances, violated the right to a hearing within a reasonable time provided by Article 6 of the Convention. The duration was caused by the fact that the case had been returned to the Data Protection Ombudsman for reprocessing, and therefore the case was heard twice. The state was ordered to compensate the complainant for the trial costs of €9,500.

The ruling in the case of *A.-M.V.* (23 March 2017) concerned a decision on the place of residence of an adult with intellectual disability. The complainant wanted to move back to live with their foster parents in a remote rural location, which was refused by the trustee appointed for the complainant, and the district court refused to appoint another trustee. The ECHR ruled that different interests, including the right of self-determination and safeguarding of a vulnerable person, had been balanced in the decision-making and that no violation of privacy or right of movement had taken place.

### COMPENSATION AMOUNTS

In the review year, compensations paid by the state following the ECHR's rulings amounted only to €9,500, which was compensation for trial costs. As the number of rulings against Finland has decreased in recent years, so have the compensation amounts (approximately €19,000 in 2016 and nearly €68,000 in 2015).

### COMMUNICATED NEW CASES

No responses on new complaints were requested from the Government, which was also the case in the previous year.



## 4 COVERT INTELLIGENCE GATHERING





## 4

## Covert intelligence gathering

The oversight of covert intelligence gathering fell within the remit of Parliamentary Ombudsman *Petri Jääskeläinen*. The principal legal adviser responsible for the area was *Mikko Eteläpää*. Other legal advisers responsible for the area included *Minna Ketola* and *Juha Haapamäki*.

Covert intelligence gathering refers first of all to the covert coercive measures used in criminal investigations and to the corresponding covert methods of gathering intelligence that may be used to prevent or detect offences or avert danger. Such methods include, for example, telecommunications interception and traffic data monitoring, technical listening and surveillance as well as undercover operations and pseudo purchases. The use of these methods is kept secret from their targets and to some extent they may, based on a court decision, remain permanently undisclosed to the targets.

The police have the most extensive powers to use covert intelligence gathering, but the Finnish Customs also have access to a wide range of covert methods of gathering intelligence with respect to customs-related offences. The powers of the Finnish Border Guard and the Defence Forces are clearly more limited.

This chapter also discusses a report on the witness protection programme submitted to the Parliamentary Ombudsman. The witness protection programme act (*laki todistajansuojeluohjelmasta 88/2015*) entered into force on 1 March 2015. According to the act, the Ministry of the Interior must annually report to the Parliamentary Ombudsman on decisions and measures taken under the act.

## 4.1

## SPECIAL NATURE OF COVERT INTELLIGENCE GATHERING

Covert intelligence gathering involves secretly intervening in the core area of several fundamental rights, especially those concerning privacy, domestic peace, confidential communications and the protection of personal data. Its use may also affect the implementation of the right to a fair trial. For intelligence gathering to be effective, the target must remain unaware of the measures, at least in the early stages of an investigation. Thus, the parties at whom these measures are targeted have more limited opportunities to react to the use of these coercive measures than is the case with “ordinary” coercive measures, which in practice become evident immediately or very soon.

Due to the special nature of covert intelligence gathering, questions of legal protection are of accentuated importance from the perspective of those against whom the measures are employed and more generally the legitimacy of the entire legal system. The secrecy that is inevitably associated with covert intelligence gathering exposes the activity to doubts about its legality, whether or not there are grounds for that. Indeed, an effort has been made to ensure legal protection through special arrangements both before and after intelligence gathering. Their key components include the court warrant procedure, the authorities’ internal oversight and the Ombudsman’s oversight of legality.

## 4.2 OVERSIGHT OF COVERT INTELLIGENCE GATHERING

### COURTS

To ensure legal protection, it has been considered important that telecommunications interception and mainly also traffic data monitoring can only be carried out under a warrant issued by a court. These days, undercover operations during a criminal investigation also require authorisation from a court (Helsinki District Court). Depending on the target location, technical surveillance can in some cases also be carried out on the basis of the authority's own decision without court control. The same applies to the majority of other forms of covert intelligence gathering. The decision-making criteria laid down by law are partly rather loose and leave the party making the decision great discretionary power. For example, the "reason to suspect an offence" threshold that is a basic precondition for issuing a warrant for telecommunications interception is fairly low.

Requests concerning coercive measures must be dealt with in the presence of the person who has requested the measure or by using a video conference – written procedures are only allowed under limited circumstances when renewing an authorisation. When considering the prerequisites for using a coercive measure, a court is dependent on the information it receives from the criminal investigation authority, and the "opposing party" is not present at the hearing. The only exception is on-site interception in domestic premises: in these cases, the interests of the target of the coercive measure are overseen (naturally without his or her knowing) by a public attorney, usually an advocate or public legal aid.

According to law, a complaint may be lodged with a Court of Appeal against a District Court's decision concerning covert intelligence gathering, with no time limit. Thus, a suspect may even years later refer the legality of a decision to a Court of Appeal for assessment, and some people have done so. In such cases, courts of higher instances establish case law on covert intelligence gather-

ing. The importance of the courts' role in ensuring a suspect's legal protection and in examining the grounds for the requested coercive measure has been highlighted, for example, in the Supreme Court's decisions KKO:2007:7 and KKO:2009:54.

The courts also play a key role with respect to the parties' right of access to information concerning covert intelligence gathering. As a rule, the target of covert intelligence gathering must be notified of the use of the method no later than one year after the use has ceased. Based on the grounds laid down by law, a court may grant permission to postpone the notification or an exemption from the notification obligation. However, it is important to ensure that the total exemption, in particular, is only granted when it is absolutely necessary. In a state governed by the rule of law, measures that interfere with fundamental rights and are kept completely secret can only be allowed to a very limited extent. The Supreme Court has considered the issue of parties' right to obtain information on undercover operations in its decision KKO:2011:27 concerning the Ulvila homicide case, which was widely covered in the media.

On 28 September 2016, the Supreme Administrative Court issued two decisions on public access to documents on covert intelligence gathering by the police (4077, 62/1/15 and 4078, 2216/1/15). The decisions concerned a request for information about regulations concerning the use of covert human intelligence sources by the police and the SALPA system. In its decisions, the Supreme Administrative Court was of the view that the information contained in the regulations regarding the use of covert human intelligence sources, the related safety and security measures and the organisation of the protection of intelligence gathering must be kept secret because, if these were disclosed in public, there is a risk that the identities of human intelligence sources and the police officers involved in the operations would be revealed.



## AUTHORITIES' INTERNAL OVERSIGHT

The oversight of the use of covert intelligence gathering primarily involves normal supervision by superior officials. Moreover, provisions separately emphasise the oversight of covert intelligence gathering.

Under law, the use of covert intelligence gathering methods by the police is overseen by the National Police Board (apart from the Finnish Security Intelligence Service, Supo) and the heads of the police units using such methods. Responsibility for overseeing the covert intelligence gathering methods used by Supo was transferred to the Ministry of the Interior at the beginning of 2016. At the Finnish Border Guard, the special oversight duties fall within the responsibility of the Border Guard Headquarters and the administrative units operating under it. At Finnish Customs, covert intelligence gathering is overseen by supervisory personnel of Customs and the units employing the methods in their respective administrative branches. At the Finnish Defence Forces, records drawn up on the use of covert intelligence gathering must be sent to the Ministry of Defence.

In addition to various acts, a government decree has been adopted on criminal investigations, coercive measures and covert intelligence gathering (122/2014). The decree lays down provisions on, for example, drawing up records on the use of different methods and reports on covert intelligence gathering. The authorities have also issued internal orders on covert intelligence gathering.

The Ministry of the Interior, the Headquarters of the Finnish Border Guard (which is a department of the Ministry of the Interior), the Ministry of Finance (which governs Finnish Customs) and the Ministry of Defence report annually by the end of February to the Parliamentary Ombudsman on the use and oversight of covert intelligence gathering in their respective administrative branches.

The authorities reporting to the Parliamentary Ombudsman receive a substantial part of their information on the use of covert intelligence gathering from the SALPA case management system. The only exception is the Finnish Defence Forces, which do not – at least yet – use the SALPA sys-

tem. SALPA is a reliable source of statistical data. However, it does not cover all methods of covert intelligence gathering, such as undercover operations, pseudo purchases and the use of covert human intelligence sources. The superior agencies also receive information on the activities through their own inspections and contacts with the heads of investigation.

The police have centralised all intelligence gathering from telecommunications operators to be conducted through the SALPA system maintained by the National Bureau of Investigation (NBI). The NBI's telecommunications unit oversees the quality of activities and provides guidance to the heads of investigation when necessary. Centralising the activities under the NBI has improved the quality of the functions.

In the police administration, several officials have been granted supervisory rights in SALPA for the oversight of legality. These officials work mainly in the legal units of police departments. Their task is to oversee activities in accordance with the unit's legality inspection plan and by conducting spot checks.

In addition to internal oversight at police departments, the National Police Board also oversees the units operating under it through the SALPA system and by conducting separate inspections.

The National Police Board has established a working group to monitor the use of covert coercive measures and covert intelligence gathering methods. The members of the group may include representatives from the National Police Board, the National Bureau of Investigation, the Finnish Security Intelligence Service and police departments. Moreover, representatives of the Ministry of the Interior, the Border Guard, the Defence Forces and Customs are also invited to participate as members of the group. The group is tasked with monitoring the authorities' activities, collaboration and training, discussing issues that have been identified in the activities and collaboration or that are important for the oversight of legality and reporting them to the National Police Board, proposing ways to improve activities, and coordinating the preparation of reports submitted to the Parliamentary Ombudsman.

## PARLIAMENTARY OMBUDSMAN'S OVERSIGHT OF LEGALITY

Overseeing covert intelligence gathering has been one of the special tasks of the Parliamentary Ombudsman since 1995. At the time, it was provided that the Ministry of the Interior would give the Ombudsman an annual report on telecommunications interception, traffic data monitoring and technical listening by the police as well as on technical surveillance in penal institutions. The National Board of Customs submitted a report on the use of the methods by Finnish Customs. The Ministry of Defence and the Finnish Border Guard prepared similar reports on the methods they had used.

In 2001, the scope of the Ombudsman's special oversight was extended to also include undercover operations and in 2005 to cover pseudo purchases. Both measures were only available to the police.

It was not until the beginning of 2014 that the Ombudsman's special oversight duties were extended to cover all covert gathering of intelligence. In addition to the extended powers, the use of these methods has also significantly increased over the years.

The annual reports obtained from various authorities improve the Ombudsman's opportunities to follow the use of covert intelligence gathering on a general level. Where concrete individual cases are concerned, the Ombudsman's special oversight can, for limited resources alone, be at best of a random check nature. At present and in the future, the Ombudsman's oversight mainly complements the authorities' own internal oversight of legality and can largely be characterised as "oversight of oversight".

Complaints concerning covert intelligence gathering have been few, with no more than approximately ten complaints received a year. This is most likely due, at least in part, to the secret nature of the activities. However, it should be noted that covert intelligence gathering operations remain completely unknown to the target only in very rare and exceptional cases. On inspection visits and in other own-initiative activities, the Ombudsman has striven to identify problematic issues concerning legislation and the practical

application of the methods. Cases have been examined, for example, on the basis of the reports received or inspections conducted. However, opportunities for this kind of own-initiative examination are limited.

## 4.3 LEGAL REFORMS

At the beginning of 2014, the Coercive Measures Act and the Police Act underwent a complete reform, including a significant expansion in the scope of regulation concerning covert intelligence gathering. The provisions on the previously used methods were also complemented and specified in the reform (the Finnish version of the 2013 Annual Report, on pages 157–158).

With respect to the Defence Forces, the act on military discipline and crime prevention in the Defence Forces (*laki sotilaskurinpäöstä ja rikostorjunnasta puolustusvoimissa 255/2014*) entered into force on 1 May 2014. Under the act, when the Defence Forces conduct a criminal investigation they may use certain, separately determined methods of covert intelligence gathering as referred to in the Coercive Measures Act, such as extended surveillance and technical observation and listening. In the prevention and detection of crimes, the Defence Forces similarly only have access to certain methods of covert intelligence gathering, although the range is wider than in criminal investigations. However, the Defence Forces cannot use, for example, telecommunications interception, traffic data monitoring, undercover operations or pseudo purchases. If these measures are needed, they are carried out by the police.

The act on the prevention of crime by Finnish Customs (*laki rikostorjunnasta Tullissa 623/2015*) entered into force on 1 June 2015. In the act, the powers of Customs were harmonised with those laid down in the new Criminal Investigation Act, Coercive Measures Act and Police Act. One significant change was that Customs were given powers to conduct undercover operations and pseudo purchases, even though the measures are in practice implemented by the police at Customs' request. Moreover, the use of covert human intelligence

sources in the prevention of customs-related offences was harmonised with the provisions of the Police Act and the Coercive Measures Act.

The act on crime prevention by the Finnish Border Guard will enter into force on 1 April 2018. The new act will include the crime prevention provisions currently included in the Border Guard Act. There will be no major changes to the powers of the Border Guard.

The future development of legislation on intelligence gathering by the security authorities is highly important for covert intelligence gathering. Parliament began debating the government proposals on intelligence in early 2018.

#### 4.4 REPORTS SUBMITTED TO THE PARLIAMENTARY OMBUDSMAN

The following presents certain information on the use and oversight of covert intelligence gathering obtained from the reports submitted by the Ministry of the Interior, the Headquarters of the Finnish Border Guard, the Ministry of Finance and the Ministry of Defence. The precise figures are partly confidential. For example, the covert intelligence gathering activities of the Finnish Security Intelligence Service are not included in the figures presented below.

#### USE OF COVERT INTELLIGENCE GATHERING IN 2017

##### Coercive telecommunications measures under the Coercive Measures Act

As in previous years, the number of register entries concerning telecommunications interception and traffic data monitoring continued to decrease slightly. The number of register entries concerning telecommunications interception decreased by more than 300 compared to 2013, when the number of entries was the highest. According to the National Police Board, this may be due, at least in part, to the fact that communications have increasingly transferred to alternative means of communication, which are subject to other types

of intelligence gathering. Another explanation may be that the targeted individuals are foreigners, and the necessary interpretation requires time and external resources.

The police were granted 2,412 telecommunications interception and traffic data monitoring warrants for the purpose of investigating an offence (2,606 in 2016). However, in the statistical evaluation of covert coercive measures the most important indicator is perhaps the number of persons at whom coercive measures were targeted. In 2017, simultaneous telecommunications interception and traffic data monitoring activities carried out by the police under the Coercive Measures Act were targeted at 450 (471) suspects, of whom 26 were unidentified. The number of suspects whose identity is unknown has significantly decreased over the past few years. The use of mere traffic data monitoring was targeted at 1,426 (1,241) suspects.

Simultaneous telecommunications interception and traffic data monitoring activities carried out by Customs were targeted in 2017 at 89 (77) persons, and the number of warrants issued was 218 (191). The use of mere traffic data monitoring was targeted at 171 (189) persons, with 476 (498) warrants being issued.

The most common grounds for simultaneous telecommunications interception and traffic data monitoring by the police were aggravated narcotics offences (68%) and violent offences (10%). Within the administrative branch of Customs, the most common grounds were aggravated tax frauds and aggravated narcotics offences.

The Finnish Border Guard used telecommunications interception and traffic data monitoring much less frequently than the police and Customs. One simple reason for this is that under the law the Border Guard can only use coercive telecommunications measures in the investigation of a few specific types of offences (mainly aggravated arrangement of illegal immigration and the related offence of human trafficking). In the Finnish Defence Forces, the use of covert intelligence gathering is even less frequent, and the activities have clearly focused on preventing and detecting offences or, in other words, the field of military intelligence instead of criminal investigations.

### Telecommunications interception and traffic data monitoring under the Police Act

Traffic data monitoring under the Police Act was targeted at 74 (64) persons. The method was used most frequently to avert a danger to life or health and to investigate the cause of death.

### Traffic data monitoring under the Act on the Prevention of Crime by Finnish Customs

In total, 16 (13) traffic data monitoring warrants were issued to prevent and detect customs offences, most often on the grounds of aggravated tax fraud or an aggravated narcotics offence.

### Technical surveillance

In 2017, the police used technical observation under the Coercive Measures Act 44 times with respect to premises covered by domiciliary peace. The method was not used in prisons during the year. The police also used on-site interception in a prison eight times, technical observation 155 times, on-site interception 114 times and technical tracking 371 times. On-site interception in domestic premises was used five times. Data for the identification of a network address or a terminal end device were obtained 61 times. The most common reason for using these surveillance methods was an aggravated narcotics offence.

Under the Police Act, technical observation was used 15 times, on-site interception four times and technical tracking 66 times.

Customs used technical tracking under the Coercive Measures Act in 38 instances. On-site interception was used 19 times and technical observation 22 times.

Technical tracking under the Act on the Prevention of Crime by Finnish Customs was used nine times. No decisions were issued on on-site interception, and technical observation was used six times.

### Extended surveillance

Extended surveillance means other than short-term surveillance of a person who is suspected of an offence or who, with reasonable cause, might be assumed to commit an offence. The National Police Board has interpreted this to mean several individual and repeated instances of surveillance (approximately five times) or one continuous instance of surveillance lasting approximately 24 hours.

According to the report submitted to the Parliamentary Ombudsman by the Ministry of the Interior, in 2017 the police made some 250 decisions on the use of extended surveillance. Customs took 39 similar decisions.

### Special covert coercive measures

In 2017, the police registered a significant number of new human intelligence sources.

In 2017, a few new decisions were taken to use undercover operations and to continue the validity of previously issued decisions on undercover operations. Undercover operations have been used to detect serious offences, in particular aggravated narcotics offences. Pseudo purchases were also mainly used to detect and investigate aggravated narcotics offences. In 2017, the number of pseudo purchases increased considerably, especially in data networks.

The application of controlled deliveries has been considered problematic. In 2017, the police made no decisions on the use of the measure. Customs reported having used controlled deliveries six times in 2017.

### Rejected requests

There was no significant change in the number of rejected requests for the use of coercive telecommunications measures. In 2017, courts rejected ten requests for coercive telecommunications measures submitted by the police. None of the requests made by Customs were rejected. One of the requests made by the Border Guard was approved only in part.

### Notification of the use of coercive measures

As a rule, the use of a covert intelligence gathering method must be notified to the target no later than one year after the gathering of intelligence has ceased. A court may under certain conditions authorise the notification to be postponed or decide that no notification needs to be given.

During the year under review, there were a few cases in which the notification of the use of a covert intelligence gathering method was delayed. In this respect, the development has been positive. The number of authorisations for postponing a notification or for not giving one at all was very low. It seems that no authorisations for not giving a notification were issued in 2017.

### INTERNAL OVERSIGHT OF LEGALITY

The unit responsible for the oversight of legality at the National Police Board conducted legality inspections in all police units. The unit reviewed the legality inspection plans drawn up by different units for 2017 and, in connection with the oversight of the SALPA system, focused on the uniform use and oversight, organisation, processes and responsibilities of the covert intelligence gathering methods employed by police units. Separate inspections were carried out nationwide on any intelligence gathering methods that have not been recorded in the SALPA system. Furthermore, a separate legality inspection was conducted on covert human intelligence sources in the police departments of Helsinki, Eastern Uusimaa and Western Uusimaa.

Based on the general findings of the National Police Board, the quality of the operative processes for organising, using and overseeing covert intelligence gathering is at least at a good level. The number of shortcomings and deficiencies has remained low, and the cases that attracted the attention and required the intervention of the National Police Board were mainly technical by nature.

According to the National Police Board, the quality and contents of the inspections carried out by police units have become established – with certain unit-specific characteristics – and there are significant differences in the breadth and depth

of inspections. These differences are explained, among other things, by the level of competence of the units responsible for inspections on covert intelligence gathering, as well as the Legal Units' emphases regarding areas of legality oversight.

An example of the individual observations of the National Police Board is the drawing up of records on covert intelligence gathering methods. The decree regulating the drawing up of records was amended on 1 October 2016 by extending the absolute time limit for preparing a record to 90 days from the day on which the use of the method was terminated, instead of the previous 30 days. According to the National Police Board, the delay situation has improved but the number of overruns increased during the year under review. In this respect, the Parliamentary Ombudsman said, in his statement on the draft decree that, as provided in the decree, the record must be prepared without undue delay, and that 90 days should not become the main rule.

The National Police Board draws attention to problems in the verification of decisions made by command centres concerning covert intelligence gathering – particularly in Helsinki. At certain times, police departments' command centres even make decisions on coercive measures taken by other police departments. As the processing of the matter is transferred to another police department, the decisions cannot be verified in the SALPA system at Helsinki Police Department. Furthermore, the records on the preconditions for the decisions made by the command centres are sometimes insufficient. The Helsinki Police Department's Legal Unit has paid attention to the matter and targeted its inspections at decisions taken by the command centres.

The regional supervisors of Customs are responsible for continuously monitoring the use of covert intelligence gathering methods. After the year has ended, they must also draw up a report on oversight activities conducted and observations made. The Enforce Department of Finnish Customs makes inspection visits to regional crime prevention units. In 2017, it conducted such visits in all operative crime prevention units. During its inspection visits, the Department paid particular attention to the justifications of claims submitted to courts, as well as the grounds for decisions



provided by the heads of investigation regarding those methods in which the decision-maker is a public official. According to Customs, the number of mistakes and amount of negligence in the processes involving covert intelligence gathering methods has decreased year after year, and hardly any mistakes were discovered during the year under review. No serious violations were identified.

At the Finnish Border Guard, oversight is conducted both in the Headquarters and at the operational border guard and coast guard districts. Administrative units perform real-time oversight and report at least once a year to the Border Guard Headquarters. Furthermore, individual deviations are reported as they occur. According to the Border Guard, the turnover of SALPA supervisors poses challenges for long-term legality oversight with a development focus. The purpose is to develop oversight by harmonising it with that performed by the police and Customs.

In its oversight of legality, the Ministry of Defence did not identify any unlawful conduct in the use of covert coercive measures and covert intelligence gathering methods in 2017. The areas of development identified during the oversight of legality were related to matters that are open to interpretation.

#### 4.5 PARLIAMENTARY OMBUDSMAN'S OVERSIGHT OF LEGALITY

During the year under review, the Ombudsman issued decisions after own-initiative investigations on cases involving technical observation, as well as the conditions and permits for traffic data monitoring.

In the first-mentioned matter, which concerned the technical observation of a recreational event, the Ombudsman stated that the precondition for such observation as referred to in the Police Act, “reasonable cause to suspect that he or she could commit an offence”, means a relatively high degree of probability, which is something more than “a reason to suspect/assume”. In his decision, an inspector had justified the measure with the fact that members of a motorcycle club, who had

participated in the same event in previous years, had been suspected and convicted of narcotics offences.

Similarly, drug tests performed by traffic control officers in connection with the event in previous years had proved cases of drug abuse before driving. As a result, there was reason to suspect that drugs were offered, used and traded in the area. According to the decision, technical surveillance would enable the detection of drug trading in the area, intervention in such activity, and the prevention of driving under the influence of narcotics through targeted control measures. According to the Ombudsman, a justified reason to suspect criminal activity would have required – besides past incidents – concrete matters related to the event at hand which would have proven that a narcotics offence was likely to be committed. However, no such matters were specified in the decision.

In his decision, the Ombudsman also examined the individual targeted by technical surveillance, as well as the concept of a targeted space or location.

The Ombudsman stated that the mention made in the decision of the intention to target the intelligence gathering method at the members of the said motorcycle club is problematic due to the requirement that decisions on covert intelligence gathering are precise and exactly defined. However, in this case, the applied method resembled so-called general surveillance. This may include, for example, general camera surveillance, which is subject to specific regulations.

As regards the targeted space or location, the Ombudsman stated that it was somewhat open to interpretation how “space” or “location” are defined and how the largish area specified in the decision at hand (for example, the surroundings and parking areas of a sports centre and indoor swimming pool) comply with the more restricted or more accurately defined concepts referred to in legislation. The Ombudsman found that, considering the principle of proportionality in police operations among other things, decisions on covert intelligence gathering and covert coercive measures should define the targets as accurately as possible and leave no room for interpretation as to who the targeted person is (2572/2015).



In the first-mentioned case on traffic data monitoring, the police had applied for a permit for traffic data monitoring and a court had granted this on the basis of the crime being of such a type that traffic data monitoring is not permitted by law in its investigation.

In his decision, the Ombudsman stated, among other things, that the role of a court of law in matters involving coercive measures – in particular covert coercive measures – is to safeguard the fundamental rights of citizens. Since the target of a coercive measure is not present (and is not even aware of the matter), the court's duty to seek clarification is particularly important in order to determine whether the conditions for using the requested coercive measure have been met.

Naturally, another important matter in solving the case involves exercising control to ensure that the use of the requested measure is allowed in detecting the crime in question. According to the Ombudsman, the fact that the request by the police contains an error does not reduce the responsibility of the court in the matter.

With regard to the police, the Ombudsman stated that, although a technical SALPA system has been created for handling coercive telecommunications measures, the official entering data in the system is ultimately responsible for such data. The fact that the system allowed the use of a type of crime in connection with which traffic data monitoring is not allowed by law does not exempt the official from the obligation to observe the duty of care.

However, since the same case involved a crime allowing traffic data monitoring, the Ombudsman considered it adequate to make his views known to the police officer and local court judge involved (13/2016).

The second case involved the police applying for a permit for traffic data monitoring. In addition to the said permit, the court also granted the police permission to engage in the interception of telecommunications. The Ombudsman stressed the court's duty of care in examining, among other matters, the content of the request for coercive measures. In this case, it was clear that the request did not concern telecommunications interception,

and no permission should have been granted for it. Since the police were officially bound not to use the erroneously granted permission for telecommunications interception, the possibility of illegal telecommunications interception was small.

Since telecommunications interception had not, in reality, occurred in this case, the Ombudsman considered it adequate to request that the local court judge seriously attend to exercising care, as well as to the court's role in considering covert coercive measures (14/2016).

During the year under review, inspections concerning covert coercive measures conducted at the Western Uusimaa Police Department focused on requests for coercive telecommunications measures and decisions concerning technical surveillance. For this purpose, a sample of the related request and decision documents was examined.

As a result of the inspection, the Ombudsman stressed the importance of providing justification for requests and decisions concerning covert coercive measures and covert intelligence collection methods. This is particularly important in connection with measures based on decisions taken by the police, since there is no external, independent decision-maker in such cases, compared to cases in which the decision is taken by a court.

During the year under review, the covert intelligence gathering activities of the Finnish Security Intelligence Service and the Finnish Defence Forces were also inspected.

## 4.6 EVALUATION

### POTENTIAL PROBLEMS WITH LEGISLATION

#### Notification obligation

As a rule, a written notification of the use of covert intelligence gathering methods must be given to the suspect without delay after the matter has been submitted to the consideration of the prosecutor or the criminal investigation has otherwise been terminated or interrupted, or at the latest within one year of the termination of the use of the method. The manner of giving the notifica-

tion depends partly on the method used. The provisions on the notification obligation are currently more detailed than before, and the scope of the obligation has been extended.

Under certain conditions, a court may decide at the request of an official with the power of arrest that the notice to the suspect may be postponed at the most by two years at a time. The court may also decide that no notice is given at all, if this is necessary in order to ensure the security of the state or to protect life or health.

Thus, it is possible that the target will never know of the method used even though under the law giving a notification is the rule and not giving a notification is an exception to the rule. It is important to keep the number of cases that remain completely unknown to the target as few as possible.

When the amendments to the new Coercive Measures Act, Criminal Investigation Act and Police Act were discussed in 2013 and experts were heard during the committee reading, particularly the criminal investigation authorities expressed their concerns about the risk of an undercover officer or a covert human intelligence source being exposed and about their safety (LaVM 17/2013 vp – HE 14/2013 vp).

According to the National Police Board, the feedback received from heads of investigation indicates that the obligation to give a written notification has hampered the use of intelligence gathering methods. The availability of covert human intelligence sources was identified as a problem already in 2014, and the use of on-site interception at prisons significantly decreased in 2015 because the coercive measure is no longer considered as effective as before in preventing serious offences.

According to the National Police Board, the notification obligation has become an obstacle to the use of covert human intelligence sources. As a result, Finnish authorities confine themselves to using “passive covert human intelligence sources”, which reduces the effectiveness of the method. In undercover operations, notifying the target of intelligence gathering may, at worst, mean that the police officer in question will in the future no longer be able to work undercover. According to the National Police Board, the notification obliga-

tion also significantly reduces international collaboration.

One of the aims of notifying the target of the use of intelligence gathering methods is to ensure a fair trial. The new Criminal Investigation Act was amended in the previous year to emphasise the right of a party to obtain information. Under the Act, when considering the right of a party to obtain information or the restriction of this right, consideration shall be given in the assessment to the party’s right to a proper defence or otherwise to appropriately secure his or her right in the court proceedings.

Together with the potential risks associated with notifying the use of covert intelligence gathering methods in investigating an offence, the requirements concerning the right to obtain information and the right to fair trial form a complex issue involving many difficulties in balancing the different aspects.

### Undercover operations

The problems identified in undercover operations before the new acts entered into force have been discussed on pages 109–112 of the Finnish version of the 2011 Annual Report. These problems are still relevant.

The point of departure of the law is that police officers performing undercover operations are not allowed to commit or instigate an offence. However, if a police officer commits a traffic violation, public order violation or other similar offence for which the punishment by law is a fixed penalty, he or she will be exempt from criminal liability if the action was necessary for achieving the purpose of the undercover activities or preventing the intelligence gathering from being revealed.

The law also includes provisions on a police officer participating in the activities of an organised criminal group while performing undercover operations. If, when participating in such activities, a police officer obtains premises, or transport or other such objects, transports persons, objects or substances, attends to financial matters or assists the criminal group in other similar ways, he or she is not subject to criminal liability under the conditions laid down by law.

The police officer is exempt from criminal liability in the above-mentioned situations if there are very good grounds to have assumed that the measure would have been performed also without his or her contribution, the action of the police officer does not endanger or harm the life, health or freedom of any person or cause a significant danger or damage to property, and the assistance significantly promotes the achievement of the purpose of the covert activity.

These provisions are open to interpretation and leave certain questions unanswered. Based on the provisions, a police officer performing undercover operations has very limited room to operate. Together with the ambiguity of the provisions, this has raised questions among the police, for example, about the legal protection of police officers. It is also unclear how the exemption from criminal liability, as referred to in the law, would be implemented in practice.

Courts play a very limited role in commencing undercover operations, as their powers are limited to deciding whether the formal preconditions for undercover operations are met. Courts cannot take a stand on the plans concerning undercover operations or their practical implementation.

## GENERAL PROBLEMS IN OVERSIGHT

### Resources must be invested in internal oversight

The Ombudsman's oversight of the legality of covert intelligence gathering focuses on overseeing the internal oversight of authorities. In this context, one of the areas emphasised in 2014 during visits to the legal units of all police departments was the units' own oversight of the covert intelligence gathering methods used by the police departments.

The authorities using covert intelligence gathering have in recent years invested resources and efforts in internal oversight. With respect to the efficiency of internal oversight, it is of concern that the National Police Board has observed differences in the quantitative comprehensiveness

of inspections conducted to oversee the police departments' use of covert intelligence gathering. According to the National Police Board, such variation at least partly depends on the quantity and prioritisation of other tasks.

A key prerequisite for internal oversight is that those who conduct it are familiar with the field and have access to all documents. This applies not only to police departments but also to the National Police Board. Even the police estimate that the standard of oversight at police departments varies greatly, and the same most evidently applies to the expertise of those who conduct oversight. Based on the findings in the oversight of legality, internal oversight at the Finnish Security Intelligence Service and the National Bureau of Investigation is of good quality.

At the Finnish Customs, Border Guard and Defence Forces, internal oversight has functioned very well according to the authorities' own assessment. In these authorities, oversight is easier because the volume of operations is much smaller than in the police.

The Ombudsman conducts retrospective oversight of a fairly general nature. The Ombudsman is remote from the actual activities and cannot begin directing the authorities' actions or otherwise be a key setter of limits, who would redress the weaknesses in legislation. Annual or other reports submitted to the Ombudsman are important but do not solve the problems related to oversight and legal protection.

The oversight of covert coercive measures is partly founded on trust in the fact that the person conducting the oversight activities receives all the information he or she wants. Due to the nature of the activities, precise documentation is a fundamental prerequisite for successful oversight.

Real-time active recording of events and measures also helps operators to evaluate and develop their own activities, to ensure the legality of their operations and to build trust in their activities. Keeping records is also an absolute precondition for the Ombudsman's retrospective oversight of legality.

At the time of its introduction, the SALPA system was a step forward in the oversight of covert coercive measures in terms of recording the use

of covert intelligence gathering methods. The system also guides its users to follow correct and lawful operating models. However, the SALPA system – like other information systems used by the police – is gradually reaching its limits, and the VITJA reform project was intended to solve the problem. Because the project could not be implemented as planned, the SALPA system has required updating. It is important to ensure that the legality and oversight of activities are not compromised due to information system issues.

In the oversight of legality, the Ombudsman has continuously emphasised the importance of providing justifications for requests and decisions. The grounds and justifications should be recorded, for example, to enable the control of decisions. If a court does not require the applicant to provide sufficient justifications or if the court neglects to provide sufficient justifications, there is a risk that warrants will be issued for cases other than those intended by the legislator.

#### 4.7 DRAFTING OF INTELLIGENCE LEGISLATION

On 19 April 2017, the Ministry of the Interior and the Ministry of Defence published their reports on the draft government proposals for civil and military intelligence legislation. The same entity included the reports of the Ministry of Justice on amending the provisions of the Constitution on protecting the secrecy of confidential communications, as well as the report of a working group established by the Secretary-General of Parliament on the parliamentary oversight of intelligence activities.

In his statements on the reports, Parliamentary Ombudsman Jääskeläinen said, among other things, that detecting and preventing military activities and activities that seriously endanger national security is naturally a key goal, on the basis of which granting intelligence gathering powers to intelligence authorities can be considered acceptable and desirable.

However, the Ombudsman also stated that granting the proposed intelligence powers would violate the right to privacy and the protection of confidential communications in a manner that, in terms of precision and accuracy, is rather far from the current requirements concerning the use of covert coercive measures and covert intelligence gathering methods. The Ombudsman found the proposed regulation problematic with respect to the requirements for accuracy and preciseness which form part of the general conditions for the limitation of fundamental rights.

According to the Ombudsman, a factor which needs to be taken into account in assessing the acceptability of regulation is the efficiency of external control and oversight. A key method for controlling the use of intelligence methods is an authorisation granted by an independent court as a way of ensuring an objective evaluation of whether the legal preconditions for the use of the methods are met.

In particular, considering the proportionality of using a given method requires an external evaluation. As a result of this, critical assessment is required whenever a police officer is proposed as the party with decision-making power, and granting such powers must be carefully considered in connection with the related legislation. If the proposed preconditions for the use of intelligence methods are more undefined than those applied to covert coercive measures and covert intelligence gathering under the law in force, decision-making powers on intelligence activities should be given to the courts to the greatest extent possible.

The Ombudsman supported the working groups' core approach according to which, when enacting intelligence legislation, two new bodies should be established for the purpose of intelligence oversight: an independent intelligence ombudsman and an intelligence committee as a standing special committee. It has been proposed that the Government nominate the intelligence ombudsman for a fixed term of no more than five years. The Parliamentary Ombudsman found this proposal problematic in terms of the independence of the intelligence ombudsman and consid-

ered it important that Parliament be involved in the nomination procedure.

Parliament began debating the government proposals that together form a legislative package on intelligence in early 2018.

## 4.8 WITNESS PROTECTION

The witness protection programme act (*laki todistajansuojeluohjelmasta 88/2015*) entered into force on 1 March 2015. The act constitutes a major reform in terms of fundamental rights and the rights of the individual. It safeguards the right to life, personal liberty and integrity and the right to the sanctity of the home, as enshrined in the Constitution.

A person may be admitted to a witness protection programme in order to receive protection if there is a serious threat against the life or health of the person or someone in their family, because the person is being heard in a criminal matter or for some other reason and the threat cannot be efficiently eliminated through other measures. Together with the protected person, the police will draw up a personal protection plan in writing that includes the key measures to be implemented as part of the programme. They may include, for example, relocating the protected person to another region, arranging a new home for the person, installing security devices in their home and providing advice on personal safety and security.

If necessary for the implementation of the witness protection programme, the police may make and create false, misleading or disguised register entries and documents to support the protected person's new identity. The police may also monitor the person's home and its surroundings. Protected persons may also receive financial support to ensure their income security and independent living.

The National Bureau of Investigation (NBI) is responsible for the implementation of the witness protection programme together with other authorities. The director of the NBI makes decisions about beginning and terminating witness protection programmes and certain related meas-

ures. The Ministry of the Interior submits annual reports to the Parliamentary Ombudsman on decisions and measures taken under the act.

According to the report by the Ministry of the Interior for 2017, the National Police Board did not identify any shortcomings in its investigation of the activities of the National Bureau of Investigation related to witness protection.

The Ministry of the Interior points out that the National Bureau of Investigation (NBI) finds the scope of the Witness Protection Act to be too broad, since it enables the use of the witness protection programme in non-criminal cases. According to the NBI, this may cause problems in terms of resources, among other matters. However, the Ministry of the Interior refers to the government proposal on the matter (HE 65/2014 vp) and states that the witness protection programme is intended as a measure of last resort. The programme should only be implemented if the threat posed to the life or health of the person in question is of such a manner that it cannot be eliminated through other measures.

Another problem highlighted by the NBI is that the threshold for terminating the witness protection programme is too high. Furthermore, the so-called evaluation stage that precedes the potential launch of the actual witness protection programme is problematic in terms of the powers involved. According to the Ministry of the Interior, these matters should be monitored, and experiences should be gathered on them. If concrete examples prove that the act does not work, the National Police Board should bring up such issues.







## 5 EUROPEAN UNION LAW ISSUES



## 5

## European Union law issues

**SUPERVISION OF THE MONITORING  
OF THE IMPLEMENTATION OF EU LAW**

The European Ombudsman and the European Commission arranged a joint meeting in September on the development of co-operation in the monitoring of the implementation of EU law together with the Ombuds included in the European Network. Deputy-Ombudsman Sakslin addressed the meeting regarding the national challenges of the monitoring of the implementation of EU law.

Topics identified in the meeting as forms of co-operation included improved mutual flow of information on complaints that are or were being processed and on other topics, and the possible transfer of complaints received by the Commission to national Ombudsmen or directing the complainants to turn to a national Ombudsman. The possibility also to inquire, via the European Ombudsman, the Commission's position on the interpretation of Union law regarding matters investigated by a national Ombudsman was discussed.

The meeting also discussed the application of the SOLVIT procedure, based on the Commission's voluntary conciliation, instead of investigating complaints or to support such investigations.

The Commission's representatives presented the new Commission guidelines concerning the development of the complaints-handling procedure. The aim is to direct the infringement procedure primarily to broader and structural issues. According to the final report of the meeting, the Commission will supervise the proceedings of the Member States in the correct implementation of Union law and in the compliance with rulings of the Court of Justice of the European Union.

The focus of the Commission's supervision was also in intervening in the severe compromising of the financial interests of the EU or in infringements of the EU's sole authority. Instead, individual complaints concerning the incorrect

application of EU law were deemed by the Commission to be best handled by another institution or body of the Union or a national body, such as an Ombudsman.

Several participants voiced their concerns that the national Ombudsmen need to have better information on the Commission's infringement procedures, and concrete suggestions were presented on the means of exchanging information and on the necessity of electronic databases. The Commission's representatives considered it often challenging to provide correct guidance regarding a competent national authority.

The common understanding was that the exchange of information should be deepened. In this sense, direct personal contacts were important. Regarding the future development of the co-operation, the European Ombudsman expressed his capacity to serve as a proxy between the Commission and the Ombudsman institutions.

**NOTICES REGARDING PRELIMINARY RULINGS**

The Ministry for Foreign affairs sent copies of the references for a preliminary ruling of the Court of Justice of the European Union to the Parliamentary Ombudsman's office, where such references involve fundamental rights. On the basis of these requests, the significance of the questions put to the Court of Justice and any responses received may be assessed, for the purpose of issuing potential statements, in terms of the fundamental rights systems in Finland and the EU. The request evaluated in the light of the knowledge of fundamental rights the Ombudsman has accumulated as the overseer of legality. During the reporting period, the notices have not given cause for action to the Deputy-Ombudsman.



## DECISIONS ON COMPLAINTS

### Communication regarding the new Tobacco Act

The complainant criticised the regulations pertaining to electronic cigarettes and the communication from the Ministry of Social Affairs and Health and from the National Supervisory Authority for Welfare and Health (Valvira) regarding the transition provisions of the act. The complainant considered it wrong that the act contained provisions that retroactively restricted operations since 20 May 2016, although the act did not enter into force until 15 August 2016. The act has caused damage to the complainant and other Finnish merchants.

The new Tobacco Act implements the Tobacco Products Directive of the European Union. The act was to enter into force on 20 May 2016, which was the last date of implementation for the directive. The process regarding the act continued, however, until 22 June 2016 and the act did not enter into force until 15 August 2016.

Directives impose obligations on the citizens and businesses of Member States only after their national implementation. If a Member State fails to implement a directive within its prescribed deadline, citizens may, however, under certain circumstances refer to the provisions of the directive in a matter against the authorities of the Member State. For this reason, Ombudsman Jämskeläinen deemed it appropriate and in the interest of the entrepreneur that the advance notices required by the directive could be filed as of 20 May 2016.

Based on the Act on the Openness of Government Activities 19(1), the primary responsibility for communication concerning the reform of the Tobacco Act was with the Ministry of Social Affairs and Health, which was in charge of the preparation of the act. Valvira, on the hand, has primary responsibility for matters involving the implementation of the act. At the time of the entry into force of the act, the need for communication regarding transition periods was apparent. On the one hand, this was attributable to the complexity of the transition regulations, and on the other, to the legal ramifications of the de-

layed implementation of the directive. Valvira had also stated that the different timing of the act and the directive has partly contributed to unclarity among the customers.

The ministry provided communication on its website regarding the effect of the delayed implementation of the directive. When it became apparent that the transition period regulation concerning cross-border distance sales was insufficient, the ministry provided information about the matter. In addition, the information letter sent by National Supervisory Authority for Welfare and Health (Valvira) to municipal authorities contained certain instructions pertaining to the transition provisions. However, the ministry or Valvira did not produce a detailed communication targeting entrepreneurs regarding the transition provisions. In particular, the significance of the notification obligation on electronic cigarette products with respect to the sale of products already on the market appeared to be a source of confusion.

Based on the information received, the communication by the ministry or Valvira cannot, as a whole, be considered in violation of the Act on the Openness of Government Activities. Considering, however, the complexity of the transition regulations and the great significance to the entrepreneurs in particular, the Parliamentary Ombudsman considered it would have been justified to prepare a separate communication or otherwise provide more efficient information than what was issued (4315/2016\*).

### Processing of a request for information

Deputy-Ombudsman Sakslin deemed that Finnish Food Safety Authority (Evira) had violated the law in the processing of a request for information by the complainant when it had not adhered to the deadlines prescribed by the Act on the Openness of Government Activities. The processing of the matter had been delayed by a further seven months after Evira had obtained a response to its question regarding the implementation of EU law from the head of the RASFF unit of the Directorate-General Health and Food Safety of the European Commission.

When assessing the blameworthiness of the process, the Deputy-Ombudsman considered that, prior to deciding on the case, Evira had considered it necessary to determine how it should apply the regulations pertaining to publicity and secrecy of the Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules and the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents in connection with the Finnish national legislation concerning the publicity of documents.

In the absence of established interpretation praxis, Evira had hoped to receive support from the Commission and other Member States on the application of Union law. The Deputy-Ombudsman considered this practice understandable, considering that the question was a matter of weighing the protection of the financial interests of businesses against overriding public interest. The correct interpretation of Union law is, however, ultimately established by the Court of Justice of the European Union. In Finland, this consideration is also affected by the fact that the principle of openness is secured as a basic right. The question was regarding an information request that applied to an extensive set of 111 documents (3973/2016).

the processing may be in violation of the loyalty obligation of Member States required by Article 4 of the Treaty on European Union.

Prolonged administrative processing times may, per se, be also assessed as an administrative obstacle. It can also be considered an act prohibited by Article 34 of the Treaty on the Functioning of the European Union, which, with respect to its impact, corresponds to quantitative restrictions on imports. Under the prevailing circumstances and because the seizure of the shipment had not been communicated as required by law, the Deputy-Ombudsman deemed that the processing of the matter had been delayed and that Customs was to pay attention to speeding up the clearing procedure (2447/2016).

### Duration of seizure in customs proceeding

A package sent to the complainant by mail had been seized by Customs and sent to the Customs Laboratory for inspection. The shipment was in the possession of Customs for approximately two months before it was returned, and the complainant was not informed prior to the returning.

Deputy-Ombudsman Sakslin also assessed the duration of the processing in light of the implementation of European Union law. The requirement of sufficiently swift execution of administrative matters can be derived from the objective of efficient realisation of EU law. The slowness of







## 6 APPENDIXES



# Constitutional Provisions pertaining to Parliamentary Ombudsman of Finland

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

## SECTION 27 Eligibility and qualifications for the office of Representative

Everyone with the right to vote and who is not under guardianship can be a candidate in parliamentary elections.

A person holding military office cannot, however, be elected as a Representative.

The Chancellor of Justice of the Government, the Parliamentary Ombudsman, a Justice of the Supreme Court or the Supreme Administrative Court, and the Prosecutor-General cannot serve as representatives. If a Representative is elected President of the Republic or appointed or elected to one of the aforesaid offices, he or she shall cease to be a Representative from the date of appointment or election. The office of a Representative shall cease also if the Representative forfeits his or her eligibility.

## 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. A Deputy Ombudsman may have a substitute as provided in more detail by an Act. The provisions on the Ombudsman apply, in so far as appropriate, to a Deputy Ombudsman and to a Deputy Ombudsman's substitute. (802/2007, entry into force 1.10.2007)

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

Minister has the right to attend and to participate in debates in plenary sessions of the Parliament even if the Minister is not a Representative. A Minister may not be a member of a Committee of the Parliament. When performing the duties of the President of the Republic under section 59, a Minister may not participate in parliamentary work.

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

14 March 2002 (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 of oversight 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 (20.5.2011/535)

(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 or if the Ombudsman for another reason takes the view that doing so is warranted.

(2) Arising from a complaint made to him or her, the Ombudsman shall take the measures that he or she deems necessary from the perspective of compliance with the law, protection under the law or implementation of fundamental and human rights. Information shall be procured in the matter as deemed necessary by the Ombudsman.

(3) The Ombudsman shall not investigate a complaint relating to a matter more than two years old, unless there is a special reason for doing so.

(4) The Ombudsman must without delay notify the complainant if no measures are to be taken in a matter by virtue of paragraph 3 or because it is not within the Ombudsman's remit, it is pending before a competent authority, it is appealable through regular appeal procedures, or for another reason. The Ombudsman can at the same time inform the complainant of the legal remedies available in the matter and give other necessary guidance.

(5) The Ombudsman can transfer handling of a complaint to a competent authority if the nature of the matter so warrants. The complainant must be notified of the transfer. The authority must inform the Ombudsman of its decision or other measures in the matter within the deadline set by the Ombudsman. Separate provisions shall apply to a transfer of a complaint between the Parliamentary Ombudsman and the Chancellor of Justice of the Government.



## 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 (28.6.2013/495)

(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 Finland's military crisis management organisation to monitor the treatment of conscripts, other persons doing their military service and crisis management personnel.

(2) In the context of an inspection, the Ombudsman and officials in the Office of the Ombudsman assigned to this task by the Ombudsman have the right of access to all premises and information systems of the inspection subject, as well as the right to have confidential discussions with the personnel of the office or institution, persons serving there and its inmates.

## 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 pre-trial investigation (22.7.2011/811)

The Ombudsman may order that a police inquiry, as referred to in the Police Act (872/2011), or a pre-trial investigation, as referred to in the Pre-trial Investigations Act (805/2011), be carried out in order to clarify a matter under investigation by the Ombudsman.

## SECTION 9 Hearing a subject

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

## SECTION 10 Reprimand and opinion

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

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

(3) If a decision made by the Parliamentary Ombudsman referred to in Subsection 1 contains an imputation of criminal guilt, the party having been issued with a reprimand has the right to have the decision concerning criminal guilt heard by a court of law. The demand for a court hearing shall be submitted to the Parliamentary Ombudsman in writing within 30 days of the date on which the party was notified of the reprimand. If notification of the reprimand is served in a letter

sent by post, the party shall be deemed to have been notified of the reprimand on the seventh day following the dispatch of the letter unless otherwise proven. The party having been issued with a reprimand shall be informed without delay of the time and place of the court hearing, and of the fact that a decision may be given in the matter in their absence. Otherwise the provisions on court proceedings in criminal matters shall be complied with in the hearing of the matter where applicable. (22.8.2014/674)

## **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 1 a** **NATIONAL PREVENTIVE MECHANISM (NPM)** **(28.6.2013/495)**

### **SECTION 11 a** **National Preventive Mechanism** **(28.6.2013/495)**

The Ombudsman shall act as the National Preventive Mechanism referred to in Article 3 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (International Treaty Series 93/2014 ).

### **SECTION 11 b** **Inspection duty (28.6.2013/495)**

(1) When carrying out his or her duties in capacity of the National Preventive Mechanism, the Ombudsman inspects places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (place of detention).

(2) In order to carry out such inspections, the Ombudsman and an official in the Office of the Ombudsman assigned to this task by the Ombudsman have the right of access to all premises and information systems of the place of detention, as well as the right to have confidential discussions with persons having been deprived of their liberty, with the personnel of the place of detention and with any other persons who may supply relevant information.

### **SECTION 11 c** **Access to information (28.6.2013/495)**

Notwithstanding the secrecy provisions, when carrying out their duties in capacity of the National Preventive Mechanism the Ombudsman and an official in the Office of the Ombudsman assigned to this task by the Ombudsman have the right to receive from authorities and parties maintaining the places of detention information about the number of persons deprived of their liberty, the number and locations of the facilities, the treatment of persons deprived of their liberty and the conditions in which they are kept, as well as any other information necessary in order to carry out the duties of the National Preventive Mechanism.

### **SECTION 11 d** **Disclosure of information (28.6.2013/495)**

In addition to the provisions contained in the Act on the Openness of Government Activities (621/1999) the Ombudsman may, notwithstanding the secrecy provisions, disclose information

about persons having been deprived of their liberty, their treatment and the conditions in which they are kept to a Subcommittee referred to in Article 2 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

#### **SECTION 11 e** **Issuing of recommendations (28.6.2013/495)**

When carrying out his or her duties in capacity of the National Preventive Mechanism, the Ombudsman may issue the subjects of supervision recommendations intended to improve the treatment of persons having been deprived of their liberty and the conditions in which they are kept and to prevent torture and other cruel, inhuman or degrading treatment or punishment.

#### **SECTION 11 f** **Other applicable provisions (28.6.2013/495)**

In addition, the provisions contained in Sections 6 and 8–11 herein on the Ombudsman's action in the oversight of legality shall apply to the Ombudsman's activities in his or her capacity as the National Preventive Mechanism.

#### **SECTION 11 g** **Independent Experts (28.6.2013/495)**

(1) When carrying out his or her duties in capacity of the National Preventive Mechanism, the Ombudsman may rely on expert assistance. The Ombudsman may appoint as an expert a person who has given his or her consent to accepting this task and who has particular expertise relevant to the inspection duties of the National Preventive Mechanism. The expert may take part in conducting inspections referred to in Section 11 b, in which case the provisions in the aforementioned section and Section 11 c shall apply to their competence.

(2) When the expert is carrying out his or her duties referred to in this Chapter, the provisions on criminal liability for acts in office shall apply. Provisions on liability for damages are contained in the Tort Liability Act (412/1974).

#### **SECTION 11 h** **Prohibition of imposing sanctions (28.6.2013/495)**

No punishment or other sanctions may be imposed on persons having provided information to the National Preventive Mechanism for having communicated this information.

### **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 Parliament a declaration of business activities and assets and duties and other interests which may be of relevance in the evaluation of his or her activity as Ombudsman, Deputy-Ombudsman or substitute for a Deputy-Ombudsman.

(2) During their term in office, the Ombudsman the Deputy-Ombudsmen and the 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 THE DIRECTOR OF THE HUMAN RIGHTS CENTRE (20.5.2011/535)

## 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 Parliament has not elected a successor, his or her duties shall be performed by the senior Deputy-Ombudsman.

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

(3) 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, paragraph 1, invites a substitute for a Deputy-Ombudsman 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 the person elected as Ombudsman, Deputy-Ombudsman or Director of the Human Rights Centre holds a state office, he or she shall be granted leave of absence from it for the duration of their term of service as Ombudsman, Deputy-Ombudsman or Director of the Human Rights Centre (20.5.2011/535).

## 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 for a Deputy-Ombudsman can perform the duties of a Deputy-Ombudsman if the latter is prevented from attending to them 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. (20.5.2011/535)

(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 3 a HUMAN RIGHTS CENTRE (20.5.2011/535)

### SECTION 19 b Purpose of the Human Rights Centre (20.5.2011/535)

For the promotion of fundamental and human rights there shall be a Human Rights Centre under the auspices of the Office of the Parliamentary Ombudsman.

### SECTION 19 c The Director of the Human Rights Centre (20.5.2011/535)

(1) The Human Rights Centre shall have a Director, who must have good familiarity with fundamental and human rights. Having received the Constitutional Law Committee's opinion on the matter, the Parliamentary Ombudsman shall appoint the Director for a four-year term.

(2) The Director shall be tasked with heading and representing the Human Rights Centre as well as resolving those matters within the remit of the Human Rights Centre that are not assigned under the provisions of this Act to the Human Rights Delegation.



## SECTION 19 d Tasks of the Human Rights Centre (20.5.2011/535)

(1) The tasks of the Human Rights Centre are:

- 1) to promote information, education, training and research concerning fundamental and human rights as well as co-operation relating to them;
- 2) to draft reports on implementation of fundamental and human rights;
- 3) to present initiatives and issue statements in order to promote and implement fundamental and human rights;
- 4) to participate in European and international cooperation associated with promoting and safeguarding fundamental and human rights;
- 5) to take care of other comparable tasks associated with promoting and implementing fundamental and human rights.

(2) The Human Rights Centre does not handle complaints.

(3) In order to perform its tasks, the Human Rights Centre shall have the right to receive the necessary information and reports free of charge from the authorities.

## SECTION 19 e Human Rights Delegation (20.5.2011/535)

(1) The Human Rights Centre shall have a Human Rights Delegation, which the Parliamentary Ombudsman, having heard the view of the Director of the Human Rights Centre, shall appoint for a four-year term. The Director of the Human Rights Centre shall chair the Human Rights Delegation. In addition, the Delegation shall have not fewer than 20 and no more than 40 members. The Delegation shall comprise representatives of civil society, research in the field of fundamental and human rights as well as other actors participating in the promotion and safeguarding of fundamental and human rights. The Delegation shall choose a deputy chair from among its own number. If a member of the Delegation resigns or dies mid-

term, the Ombudsman shall appoint a replacement for him or her for the remainder of the term.

(2) The Office Commission of the Eduskunta shall confirm the remuneration of the members of the Delegation.

(3) The tasks of the Delegation are:

- 1) to deal with matters of fundamental and human rights that are far-reaching and important in principle;
- 2) to approve annually the Human Rights Centre's operational plan and the Centre's annual report;
- 3) to act as a national cooperative body for actors in the sector of fundamental and human rights.

(4) A quorum of the Delegation shall be present when the chair or the deputy chair as well as at least half of the members are in attendance. The opinion that the majority has supported shall constitute the decision of the Delegation. In the event of a tie, the chair shall have the casting vote.

(5) To organise its activities, the Delegation may have a work committee and sections. The Delegation may adopt rules of procedure.

## CHAPTER 3 b OTHER TASKS (10.4.2015/374)

### SECTION 19 f (10.4.2015/374) Promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities

The tasks under Article 33(2) of the Convention on the Rights of Persons with Disabilities concluded in New York in 13 December 2006 shall be performed by the Parliamentary Ombudsman, the Human Rights Centre and its Human Rights Delegation.

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

### SECTION 20 (20.5.2011/535) Office of the Parliamentary Ombudsman and detailed provisions

For the preliminary processing of cases for decision by the Ombudsman and the performance of the other duties of the Ombudsman as well as for the discharge of tasks assigned to the Human Rights Centre, there shall be an office headed by the Parliamentary Ombudsman.

### SECTION 21 Staff Regulations of the Parliamentary Ombudsman and the Rules of Procedure of the Office (20.5.2011/535)

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

(2) The Rules of Procedure of the Office of the Parliamentary Ombudsman shall contain more detailed provisions on the allocation of tasks among the Ombudsman and the Deputy-Ombudsmen. Also determined in the Rules of Procedure shall be substitution arrangements for the Ombudsman, the Deputy-Ombudsmen and the Director of the Human Rights Centre as well as the duties of the office staff and the cooperation procedures to be observed in the Office.

(3) The Ombudsman shall confirm the Rules of Procedure of the Office having heard the views of the Deputy-Ombudsmen and the Director of the Human Rights Centre.

## 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.

### ENTRY INTO FORCE AND APPLICATION OF THE AMENDING ACTS:

#### 24.8.2007/804

This Act entered into force on 1 October 2007.

#### 20.5.2011/535

This Act entered into force on 1 January 2012 (Section 3 and Section 19 a, subsection 1 on 1 June 2011).

#### 22.7.2011/811

This Act entered into force on 1 January 2014.

#### 28.6.2013/495

This Act entered into force on 7 November 2014 (Section 5 on 1 July 2013).

#### 22.8.2014/674

This Act entered into force on 1 January 2015.

#### 10.4.2015/374

This Act entered into force on 10 June 2016.

## Division of labour between the Ombudsman and the Deputy-Ombudsmen

### **OMBUDSMAN Mr PETRI JÄÄSKELÄINEN**

decides on matters concerning:

- the highest organs of state
- questions involving important principles
- courts
- health care
- legal guardianship
- language legislation
- asylum and immigration
- the rights of persons with disabilities
- oversight of covert intelligence gathering
- the coordination of the tasks of the National Preventive Mechanism against Torture and reports relating to its work

### **DEPUTY-OMBUDSMAN Mr PASI PÖLÖNEN (Mr JUSSI PAJUOJA, TILL 30 SEPTEMBER 2017)**

decides on matters concerning:

- the police
- public prosecutor
- social insurance
- labour administration
- unemployment security
- education, science and culture
- data protection, data management and telecommunications
- the prison service and execution of sentences

### **DEPUTY-OMBUDSMAN Ms MAIJA SAKSLIN**

decides on matters concerning:

- municipal affairs
- children's rights and early childhood education and care
- social welfare
- Sámi affairs
- agriculture and forestry
- customs
- distraint, bankruptcy and debt arrangements
- taxation
- environmental administration
- Defence Forces, Border Guard and non-military national service
- church affairs
- traffic and communications

# Statistical data on the Ombudsman’s work in 2017

## MATTERS UNDER CONSIDERATION

Oversight-of-legality cases under consideration		7,292
Cases initiated in 2017		6,415
- complaints to the Ombudsman	6,192	
- complaints transferred from the Chancellor of Justice	64	
- taken up on the Ombudsman’s own initiative	77	
- submissions and attendances at hearings	82	
Cases held over from previous years		878
Cases resolved		6,252
Complaints		6,094
Taken up on the Ombudsman’s own initiative		81
Submissions and attendances at hearings		77
Cases held over to the following year		1,040
Other matters under consideration		938
Inspections		121
Administrative matters in the Office		771
International matters		46

## OVERSIGHT OF PUBLIC AUTHORITIES

### Complaint cases

6,094

Social welfare	1,369
Police	716
Health	624
Social insurance	471
Criminal sanctions field	377
Administrative branch of the Ministry of Economic Affairs and Employment	256
Administration of law	238
Highest organs of government	229
Administrative branch of the Ministry of Education and Culture	214
Local government	172
Enforcement (distrain)	151
Aliens affairs and citizenship	138
Administrative branch of the Ministry of Transport and Communications	132
Administrative branch of the Ministry of Environment	117
Taxation	101
Prosecutors	92
Administrative branch of the Ministry of Agriculture and Forestry	83
Guardianship	82
Administrative branch of the Ministry of Justice	80
Administrative branch of the Ministry of Finance	44
Administrative branch of the Ministry of Defence	42
Customs	39
Administrative branch of the Ministry of the Interior	21
Subjects of oversight in the private sector	12
Administrative branch of the Ministry for Foreign Affairs	9
Other administrative branches	285

OVERSIGHT OF PUBLIC AUTHORITIES

Taken up on the Ombudsman’s own initiative		81
Social welfare	25	
Police	11	
Criminal sanctions field	8	
Local government	6	
Aliens affairs and citizenship	6	
Health	4	
Administrative branch of the Ministry of Education and Culture	4	
Social insurance	3	
Administration of law	3	
Prosecutors	3	
Administrative branch of the Ministry of Agriculture and Forestry	2	
Customs	2	
Administrative branch of the Ministry of the Interior	2	
Enforcement (distrainment)	1	
Administrative branch of the Ministry of Transport and Communications	1	
Total number of decisions		6,175



## MEASURES TAKEN BY THE OMBUDSMAN

**Complaints** **6,094**

**Decisions leading to measures on the part of the Ombudsman** **1,091**

- prosecution	-
- assessment of the need for pre-trial investigation	2
- reprimands	67
- opinions	839
- as a rebuke	564
- for future guidance	275
- recommendations	31
- to redress an error or rectify a shortcoming	3
- to develop legislation or regulations	16
- to provide compensation for a violation	10
- to reach an agreed settlement	2
- matters redressed in the course of investigation	16
- other measure	136
- to reach an agreed settlement	-

**No action taken, because** **2,778**

- no incorrect procedure found	171
- no grounds	2,607
- to suspect illegal or incorrect procedure	1,516
- for the Ombudsman's measures	1,091

**Complaint not investigated, because** **2,225**

- matter not within Ombudsman's remit	234
- still pending before a competent authority or possibility of appeal still open	746
- unspecified	435
- transferred to Chancellor of Justice	40
- transferred to Prosecutor-General	6
- transferred to Regional State Administrative Agency	85
- transferred to Centre for Economic Development, Transport and the Environment	2
- transferred to other authority	104
- older than two years	119
- inadmissible on other grounds	37
- no answer	71
- answer without measures	346

MEASURES TAKEN BY THE OMBUDSMAN

Taken up on the Ombudsman's own initiative		81
Decisions leading to measures on the part of the Ombudsman		50
- prosecution		-
- assessment of the need for pre-trial investigation		1
- reprimands		-
- opinions		37
- as a rebuke	12	
- for future guidance	25	
- recommendations		5
- to redress an error or rectify a shortcoming	1	
- to develop legislation or regulations	4	
- to provide compensation for a violation	-	
- to reach an agreed settlement	-	
- matters redressed in the course of investigation		1
- other measure		6
No action taken, because		30
- no incorrect procedure found		2
- no grounds		28
- to suspect illegal or incorrect procedure	8	
- for the Ombudsman's measures	20	
Own initiative not investigated, because		1
- transferred to other authority		-
- inadmissible on other grounds		1
- still pending before a competent authority or possibility of appeal still open		-

## INCOMING CASES BY AUTHORITY

Social welfare	1,459
Police	710
Health	600
Social insurance	453
Criminal sanctions field	453
Administrative branch of the Ministry of Economic Affairs and Employment	254
Administration of law	235
Highest organs of government	218
Administrative branch of the Ministry of Education and Culture	193
Local government	188
Enforcement (distrain)	151
Aliens affairs and citizenship	136
Administrative branch of the Ministry of Transport and Communications	133
Administrative branch of the Ministry of Environment	132
Taxation	109
Prosecutors	91
Guardianship	89
Administrative branch of the Ministry of Justice	79
Administrative branch of the Ministry of Agriculture and Forestry	78
Administrative branch of the Ministry of Finance	41
Administrative branch of the Ministry of Defence	40
Customs	25
Administrative branch of the Ministry of the Interior	20
Subjects of oversight in the private sector	11
Administrative branch of the Ministry for Foreign Affairs	10
Other administrative branches	284

## Proposals for the development of legislation and regulations and for the redressing of errors

### TO THE MINISTRY OF SOCIAL AFFAIRS AND HEALTH

- Deputy-Ombudsman Sakslin proposed, for consideration, whether the prohibition to appeal against a decision by the Social Insurance Institution (Kela) prescribed in section 22(4) of the Act on Child Home Care Allowances and Private Care Allowances should be amended so that an applicant who is dissatisfied with Kela's decision could receive, upon request, an appealable decision from a municipal official on whether the conditions for granting a municipal supplement to child home care allowance have been met (1792/2/13).
- Deputy-Ombudsman Sakslin proposed that the Ministry expedite the clarification and revision of guidelines for municipalities regarding social assistance and take immediate measures to add detail to the legislation regarding emergency housing (427/4/16, 682/4/16 and 2834/2016\*).
- Parliamentary Ombudsman Jääskeläinen proposed that the critical care level of prehospital emergency care services be defined (1016/4/16).
- Parliamentary Ombudsman Jääskeläinen proposed that national Current Care Guidelines be drawn up and a centre of expertise be established to safeguard the right of hereditary angioedema patients to sufficient and equal health services (6041/2016).
- Parliamentary Ombudsman Jääskeläinen proposed that, if necessary, the Ministry take measures without delay to clarify section 2 a, subsection 3 of the Decree on Health Care Professionals (4316/2016).
- Parliamentary Ombudsman Jääskeläinen proposed that the Ministry take measures to provide regulations regarding the restriction of the right of self-determination of psychiatric patients during transport (3445/2016).

- Parliamentary Ombudsman Jääskeläinen proposed that the Mental Health Act be supplemented with provisions on the transport of a patient, their treatment and conditions during transport, and the competencies of the accompanying personnel (2459/2016).

### TO THE MINISTRY OF JUSTICE

- Deputy-Ombudsman Pajuoja proposed that Chapter 7, section 7 of the Imprisonment Act be clarified by specifying the person who will decide on the restriction of the use of own clothes on grounds related to occupational safety as specified in Chapter 2, section 4 of the same Act and, with respect to Chapter 20, whether a prisoner has the right to appeal against decisions made by virtue of Chapter 7, section 2, subsection 4 (4353/2/15).
- Deputy-Ombudsman Pajuoja proposed that the Ministry examine the need to amend the Immunities of Persons Participating in Proceedings or Criminal Investigations Act as regards the validity of immunity and the right of appeal and, in more general terms, the appropriateness of and need for regulation (3427/2016).
- Deputy-Ombudsman Pajuoja proposed that the Imprisonment Act be clarified as regards the cancellation of free time and other activities and the grounds for these (2247/2016).
- Parliamentary Ombudsman Jääskeläinen proposed that sections 13 and 16 of the Act on the Openness of Government Activities and their relationship with the Personal Data Act be revised and clarified without delay (1473/2016).
- Parliamentary Ombudsman Jääskeläinen proposed that section 13 of the Credit Information Act be clarified as regards the storage of court decisions in such a manner that only court decisions issued in undisputed matters con-

cerning insolvency or reluctance to pay can lead to a bad credit record (945/2016\*).

- Deputy-Ombudsman Sakslin presented a proposal, for consideration, on whether judicial matters concerning customer fees in social welfare services should be prescribed as free of charge (4789/2017).

#### **TO THE MINISTRY OF EDUCATION AND CULTURE**

- Pasi Pölönen, the Substitute for the Deputy-Ombudsmen, presented a proposal, for consideration, on whether the Teaching Qualifications Decree should be clarified in terms of who is qualified to temporarily provide teaching on vocational subjects included in vocational education (416/4/16).

#### **TO THE FINNISH IMMIGRATION SERVICE**

- Parliamentary Ombudsman Jämskeläinen proposed that the Finnish Immigration Service revise its hearing procedures and guidelines regarding age assessment and consider what kinds of changes are needed in the age assessment procedure to avoid shortcomings violating the principle of good administration in the future (1487/2017).
- Deputy-Ombudsman Sakslin proposed that the Finnish Immigration Service revise and supplement its guidelines for the hearing of children as regards issues concerning the representation of the child and the right to speak (2282/2/15\*).

#### **TO THE NATIONAL SUPERVISORY AUTHORITY FOR WELFARE AND HEALTH (VALVIRA)**

- Pasi Pölönen, the Substitute for the Deputy-Ombudsmen, proposed that Valvira supplement the guidelines available on its website concerning situations in which a person has failed the clinical skills test on his or her third attempt (5776/2016).

#### **TO THE MINISTRY FOR FOREIGN AFFAIRS AND THE MINISTRY OF THE INTERIOR**

- Parliamentary Ombudsman Jämskeläinen proposed that the ministries consider whether legislative measures are required to avoid and solve problems revealed in the identification of children reported to be Finnish citizens, such as enacting on the use of DNA tests. Should this be the case, the Ombudsman proposed that such legislative measures be taken without delay (4654/2016).

#### **TO THE SOCIAL INSURANCE INSTITUTION OF FINLAND (KELA)**

- Pasi Pölönen, the Substitute for the Deputy-Ombudsmen, urged Kela to reconsider a case concerning the amount of sickness allowance (3248/2017).

#### **TO THE PÄIJÄT-HÄME JOINT AUTHORITY FOR HEALTH AND WELLBEING**

- Pasi Pölönen, the Substitute for the Deputy-Ombudsmen, found that the isolation facilities in which the complainant had been kept were insufficiently equipped and, therefore, were not appropriate as specified in section 22 a, subsection 2 of the Mental Health Act and section 3, subsection 2 of the Patient Act (3664/2016).

# Inspections

#) = unannounced inspection

## COURTS

- 26 September Detention facilities for persons deprived of their liberty in District Court of Helsinki#) (5560/2017)

## PROSECUTION SERVICE

- 21 March Prosecutor's Office of Western Finland, Espoo Headquarter (1356/2017)

## POLICE ADMINISTRATION

- 14 March Espoo Central Police Station, Police prison#) (1382/2017)
- 21 March Western Uusimaa Police Department, Espoo (1462/2017)
- 21 March Western Uusimaa Police Department, covert intelligence gathering, Espoo (2000/2017)
- 3 April Helsinki Police Department, Command Centre (2266/2017)
- 10 April The Finnish Security Intelligence Service (Supo), Covert Intelligence, Helsinki (2378/2017)
- 21 May Vaasa Central Police Station, Police prison#) (3243/2017)
- 4 July Porvoo Police Station, Police prison#) (3854/2017)
- 4 July Kotka Police Station, Police prison#) (3855/2017)
- 4 July Kouvolaa Central Police Station, Police prison#) (3856/2017)
- 14 November Helsinki Police Department, Legal Unit (6470/2017)
- 5 December The National Police Board, Helsinki (6797/2017)
- 12 December Rovaniemi Central Police Station, Police prison#) (6794/2017)

- 12 December Sodankylä Police Station, Police prison (6795/2017)
- 13 December Inari Police Station, Police prison, Ivalo (6796/2017)

## DEFENCE FORCES AND BORDER GUARD

- 13 February Defence Command Finland, Helsinki (227/2017)
- 13 February Defence Command Intelligence Division, Helsinki (891/2017)
- 28 March North Karelia Border Guard District, Oittola (1989/2017)
- 28 March North Karelia Border Guard District, Detention facilities at Niirala Border Crossing Point for persons deprived of their liberty (2213/2017)
- 27 June Armoured Brigade, Detention facilities in Hämeenlinna Unit for persons deprived of their liberty#) (4034/2017)
- 27 June Armoured Brigade, Detention facilities in Riihimäki Unit for persons deprived of their liberty#) (4128/2017)
- 25 October Kainuu Brigade, Kajaani (5440/2017)
- 25 October Kainuu Brigade, detention facilities for persons deprived of their liberty#), Kajaani (6306/2017)
- 25 October Kainuu Border Guard District, Kajaani (5441/2017)
- 12 December Jaeger Brigade, the Rovaniemi Air Defence Battalion (6905/2017)
- 12 December Jaeger Brigade, Detention facilities in Sodankylä Unit for persons deprived of their liberty#) (7119/2017)
- 12 December Jaeger Brigade, Sodankylä Unit (6906/2017)
- 13 December Lapland Border Guard District, Border Jaeger Company, Ivalo (6907/2017)



## CRIMINAL SANCTIONS

- 22 March Helsinki Prison (2052/2017)
- 4 April Kerava Prison (2359/2017)
- 22 May Vaasa Prison (2705/2017)
- 29–30 May Mikkeli Prison (3005/2017\*)
- 7 September Satakunta Prison, Köyliö Unit<sup>#</sup> (3733/2017)
- 28 and 30 November Vantaa Prison (6206/2017)

## DEBT AND DISTRAINT

- 28 March Local Register Office of East Finland, Joensuu Unit (1138/2017)

## ALIENS AFFAIRS

- 5–6 April Joutseno Reception Centre, Detention Unit (1868/2017)
- 24 October Esperu group home Kajaani, former Group home Kainuu HoivaTaito (residential unit for minor asylum seekers), Kajaani (6320/2017)
- 14 December City of Helsinki, Metsälä Reception Centre, Detention Unit<sup>#</sup>, Helsinki (6966/2017)

## SOCIAL WELFARE

- 15 February City of Helsinki, Hietaniemenkatu Service Centre<sup>#</sup> (housing services for the homeless) (985/2017)
- 20 June City of Helsinki, Kulosaari Supported Housing Unit<sup>#</sup> (housing services for the homeless) (4032/2017)
- 20 June City of Helsinki, Pakila Supported Housing Unit<sup>#</sup> (housing services for the homeless and retired single men) (4033/2017)

## SOCIAL WELFARE/CHILDREN

- 8 March Familiar Oy, Peiponpesä<sup>#</sup> (private home for children requiring demanding psychiatric care), Hyvinkää (619/2017)
- 20 September City of Helsinki, Outamo children's home<sup>#</sup> (child welfare unit), Lohja (5500/2017)
- 15 October Vaahteramäki Oy, youth home Lukkarila<sup>#</sup> (private child welfare unit), Peräseinäjoki (5727/2017)
- 16 October Familiar Oy, youth home Nummela<sup>#</sup> (private special youth home), Lapua (5681/2017)
- 24 October Save the Children Finland, Children's home Harjula<sup>#</sup>, Kajaani (6182/2017)
- 24 October Kainuu Social Welfare and Health Care Joint Authority (Kainuun sote), Children's home Salmila – Salmijärvi child welfare unit<sup>#</sup>, Kajaani (6184/2017)
- 25 October Children's and youth home Kimppa<sup>#</sup> (private child welfare unit), Paltamo (6183/2017)
- 26 October Kainuu Social Welfare and Health Care Joint Authority (Kainuun sote) (child welfare), Kajaani (5449/2017)
- 8 November City of Helsinki, Outamo children's home (child welfare unit), Lohja (5500/2017)
- 21 November Nauha ry, Villa Junior<sup>#</sup> (child welfare unit for adolescents aged 15–17), Ylöjärvi (6545/2017)
- 22 November Special child welfare unit Honkalyhty<sup>#</sup> (private child welfare unit), Kangasala (6546/2017)
- 14 December Familiar Oy, Varatie Tervakoski<sup>#</sup> (private children's welfare institution for children with neuropsychiatric symptoms), Tervakoski (7024/2017)
- 19 December Tukikoti Tasapaino<sup>#</sup> (neuropsychiatric child welfare unit for children and adolescents), Forssa (7015/2017)

## SOCIAL WELFARE/PERSONS WITH DISABILITIES

- 3 March Kainuu Social Welfare and Health Care Joint Authority, Sirkunkuja residential Unit<sup>#</sup>, Kajaani (assisted living for people with intellectual disabilities) (1191/2017)
- 3 March Kainuu Social Welfare and Health Care Joint Authority, Leivolän asunnot<sup>#</sup>, (assisted living for people with intellectual disabilities), Kajaani (1193/2017)
- 5 April Eskoo Social Welfare Joint Authority, Tuulentupa and Neliapila (Institutional care for people with intellectual disabilities), Seinäjoki (2398/2017)
- 5 April Eskoo Social Welfare Joint Authority, Pikkupihlaja<sup>#</sup> (institutional care for children with intellectual disabilities), Seinäjoki (2413/2017)
- 5 April Eskoo Social Welfare Joint Authority, children's and youth home Vanamo (child welfare unit), Seinäjoki (2526/2017)
- 5 April Eskoo Social Welfare Joint Authority, Kotomarkki (services housing for adults with intellectual disabilities) and Helakoti (residential services for young adults with intellectual disabilities), Seinäjoki (628/2017)
- 13 July City of Helsinki, Aurinkolahti group home<sup>#</sup> (intensified support unit for people with intellectual disabilities) (4378/2017)
- 10 October Rinnekoti Foundation examination and rehabilitation Unit Turva<sup>#</sup> (psychiatric institutional care for people with intellectual disabilities), Espoo (5794/2017)
- 10 October Rinnekoti Foundation Annala<sup>#</sup> (small group home for children with intellectual disabilities), Espoo (6006/2017)
- 25 October Betanian lastenkodin säätio, Koivukaarre<sup>#</sup> (assisted living for people with disabilities), Suomussalmi (6295/2017)
- 26 October North Karelia Social Welfare and Health Care Joint Authority (Siun sote), Honkatähti<sup>#</sup> (intensified support unit for people with intellectual disabilities), Liperi (5920/2017)
- 26 October North Karelia Social Welfare and Health Care Joint Authority (Siun sote), Lepälä<sup>#</sup> (intensified support unit for people with intellectual disabilities), Liperi (6670/2017)
- 26 October North Karelia Social Welfare and Health Care Joint Authority (Siun sote), Tuulikello<sup>#</sup> (institutional care for people with disabilities), Liperi (5922/2017)
- 26 October North Karelia Social Welfare and Health Care Joint Authority (Siun sote), Muksula, Pauliina and Majakka Units<sup>#</sup> (institutional care for children and adolescents with disabilities), Liperi (6311/2017)
- 22 November Vaalijala Joint Authority, Residential Unit Luotain (psychiatric and psycho-social rehabilitation unit for adolescents aged 12–18), Pieksämäki (5662/2017)
- 22 November Vaalijala Joint Authority, Residential Unit Jolla (psychiatric rehabilitation unit for children and adolescents), Pieksämäki (6421/2017)
- 22 November Vaalijala Joint Authority, Satama (adult psychiatric crisis and rehabilitation service) and Luoto Unit (a closed unit for adults requiring special psycho-social and psychiatric support), Pieksämäki (7007/2017)
- 23 November Vaalijala Joint Authority, Kaisla (psychiatric and psycho-social rehabilitation and examination unit for adults), Pieksämäki (6800/2017)
- 23 November Vaalijala Joint Authority, Reimari (adult psychiatric and psycho-social rehabilitation centre), Pieksämäki (7006/2017)

## SOCIAL WELFARE/ELDERLY UNITS

- 30 March City of Espoo Taavi Service Centre<sup>#</sup> (intensified support unit for people with memory disorders), Espoo (2066/2017)
- 30 March City of Espoo Viherlaakso Service Centre<sup>#</sup> (intensified support unit for people with memory disorders), Espoo (2065/2017)
- 4 July Helsinki Seniorisäätiö's Antinkoti<sup>#</sup> (nursing home for people with memory loss) (4210/2017)
- 4 July Helsinki Seniorisäätiö's Kannelkoti<sup>#</sup> (home for the elderly) (4211/2017)
- 24 October Serviced housing Arvola-home (private housing services for the elderly)<sup>#</sup>, Kajaani (6198/2017)

- 24 October Care home Menninkäinen<sup>#)</sup> (private housing services for the elderly), Kajaani (6199/2017)
- 25 October Betanian lastenkodin säätiö, Serviced housing Aamurusko<sup>#)</sup> (assisted living for the elderly), Suomussalmi (6185/2017)
- 28 November Päijät-Häme Joint Authority for Health and Wellbeing, Marttila serviced housing, group home Päivänsini<sup>#)</sup> (intensified support unit for people with memory disorders), Orimattila (6712/2017)
- 28 November Päijät-Häme Joint Authority for Health and Wellbeing, Timontalo serviced housing<sup>#)</sup> (intensified support unit for people with memory disorders), Nastola (6713/2017)

## HEALTH CARE

- 14 March City of Espoo, Sobering-up station<sup>#)</sup> (1606/2017)
- 24 April Regional State Administrative Agency (AVI) Western and Inland Finland, Basic services, Legal protection and permits, Vaasa head office (2146/2017)
- 25–26 April Vanha Vaasa Hospital<sup>#)</sup>, Vaasa (forensic psychiatric hospital) (2147/2017)
- 27 April Emergency Care Unit at Vaasa Central Hospital<sup>#)</sup> (2149/2017)
- 27–28 April Psychiatric Unit at Vaasa Central Hospital<sup>#)</sup> (2148/2017)
- 6 June Emergency Care Unit at Seinäjoki Central Hospital<sup>#)</sup> (2151/2017)
- 6–7 June The Hospital District of South Ostrobothnia, Psychiatry<sup>#)</sup>, Seinäjoki (2150/2017)
- 19–20 September Päijät-Häme Joint Authority for Health and Wellbeing, Central Hospital, Psychiatric wards (5338/2017)
- 28 September Prisoners' Health Care Unit (5195/2017)
- 29 November Health Care Services for Prisoners, Outpatient clinic in Vantaa Prison (6454/2017)

## SOCIAL INSURANCE

- 7 March Kela's Local office in Kamppi<sup>#)</sup>, Helsinki (1484/2017)
- 29 November Kela, Western Insurance District (6704/2017)
- 29 November Kela, Western customer service unit (6705/2017)
- 29 November Kela, Customer Service Point Skanssi, Turku (6706/2017)
- 29 November Kela, Turku office (6707/2017)

## LABOUR AND UNEMPLOYMENT SECURITY

- 28 February The development and administration centre for the ELY Centres and TE Offices (KEHA centre), Helsinki (1014/2017)
- 29 November TE Office of Varsinais-Suomi (6656/2017)
- 29 November City of Turku, Employment Service Centre Työpiiste (6657/2017)

## EDUCATION

- 7 February City of Helsinki, Staffansby lågstadieskola (The Swedish-speaking primary school in Tapaninkylä) (782/2017)
- 20 April The Faculty of Medicine, University of Helsinki (1007/2017)
- 28 April City of Hyvinkää, Department of Education, Early childhood education services (950/2017)
- 3 May City of Riihimäki, Education and welfare, early childhood education (898/2017)
- 18 May Aleksis Kivi school, Siuntio (2375/2017)
- 5 September City of Kuopio, Pyörö school (4067/2017)
- 5 September Regional State Administrative Agency (AVI) Eastern Finland, Education and culture, Kuopio (5009/2017)
- 19 September City of Turku, Luolavuori school (4068/2017)
- 19 September Regional State Administrative Agency (AVI) Southwestern Finland, Education and culture, Turku (5479/2017)
- 28 November The Finnish Education Evaluation Centre (FINEEC), Helsinki (6910/2017)

## OTHER INSPECTIONS

- 18 January National Ecclesiastical Board, Helsinki (6515/2016)
- 28 March Imatra Customs, Niirala border-crossing point (1408/2017)
- 30 March Advance polling stations:
  - Matinkylä municipal service point<sup>#</sup>, Espoo (2164/2017\* incl. all sites visited)
  - Main Library<sup>#</sup>, Kirkkonummi (2353/2017)
  - Pähkinärinne service centre<sup>#</sup>, Vantaa (2354/2017)
  - Klaukkala service point, conference room<sup>#</sup>, Nurmijärvi (2355/2017)
  - Riihikallio school<sup>#</sup>, Tuusula (2356/2017)
  - Sampola service centre/municipal service point<sup>#</sup>, Kerava (2357/2017)
  - Etelä-Haaga Library<sup>#</sup>, Helsinki (2358/2017)

## OTHER INSPECTION-RELATED MEETINGS

- 18 October Cooperation meeting with Kela on matters related to Kela (6137/2017)

# Staff of the Office of the Parliamentary Ombudsman

## PARLIAMENTARY OMBUDSMAN

Mr Petri Jääskeläinen, LL.D., LL.M. with court training

## DEPUTY-OMBUDSMEN

Mr Jussi Pajuoja, LL.D. (till 30 September)

Ms Maija Sakslin, LL.Lic.

Mr Pasi Pölönen, LL.D., LL.M. with court training

## SECRETARY GENERAL

Ms Päivi Romanov, LL.M. with court training

## PRINCIPAL LEGAL ADVISERS

Mr Mikko Eteläpää, LL.M. with court training

Mr Juha Haapamäki, LL.M. with court training  
(on leave from 1 May–6 September)

Mr Jarmo Hirvonen, LL.M. with court training  
(since 1 October)

Mr Erkki Hännikäinen, LL.M.

Ms Kirsti Kurki-Suonio, LL.D. (on leave)

Ms Ulla-Maija Lindström, LL.M.

Ms Riitta Länsisyrjä, LL.M. with court training

Mr Juha Niemelä, LL.M. with court training

Mr Jari Pirjola, LL.D., M.A. (on leave till 31 July)

Mr Pasi Pölönen, LL.D., LL.M. with court training  
(on leave since 1 October)

Ms Anu Rita, LL.M. with court training

Mr Tapio Rätty, LL.M.

Mr Mikko Sarja, LL.Lic., LL.M. with court training

Mr Håkan Stoor, LL.Lic., LL.M. with court training

Ms Kaija Tanttinen-Laakkonen, LL.M.

## SENIOR LEGAL ADVISERS

Ms Tuula Aantaa, LL.M. with court training  
(part-time till 30 September)

Ms Terhi Arjola-Sarja, LL.M. with court training

Mr Kristian Holman, LL.M., M.Sc. (Admin.)

Ms Minna Ketola, LL.M. with court training

Mr Juha-Pekka Konttinen, LL.M.

Ms Heidi Laurila, LL.M. with court training  
(since 1 June)

Mr Kari Muukkonen, LL.M. with court training

Ms Päivi Pihlajisto, LL.M. with court training  
(since 1 January)

Ms Piatta Skottman-Kivelä, LL.M. with court training  
(on leave since 1 October)

Ms Iisa Suhonen, LL.M. with court training

Ms Mirja Tamminen, LL.M. with court training

Mr Jouni Toivola, LL.M.

Mr Matti Vartia, LL.M. with court training

Ms Minna Verronen, LL.M. with court training

Ms Pirkko Äijälä-Roudasmaa, LL.M. with court training

## LEGAL ADVISERS

Ms Elina Castrén, LL.M. with court training  
(till 31 July)

Mr Juho Martikainen, LL.M. with court training,  
M.Sc. (Admin) (till 30 June)

## REFERENDARIES

Ms Riikka Jackson, LL.M.

Mr Kimmo Metsä, M.Pol.Sc.  
(from 1 September–31 December)

Ms Virve Toivonen, LL.D., LL.M. with court training  
(since 1 October)

## ON-DUTY LAWYERS

Ms Jaana Romakkaniemi, LL.M. with court training

Ms Pia Wirta, LL.M. with court training

## INFORMATION OFFICER

Ms Citha Dahl, M.A.

## INFORMATION MANAGEMENT SPECIALIST

Mr Janne Madetoja, M.Sc. (Admin.)

## INVESTIGATING OFFICERS

Mr Peter Fagerholm, M.Sc. (Admin)

Mr Reima Laakso

### NOTARIES

Ms Taru Koskiniemi, LL.B.  
Ms Kaisu Lehtikangas, M.Soc.Sc.  
Ms Heini Lehtinen (since 1 September)  
Ms Helena Rahko, LL.B.  
Ms Eeva-Maria Tuominen, M.Sc.(Admin.), LL.B.

### ADMINISTRATIVE SECRETARY

Ms Eija Einola

### FILING CLERK

Ms Helena Kataja

### ASSISTANT FILING CLERK

Ms Anu Forsell

### CASE MANAGEMENT SECRETARY

Ms Nina Moisio, M.Soc.Sc., M.A.

### DEPARTMENTAL SECRETARIES

Ms Päivi Ahola  
Ms Mervi Stern

### OFFICE SECRETARIES

Ms Sari Aaltonen (since 21 August)  
Ms Johanna Hellgren  
Mr Mikko Kaukolinna  
Ms Krissu Keinänen  
Mr Lauri Lehmuskenttä, M.A.  
(from 1 May–6 September)  
Ms Tiina Mäkinen  
Ms Taina Raatikainen, B.Soc.Sc. (till 15 January)  
Ms Virpi Salminen  
Ms Anna-Liisa Tapio (since 1 April)

## Staff of the Human Rights Centre

### DIRECTOR

Ms Sirpa Rautio, LL.M. with court training

### EXPERTS

Mr Mikko Joronen, M.Pol.Sc.  
Ms Kristiina Kouros, LL.M.  
Ms Leena Leikas, LL.M. with court training

### ASSISTANT EXPERTS

Ms Elina Hakala, M.Soc.Sc. (till 31 October)  
Ms Emilia Hannuksela, M.A. (from 1 August–31  
December, part-time from 13 March–30 June)

### COORDINATOR FOR INTERNATIONAL AFFAIRS

Ms Elina Hakala, M.Soc.Sc. (since 1 November)

### PROJECT ASSISTANT

Ms Tuija Kasa, M.Soc.Sc. (since 1 November)

### TRAINEE

Ms Emilia Hannuksela, M.A. (till 12 March)



## International and national events held in Finland

Officials from the Office also participated in seminars and other conferences abroad.

- 19 January Reforming the Nordic Convention on Social Security, Copenhagen
- 27–28 February Meeting on the reform of the Nordic Convention on Social Security, Nordic Council of Ministers, Copenhagen
- 3 April Seminar regarding the use of solitary confinement as a disciplinary measure, Copenhagen
- 10–12 April EUI workshop Constitutionalist resistance to authoritarianism and populism, Florence
- 20–21 April National defence training, the Hague
- 4–5 May Nordic ICCPR meeting, Stockholm
- 4–5 May ENNHRI Working Group, Berlin
- 10–12 May Nordic Military Legal Adviser Days, Linköping
- 22 May Meeting with Director of Fundamental Rights Agency
- 14–17 August Summer school “Detention monitoring applying the UN Nelson Mandela Rules”, Bristol
- 23–24 August Reforming the Nordic Convention on Social Security, Nordic Council of Ministers, Copenhagen
- 23–24 August Nordic NPM Network, Oslo
- 15 September Fundamental Rights refresher course for Schengen evaluations trainers in the field of return and border management, Vienna
- 25–27 September IOI NPM Workshop on “Communication skills & techniques”, Vienna
- 28–29 September Application of EU law, Challenges in complaint handling and own-initiative investigations, Brussels

- 9–10 October International Conference of Ombuds Institutions for the Armed Forces, London
- 11 October Reforming the Nordic Convention on Social Security, Secretariat of the Nordic Council of Ministers, Copenhagen
- 24 November Finnish Red Cross seminar: “Red Cross European Workshop on Immigration Detention”

International events held in Finland, which involved staff members from the Office.

- 17 January The Nordic NPM Meeting
- 18 January Office event: OPCAT training
- 6 June Seminar: “Defending Human Rights in Europe”, House of the Estates
- 28 June Helsinki Pride Week event: “Legal Gender Recognition in the Nordic Countries”, Helsinki









PARLIAMENTARY OMBUDSMAN OF FINLAND

FI - 00102 Parliament of Finland

TELEPHONE +358 9 4321

TELEFAX +358 9 432 2268

[ombudsman@parliament.fi](mailto:ombudsman@parliament.fi)

[www.ombudsman.fi/english](http://www.ombudsman.fi/english)