PARLIAMENTARY OMBUDSMAN OF FINLAND

SUMMARY OF THE ANNUAL REPORT

2012

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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 *Petri Jääskeläinen,* Doctor of Laws and LL.M. with Court Training, served as Parliamentary Ombudsman throughout the year under review 2011. My term of office is from 1.1.2010 to 31.12.2013. Those who have served as Deputy-Ombudsmen are Doctor of Laws *Jussi Pajuoja* (from 1.10.2009 to 30.9.2013) and Licentiate in Laws *Maija Sakslin* (from 1.4.2010 to 31.3.2014).

I am on leave of absence from my post as a state prosecutor with the Office of the Prosecutor General for the duration of my term, Dr. Pajuoja is on leave of absence from his post as a deputy head of department at the Ministry of Justice and Ms. Sakslin from her post as a responsible researcher with the Social Insurance Institution.

Doctor of Laws, Principal Legal Adviser *Pasi Pölönen* was selected to serve as the Substitute for a Deputy-Ombudsman for the period 15.12.2011–14.12.2015. He performed the tasks of a Deputy-Ombudsman for a total of 48 work days during the year under review.

The annual report has been given a new visual format as part of our efforts to improve its readability. It retains the same structure as in earlier years. It 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 almost 400 pages long. This brief summary in English has been prepared for the benefit of foreign readers. The longest section of the original report, a review of oversight of legality and decisions by the Ombudsman by sector of administration, has been omitted from it.

I hope the summary will provide the reader with an overview of the Parliamentary Ombudsman's work in 2012.

Helsinki 12.4.2013

Petri Jääskeläinen
Parliamentary Ombudsman of Finland

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Decisions marked with an asterisk * (for example 123/4/10*) can be found as press releases on the Ombudsman's web site: www.ombudsman.fi/english.

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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
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1 General comments

Petri Jääskeläinen

The Ombudsman not only oversees, but also promotes implementation of fundamental and human rights

According to the Constitution of Finland, "the Ombudsman shall in the discharge of his or her task oversee implementation of fundamental and human rights". This provision was incorporated into the Constitution as part of the revised fundamental rights provisions that entered into force in 1995. No new institutional oversight systems for fundamental rights were created at that point, but it was deemed necessary to add this emphasis to the tasks of the Ombudsman (and of the Chancellor of Justice).

Thus the Ombudsman *oversees* implementation of fundamental and human rights. However, the view that has at times been taken is that the Ombudsman's task would not be to *promote* these rights. This perception may stem from the above-quoted formulation in the Constitution and from the Ombudsman's traditional role as an overseer of legality. However, the present situation is different.

The question of the respective semantic contents of overseeing and promoting fundamental and human rights and of the differences between these contents is not quite clear. As I see it, oversight has generally meant after-the-fact examination, on the basis of a complaint or otherwise, of an official action and a rebuke arising from any unlawful or incorrect deed that has been observed. Promotion, in turn, probably means an action with its special focus on the future and which is often taken on the Ombudsman's own initiative with the aim of improving implementation of fundamental and human rights and preventing violations of them. Promotion is not repressive in nature; on the contrary, it has more of a positive character, one that develops official actions and the legal state.

Understood in that way, the difference between oversight and promotion remains imprecise. It can, for example, be pointed out that the purpose of also an after-the-fact rebuke is in the final analysis preventive: what it is intended to achieve is that the authority to which the rebuke is directed – in common with other authorities as well – refrain in future from acting in the way that has been deemed deserving of a rebuke.

In the Parliamentary Ombudsman Act, the Ombudsman is specifically tasked with promo-

tion of fundamental and human rights. It is stated in the relevant provision that "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." This perspective of promoting fundamental and human rights has long been very characteristic of the Ombudsman and is evident in all of the Ombudsman's work.

Complaint matters

Well over 4,000 complaints are made to the Ombudsman each year. About one in five of them leads to some or other measure being taken.

Examining complaints is no longer merely a matter of assessing whether an official has acted unlawfully or neglected a duty. Something that is nowadays additionally evaluated in all cases is whether an authority could have, by acting in some or other way, better promoted implementation of fundamental and human rights.

This broadening of examination and perspective is founded on the principles adopted in the revision of the constitutional provisions and the Ombudsman's fundamental and human rights mandate. The aim with the constitutional revision was to increase the direct applicability of fundamental rights and improve the opportunity of private persons to directly invoke the fundamental rights provisions in support of their rights. At the same time, a mode of interpretation that is amenable to fundamental rights, and in accordance with which the legal interpretation alternative that must be adopted is the one that best promotes the purpose of promoting fundamental rights, was embraced. In addition, all executive bodies belonging to the public authorities must safeguard material implementation of fundamental and human rights.

Drawing attention to good administration or to implementation of guarantees of a fair trial can be involved in the Ombudsman's stances. In some cases, the Ombudsman's evaluation can extend also to the contents of an official decision, whereby the focus of attention can in principle be the implementation or promotion of any fundamental right whatsoever. It is often not just a matter of promoting only one fundamental right, but rather of striking a balance between fundamental rights that exert their influence in different directions. Then the Ombudsman's stance can contain an opinion as to how fundamental rights can be taken optimally into consideration in this situation of weighing them against each other.

If what is involved is an unlawful action that is not minor, the measure the Ombudsman takes can be a reprimand. Reprimands were issued in about 40 complaint cases during the year under review. The measure used in cases where a more minor unlawful action has been taken or incorrect procedure otherwise followed can be a so-called expression of opinion intended as a rebuke. This was done in nearly 400 cases during the year under review.

Quite often, however, the measure employed is an expression of opinion intended as guidance; this was done in about 300 cases during the year under review. What is typically involved in these cases is precisely that an official decision or the procedure than an authority or official has followed has not been unlawful, but the Ombudsman takes the view that some other solution or procedure would have promoted implementation of fundamental and human rights more effectively. It is also quite usual that in decisions containing a reprimand or an expression of opinion intended to rebuke opinions intended as guidance are presented at the same time. I estimate that in all more than half of the Ombudsman's decisions involving measures contain also the guidance-oriented elements in question.

The Ombudsman can also include proposals in decisions on complaints. A proposal can relate to rectifying an error or eliminating a shortcoming. It can be addressed directly to the authority that has made the error or is responsible for the short-

coming, but also to, for example, the Supreme Court or the Supreme Administrative Court if rectification presupposes the use of extraordinary means of appeal.

Secondly, proposals can be made to ministries responsible for legislative drafting with a view to developing legal provisions or regulations. What is generally involved in such cases is that some or other deficiency or imprecision, which endangers implementation of fundamental rights, is associated with provisions or regulations. This is one of the most common themes in proposals made by the Ombudsman.

Thirdly, what can be involved in proposals is recompense for violations of fundamental or human rights. The rights guaranteed in the European Convention on Human Rights include effective legal remedies against violations of the rights that the Convention protects. The legal remedies should be primarily preventative ones, by means of which it is possible to prevent a violation of a right or a continuation of such a violation, but also reparative means, with which recompense can be made for a violation that has already taken place may be regarded as effective. The obligation that the Constitution of Finland imposes on the public authorities to safeguard implementation of fundamental and human rights can likewise be regarded as including an obligation to make recompense for violations of these rights.

Finland's national legislation on compensation for damages does not recognise a right to recompense in even all of the situations in which the injured party would be entitled to it according to the European Convention on Human Rights. For this reason, a recommendation by the Ombudsman that recompense be made is of great significance in principle – recompense must be possible on the national level without the injured party having to take the case to the European Court of Human Rights (ECHR). A further aim with such recommendations by the Ombudsman is to encourage the development of a culture in which officials and authorities acknowledge and rectify their mistakes, or if this is no longer possible, make recompense for them if necessary. The possibility of recompense is important not only from the point of view of the injured party, but also because it has a broader effect in preventing violations and promoting rectification of shortcomings. Indeed, the Eduskunta's Constitutional Law Committee has supported the possibility of the Ombudsman recommending recompense. A total of 24 such recommendations were made during the year under review.

Fourthly, the Ombudsman can recommend that a matter be settled through agreement between the authority and the complainant. Also these recommendations are aimed at promoting the individual's rights and concretely implementing them.

Various kinds of recommendations show clearly that the Ombudsman's work nowadays involves a lot more than just after-the-fact oversight of legality. The aim with them is to promote implementation of fundamental and human rights not only in the case of the individual complainant, but also more generally.

Own initiatives

The number of matters that the Ombudsman investigates on his own initiative each year has risen to about 80. A matter of this kind can come to light in connection with examining a complaint, during an inspection visit or through the media.

Investigations on the Ombudsman's own initiative often involve structural problems that are broader in import than individual cases and are of general significance. Typical themes of this kind of investigation are flaws associated with legislation or official guidelines or procedures and which can jeopardise implementation of fundamental and human rights.

The overwhelming majority of cases investigated on the Ombudsman's own initiative lead to measures being taken. The measure taken is often the expression of an opinion or a proposal intended to promote implementation of fundamental and human rights.

Inspections

What is involved to a constantly growing degree in inspections conducted by the Ombudsman is future-oriented guidance rather than looking for errors. This tendency will be further emphasised when, under legislation that has just been enacted by the Eduskunta, the Ombudsman becomes the national preventive mechanism (NPM) for the Optional Protocol to the Convention against Torture (OPCAT) approved by the United Nations. The NPM will have to pay visits to places where people who have been deprived of their liberty are kept, such as prisons and police detention facilities, but also for example to care institutions catering for psychiatric patients, the aged, mentally handicapped persons or children.

The task of the NPM will be specifically to engage in preventive activities. The purpose of this is to promote implementation of the fundamental and human rights of persons who have lost their liberty.

Annual fundamental and human rights theme

For the past several years, an annual theme that is highlighted in conjunction with all inspection visits is chosen by the Office of the Parliamentary Ombudsman. The theme is taken into consideration also in other aspects of our work, such as when we are considering the thrust of own-initiative investigations. The themes so far have been the obligation that authorities have to provide advice and service in accordance with the principle of good administration as well as implementation of equality (2006–07), implementation of the principle of publicity in official actions (2008–09), language rights and the requirement of good use of language (2010–11) and most recently non-discrimination and gender equality (2012–).

Preparations for dealing with the theme are made in advance in the Office of the Parliamentary Ombudsman and any problematic aspects associated with it are explored. Thus, for example in conjunction with inspection visits, it is possible to conduct an articulated discussion with the aim of developing official actions in order to promote the implementation of fundamental and human rights that is included in the theme.

Statements and submissions

The Ombudsman makes dozens of statements and submissions each year. Most commonly, they are made to various ministries at various stages of legislative drafting, but also to such bodies as parliamentary committee. Statements can also be associated with the various periodic reports that are required under human rights conventions.

In his statements and submissions the Ombudsman does not generally intervene in questions that belong to the sphere of consideration of purposefulness in societal policy. By contrast, a legislative proposal or other matter under deliberation is evaluated in a submission from precisely the perspective of fundamental and human rights.

Annual Report

The Constitution requires the Ombudsman to give the Eduskunta an annual report on his activities as well as on the state of administration of law and any flaws or shortcomings that he has observed in legislation. According to the Parliamentary Ombudsman Act, attention must be paid in the report also to the state of public administration and performance of public tasks as well as especially to implementation of fundamental and human rights.

In conjunction with the revision of the fundamental rights provisions in the Constitution, the Eduskunta's Constitutional Law Committee deemed it to be in accordance with the spirit of the reform that the report submitted by the Ombudsman (and the Chancellor of Justice) contain a separate section on implementation of fundamental and human rights and observations made

in relation to these rights. A section of this kind (Section 3 in this report) has been a feature of the annual report ever since the revised fundamental rights provisions in the Constitution entered into force in 1995.

The section of the report dealing with fundamental and human rights has gradually grown in length, which illustrates well the way in which the emphasis in the Ombudsman's work has been shifting from oversight of official observance of their duties and obligations more towards promoting people's rights. The section has traditionally included a concise report, systematised by fundamental rights provisions, of some of the Ombudsman's observations and stances (Section 3.6). For years it has also contained outlines of all European Court of Human Rights judgements that apply to Finland (3.5).

Now, for the fourth time, the annual report for 2012 contains the section (3.3) "Shortcomings and improvements in implementation of fundamental and human rights", which contains an outline of the Ombudsman's observations regarding some typical or long-standing failings in implementation of these rights (3.3.1). Also presented in the section are examples of cases in which measures by the Ombudsman have led or are leading to improvements in official actions or the state of legislation (3.3.2). Now, for the second time, information on recommendations that the Ombudsman has made regarding recompense are included in the section (3.3.3).

For the third time, the section includes a separate sub-section setting forth the Ombudsman's observations in relation to the annual fundamental and human rights theme (3.4). The latest report includes a new sub-section dedicated to the Human Rights Centre and its activities (3.2).

Information

The Ombudsman's annual reports are now also in electronic form on our web site. A large share of the Ombudsman's decisions that led to measures and many of his statements can also be read there. A press bulletin is issued when a more important decision is announced. The web site also presents basic information about the Ombudsman institution and instructions on how to make a complaint as well as information and articles on fundamental and human rights.

The web site makes its own contribution to providing information about fundamental and human rights. The Ombudsman's Facebook pages are the latest channel for information. We are trying with their aid to improve the flow of information about fundamental and human rights and reach people who are not accessible through traditional information-mediation channels and who are possibly not reached through the web site, either.

The staff of the Office of the Ombudsman includes two advisory lawyers, who provide information about the Ombudsman's activities by phone or face-to-face. They can assess whether the Ombudsman can help in a case where a client feels one of his or her rights has been violated. They can also provide guidance on how to turn to another competent body that protects rights. In addition, the advisory lawyers participate in the discussion that takes place on Facebook and thereby add an interactive element to the Ombudsman's information activities.

The Ombudsman as a part of the National Human Rights institution

In accordance with what has been set forth in the foregoing, the Ombudsman promotes implementation of fundamental and human rights in many ways. However, it can be noted from the perspective of the so-called Paris Principles, which concern National Human Rights Institutions, that some elements are missing from the Ombudsman's activities. First of all, there has been very little general education, training and research associated with promotion of fundamental and human rights. Secondly, the Ombudsman institution lacks plurality. Thirdly, the powers of the Ombudsman are limited in scope

to overseeing authorities, public servants and private parties that perform public tasks. Purely private instances are not included in the scope of these powers.

The new structures established to create Finland's National Human Rights Institution will redress all of these shortcomings. The statutory tasks of the Human Rights Centre, which is under the aegis of the Office of the Ombudsman and began its work during the year under review, include disseminating general information about fundamental and human rights as well as education, training and research in this field. The Human Rights Delegation, which serves the Human Rights Centre, has 40 members, who represent a broad cross-section of civil society, research into fundamental and human rights as well as other bodies that participate in promoting and safeguarding these rights. The tasks and powers of the Human Rights Centre and the Human Rights Delegation extend also to purely private parties. The Ombudsman, the Human Rights Centre and the Human Rights Delegation together form the Finnish National Human Rights Institution.

As I see it, the prerequisites for effectively safeguarding fundamental and human rights include general education, training, research and information provision as well as the opportunity to make statements and present proposals, but also the possibility of intervening in individual cases of violation of fundamental and human rights as well as the power to conduct inspections of authorities and closed institutions. All of these functions are combined in the Finnish National Human Rights Institution. The practical experiences of it that have been gained in the first year of operation are very promising.

To conclude

I believe that the perspective of promoting fundamental and human rights will be further strengthened in the Ombudsman's work. The establishment of the Human Rights Centre and the Human Rights Delegation under the aegis of the Office of the Ombudsman will contribute to this. The structure embraced offers excellent preconditions for flows of information and interaction between the various parts of the institution as well as for coordination of activities and a common strategy. The appointment of the Ombudsman as the NPM for the Optional Protocol to the Convention against Torture (OPCAT), which is specifically intended to prevent violations, will also work towards this end.

Jussi Pajuoja

How does the Social Insurance Institution serve its clients?

The Finnish name *Kansaneläkelaitos* (from which the acronym Kela is derived) literally means National Pension Institution and refers to history. When it was established in 1937, it was a fund that took care of the pensions payable after the end of a working career.

With the institution's present activities in mind, the name is somewhat outdated and narrow in the range of tasks it describes. National Pensions Institution hints at large, ageing groups of people who are receiving pensions. It uses the name Social Insurance Institution in English.

The old name also includes an expectation of service. It brings to mind granny and granddad, who traditionally transacted their business in a local office.

Kela on Facebook

Kela's electronic online services create quite a different picture of its client profile and the service expectations associated with it. Already the visual format of the web pages reveals how the emphasis has changed. The logo Kela is big, the name Kansaneläkelaitos small.

The visual transformation reveals that it is no longer a matter of only pensions, but rather of benefits received by large segments of the population. Kela takes care of, among other things, benefits and compensation relating to study, families with children, unemployment, foreigners, health and rehabilitation.

A further indication of the change is that since 2012 Kela has been offering its services on Facebook in addition to its own web site. The biggest group of users of these services are young and middle-aged people.

Thus the range of services that Kela provides has significantly broadened in recent decades. At the same time, the channels that the new client groups use differ substantially from the earlier ones. Where Kela's traditional clients wanted to obtain service at a local office, the new ones are more likely to avoid visiting an office when the matter can be taken care of handily online.

The Kela benefits that are commonly involved in electronic transactions are study grants, allow-

ances for families with children and housing and unemployment benefits. They typically apply particularly to young age groups.

Kela's services as subjects of complaint

The Ombudsman has occasionally been criticised for the fact that only around twenty per cent of complaints lead to measures. Also with respect to Kela, the percentage involving measures was about the same last year.

However, there is another side to the matter. The focus of complaints concerning Kela is often the final outcome of a decision, the fact that a benefit has not been granted or that the sum granted was less than had been applied for. These negative decisions can be appealed against. In the case of Kela, an appeal is usually made to an appeal board for social security, study grants or unemployment benefits. Their decisions can be further appealed to the Insurance Court.

Thus the reason why a complaint concerning Kela does not warrant measures is often the fact that the matter is already pending before an appeals instance or that the opportunity to appeal is still open. Because a complaint to the Ombudsman costs nothing and is easy to make, people write also to him, to be on the safe side as it were, even when a matter is still in the appeal stage.

Often, too, a complaint is made to an overseer of legality about a decision by a final appeal instance, such as the Insurance Court. However, the Ombudsman can not alter a decision of a court or otherwise intervene in a decision that it has issued within the parameters of its discretionary power.

Because legal remedies relating to Kela's subsidies, benefits and grants are effected through the appeals process, these matters are not at the core of the Ombudsman's field of tasks. By contrast, questions in which the Ombudsman often intervenes are the quality of the advice and service that Kela provides, the length of time taken to process matters, the reasons given for decisions and otherwise implementation of good administration.

From local activities to a national service

The biggest change in recent years has been that Kela's services have shifted from the local to the national level. The old principle of local service, in which a matter was taken in hand at a local office and also decided on there, no longer applies.

The new service structure finds expression in the Kamppi office in Helsinki. Some 350–400 clients visit the office each day. They are given advice and their applications are received, but the office does not deal with them; instead, they are electronically forwarded to another place for processing.

Something that is a result of the new service structure is a text, which has been criticised as brusque in some complaints, on the office's web site: "If you want to get in touch by phone, call one of Kela's service numbers. Calls can not be made to offices".

It would be useless to call, for example, the Kamppi office if one wanted information on what stage of processing one's matter had reached. Because a matter is forwarded and decision making is decentralised to all parts of the country, follow-up of a matter can also be done only nationally.

Kela changed over to a national telephone service in 2009. The organisation that takes care of the telephone service, Yhteyskeskus, has offices in Joensuu, Lieksa, Jyväskylä, Kemijärvi and Pietarsaari, where its Swedish-language service is operated.

Kela's national telephone service experienced teething troubles after its launch. One of the things that have been criticised as awkward in complaints is the fact that clients have to wait for a long time to be answered. Yhteyskeskus has tried to resolve the matter both by allocating more personnel during peak traffic periods and by adopting a new service that enables the client to be called back from the centre.

Something that has been discussed on inspection visits is whether Kela could through its own measures alleviate congestion during peak periods by, for example, granting fixed-term benefits that are paid until some date other than the end of the year.

On the other hand, it must be borne in mind that with the aid of a national contact centre it is possible to produce a better service than was earlier available. For example, an Act providing for so-called guarantee pensions entered into force in 2011. This pension can be applied for orally by calling the Kela service number for pension matters. In practice, the client calls Yhteyskeskus, where a service adviser fills in the client's answers to the questions on the application form. The inauguration of this flexible service means that for reasons connected with protection under the law Kela records all calls from clients.

Six service channels

Kela has six service channels, of which four are managed nationally. The national services are an electronic online service, a telephone service, mail transactions and direct compensation. There are two locally managed forms of service, an office service and service through joint service points.

Kela's local service network has been constantly thinning. The recommendation is that a service open five days a week is provided if there are more than 20 clients a day. If the daily number of clients is 10–20, they can be catered for in the context of a joint service.

A joint service point means a service maintained by Kela together with other public organisations. Kela application forms and brochures can be obtained there, applications can be handed in and general guidance concerning benefits and the use of Kela's online services is available. Kela has its own service web site for the personnel of joint service points and this is a source of information to support client service.

However, the personnel of joint service points can not access Kela's internal information systems. For that reason, the advice provided at these centres is of a general nature and it is not possible to make a detailed exploration of the client's personal situation.

A new operational model is currently being inaugurated in the Kela offices. This means three service modes. First there is an express service desk, where simple matters like handing in applications can be taken care of. The second alternative is personal advice, which is obtained on the basis of a queue number. The third form of service is an appointments system, which enables a meeting to be arranged electronically via a web site. The intention with appointments is to deal with matters that take more time, generally 30–45 minutes. In addition, the new service concept features client terminals, through which people can transact their own matters using bank codes or chip ID cards.

The general principle followed in meetings with clients is "sorted out in one visit", which means that after the visit the matter is forwarded to be dealt with, possibly after any appendices needed have been obtained. Meetings with clients in Kela offices are handled by advisory staff, who are not special experts on the benefits being applied for. If special expertise is needed, it is obtained by, for example, phoning a background support person.

Do Kela's clients enjoy equal status?

With the availability of Kela's services in mind, the most equal instrument is the telephone. It is something that everyone can easily use. The Ombudsman was complained to last year about the fact that calls to Kela are charged for. It was possible to note that the situation was in order. The telephone numbers used by Kela are service numbers, which are not charged for at premium rates; instead, clients pay only whatever their local network or mobile operator charges for calls from landlines or cellphones.

However, what could be problematic from the perspective of equality are the requests for urgency that clients present in the telephone service. It has come to light during inspections that so much importance can be given to a request for urgency that the application in question is dealt with before others that have been pending for longer. In this case, Kela's insurance districts should have uniform policies to follow.

With accessibility in mind, the second most equal instrument is the Internet. According to the Statistical Centre, about 90 per cent of 16–74-year-old Finns use the Internet. The Government has launched a project called Broadband for All, the intention with which is to extend the coverage of fast Internet access to all parts of the country, including sparsely populated areas, by the end of 2015.

In Kela's case, some practical matters have prevented more widespread use of the Internet. It was only recently that it became possible for appendices to applications to be delivered electronically. From the client's perspective, converting appendices to electronic form can also cause problems.

The direct compensation procedure is a simple mode of service for clients. The system is applied by, among others, those providers of health care services who have agreed with Kela on its use. Then the compensation is received already by displaying a Kela card in the doctor's reception. The amount of compensation is deducted from the sum charged and only the so-called excess need be paid.

From the perspective of the equality of clients, it is somewhat problematic that big service producers use the direct compensation procedure, but for example doctors in private practice do not necessarily do so. Then the client must separately apply to Kela for compensation.

A question in its own right is whether equality of clients is implemented in the ranges of services that offices and joint service points provide. Is a shrinking service network leading to a situation in which clients in different areas are in different situations?

The situation has multiple dimensions. Everyone gets good general advice from the Kela web site. Also at the joint service points advice can be of a general nature only. The client service personnel in the Kela offices are not experts on benefits, either; the service that they provide is a priori general advice. Although there may also be special expertise in an office, it will mainly be related to the benefits dealt with there.

The difference between the Kela offices and other service modes continues to be that in the offices client service personnel can use a remote link to consult experts for background support. A client does not get this kind of service if the office is not within a reasonable distance.

Service-related challenges facing Kela

There are two challenging stages in Kela's service chain. The first is the question of what kind of advice clients need in order to be able to fill out their applications as well as possible and at the same time seek all of the benefits to which they are entitled. The second question is what way clients themselves can get in contact or be contacted while the application that they have put in is being processed.

Although a good application can often be drafted already on the basis of the guidelines on the web site, there are situations where the degree of difficulty is greater. For example, a conscripts benefit can contain five different kinds of allowances (basic, housing, special and interest subsidy on study loan, and maintenance allowance). In addition, a conscripts allowance varies according to the family situation. Those that can receive it include the conscript himself, his wife or partner if they have a child together as well as a child supported by the conscript or his wife's child.

In a case like this, charting the overall situation can be challenging also in the client service that Kela offices provide, even allowing for the fact that expert background support can be called on through remote links. Besides, benefits for individual groups of clients, such as those for handicapped persons and rehabilitation applicants, may be a challenge for the expert advisers in the offices.

If the stage in which an application is due to be submitted does not work well, the matter can be corrected to some extent during the processing or rectification stage. If the person processing the application needs additional information, e.g. supplementary data on the appendices to the applica-

tion, he or she can contact the client by telephone or post. Correspondingly, the client can, through Yhteyskeskus, be put in touch by telephone with the person processing the application. The client can also monitor the progress of the matter through the online service.

A critical question is how well a person processing an application for a benefit can make sure, on the basis of the application and the information in the data management system, that the client has been able to apply for all of the benefits to which he or she may be entitled? If the client is not aware of a benefit that may be available and the person processing the application is not aware of the client's ignorance of the matter, the benefit may in the worst case not be received at all.

There is also a danger that if clients do not receive adequate detailed advice when an application is being submitted or processed, the rectification and appeals system will be burdened. This causes delays in receiving benefits. The problem can be partly redressed by means of an effective internal rectification method in Kela. If, however, the end result is that, for lack of sufficient substantive advice, appeal instances have to be resorted to, the system is ponderous and time-consuming and does not accord with the principle of good administration.

Development prospects for the service system

Several different projects aimed at improving Kela's service system are currently in progress. Those aimed at making it easier to apply for services include new application forms and solution models in clear language designed to make decisions easier to understand.

Clients should also be actively contacted. A new form of service is work ability advice, which is designed to help people get back into employment after an illness. In practice, what it means is that Kela gets in touch with sickness per diem payments recipients who may be in need of rehabilitation. Another new form of service is the provision of a personal adviser, who takes care of the affairs of handicapped people who are in need of special support.

However, not all potential clients can be reached. On inspection visits, Kela personnel have expressed their concern that, among others, elderly persons living alone, marginalised young people and persons with mental health problems remain excluded from services. Although the threshold is low, they do not always seek to benefit from services.

Maija Sakslin

Elderly persons' right to care

Oversight by the Council of Europe

The Council of Europe Commissioner for Human Rights Nils Muižnieks, whose task is to promote respect for human rights, training and awareness of these rights, visited Finland in summer 2012. In his report, he examined care for the aged and expressed his concern about safeguarding good and balanced care for elderly people. A special cause of concern were differences between municipalities with respect to informal care agreements, service charges, care allowances paid to informal carers and the difficult financial situation in which several municipalities found themselves. He pointed out in his conclusions that, while respecting municipal autonomy the State must ensure that municipalities meet the minimum requirements with respect to care and its availability. The status of informal carers should also be improved.

In December 2012 the European Committee of Social Rights issued its decisions on two complaints made by *Omaishoitajat ja Läheiset -Liitto* (The Central Association of Carers in Finland). The Committee concluded, based on the observations made by the Commissioner for Human Rights, that with respect to granting informal care support and determining fees for service housing there is a violation of the right of aged persons to social protection by Finland.

According to Article 23 of the revised European Social Charter, elderly persons must have the right to choose their lifestyle and remain full members of the society for as long as possible. The State must ensure the availability of housing suiting their needs and state of health and adequate housing support services and provide them with the health care and other public services necessitated by their state of health. In addition, elderly persons living in institutions must be guaranteed appropriate support and the opportunity to participate in decisions concerning living conditions in the institution.

The Council of Europe's European Social Charter entered into force in Finland in 1991. The rights that it safeguards were brought up to date in the revised Charter, which entered into effect in 2002. A collective complaint procedure was added to the Charter by means of an optional protocol,

which Finland ratified in 1998. International organisations that have special expertise can make a complaint concerning application of the provisions of the Social Charter. A complaint must relate to a state's legislation or practice being in conflict with the provisions of the Social Charter. It may not relate to an individual instance of application. Finland is the only state that has approved also the right of national organisations to complain.

The Central Association of Carers in Finland alleged in its first complaint that the right to social protection enshrined in Article 23 of the revised Social Charter had been violated, because persons caring for elderly people were treated differently in the various parts of the country. It was also claimed in the complaint that differences, due to inadequate municipal budget, between the services offered by municipalities meant unequal treatment of elderly persons.

The European Committee of Social Rights drew attention to the fact that the need to support had been assessed and the informal care support had been granted to a great number of people but the payment had later been discontinued or the conditions for receiving it had been tightened. However, no alternative services had been arranged. At least the Government of Finland could not give sufficient evidence of any compensatory care.

The Committee pointed out that, although it was not demanded in the Social Charter that the level of security should be the same throughout the country, the Committee required a reasonably uniformity of treatment. The situation in municipalities is unsatisfactory because they have extensive discretionary power, but no clear obligation to grant benefits to carers or alternatively services to elderly persons. In the view of the Committee, this lack of uniformity due to funding differences between municipalities is not, however, a violation of Article 23. By contrast, the fact that Finnish legislation allows practices leading to a part of the elderly population being denied access to informal care allowances or other support is a violation of this Article.

The Central Association of Carers in Finland alleged in its second complaint that Finland was not acting in compliance with Articles 13, 14, 16 and 23 since the lack of statutory pricing for service housing prevents elderly people to reach the kind of housing that their state of health would require. What was at issue in the complaint was the arrangement of long-term care in such a way that institutional care was replaced by service housing. The pricing systems for these forms of service are significantly different, for which reason higher fees are charged for service housing than for institutional care.

The Committee found that Article 23 of the Social Charter had been violated. Insufficient regulation of fees for service housing together with the fact that the demand for these services exceeded their availability fails to meet the requirements of the Social Charter insofar as this creates legal uncertainty due to the different practices with regard to fees. The Committee takes the view that while municipalities may adjust the fees, there are no effective legal safeguards to assure that effective access to services is guaranteed to every elderly person in need of services required by their condition. This constitutes also an obstacle to the right to receive information on services and the opportunity to use them.

Oversight by the Ombudsman

The Central Association of Carers in Finland had earlier complained to the Parliamentary Ombudsman about informal home care. It is established practice that the Ombudsman does not intervene in a matter that is pending before a court of law or with another authority. This established position applies to national courts and authorities. The same principle can a priori be followed also when a matter is pending before an international legal body, such as the European Court of Human Rights or the European Commission. Besides, the fact that a matter is pending before the European Court of Human Rights does not prevent the Ombudsman from examining it. When considering

whether or not to take a matter under investigation, it is, I believe, appropriate to assess whether what is in question is a rights violation of a kind in which the Ombudsman can help, or whether there would be reason for the Ombudsman to guide the authorities' actions in the implementation and enforcement of fundamental and human rights already before the international body takes a stance. Because the European Commission's oversight procedure is partly also political in character, I have earlier taken the view that the fact the same matter is pending in the European Commission does not prevent that the Ombudsman investigates the complaint. Prior to their publication, the legal decisions of the European Committee of Social Rights are given to the Committee of Ministers, which approves a resolution based on them. This resolution is political in character. That is the reason I decided to examine the complaint of the Central Association of Carers. Because a complaint by an organisation concerning the same matter was pending before the European Committee of Social Rights, I took the view that interpretation of the European Social Charter was primarily a matter for the Committee.

I noted in my decision on the complaint that an allowance for informal care at home is a support measure that is tied to a financial appropriation. Thus a municipality has the right to decide the grounds on which the allowance is determined. However, a municipality can not unilaterally alter the terms of an informal home care agreement, although it can rescind the agreement in order to, for example, re-evaluate the conditions for receiving a subsidy. Thus I took the view that a municipality can rescind agreements concerning an informal home care allowance so that it will be able to conclude new agreement. At the same time, however, I emphasised that in such a case the municipality must ensure that the need for services on the part of the social welfare client and if necessary also of his or her carer is evaluated and that, on the basis of the application, social services or support measures are arranged for the client in a way that corresponds to his or her needs and circumstances.

On an earlier occasion, when I was examining a case of an informal home care allowance being refused, I evaluated also how in such a situation home care and support services are arranged for the client. On the basis of the report I received, I could not determine that the arrangement of services associated with informal home care or of services substituting for a home care allowance had been neglected.

I stressed that a home care allowance is a financial support measure associated with services that belongs to a municipality's general obligation to arrange services. A municipality has a general obligation to arrange statutory services and support measures for its residents as well as to allocate adequate funding for them in its budget. In a municipality, assessment of the need that the general obligation to arrange services presupposes is done primarily in conjunction with deliberation of the budget. The legality of a municipality's budget is overseen with the aid of a municipal appeal. When assessing whether a municipality has fulfilled its general obligation to arrange services, earlier applications for home carer allowances and the decisions on them as well as supplementary services substituting for an allowance and support measures must be examined. The information needed when making an assessment is available from especially explorations of the need for service and the service plans drafted on their basis. A municipality must also actively track changes that happen in the need for services and support.

On the other hand, the service to be obtained to meet a client's individual need must be assessed within the framework of the allocations made in budgets. If the appropriations are not sufficient for all persons who meet the conditions for an allowance being granted, the municipality can focus appropriations and arrange services in the order of priority that it determines. However, this must be done by respecting the requirements of the principle of equality enshrined in Section 6 of the Constitution.

I have in another decision on a complaint pointed out to a municipality that it is important to inform, on its own initiative, those persons who

have been receiving support, of changes that have been made in the grounds for granting a home care allowance and the significance of these changes. The legality of the guidelines that several municipalities have issued with respect to granting a home care allowance is a matter that I am currently investigating on my own initiative.

The Act on the Status and Rights of Social Welfare Clients requires that when social welfare is being implemented, the client's wishes and view must be the primary consideration and also in other regards his or her right of self-determination must be respected. Clients must be given the opportunity to participate in and influence the planning and implementation of the service they receive. Their rights and obligations must be explained to them as well as the various alternatives and their effects. The obligation to advise also includes a duty to recommend to clients, if necessary, that they apply for a support measure that would suit them better or for a more appropriately arranged service. When social welfare is being arranged, a plan must be drafted. Although a plan is not a document that is binding on a municipality, a municipal authority must advise clients to apply for the services and support measures that are included in the plan.

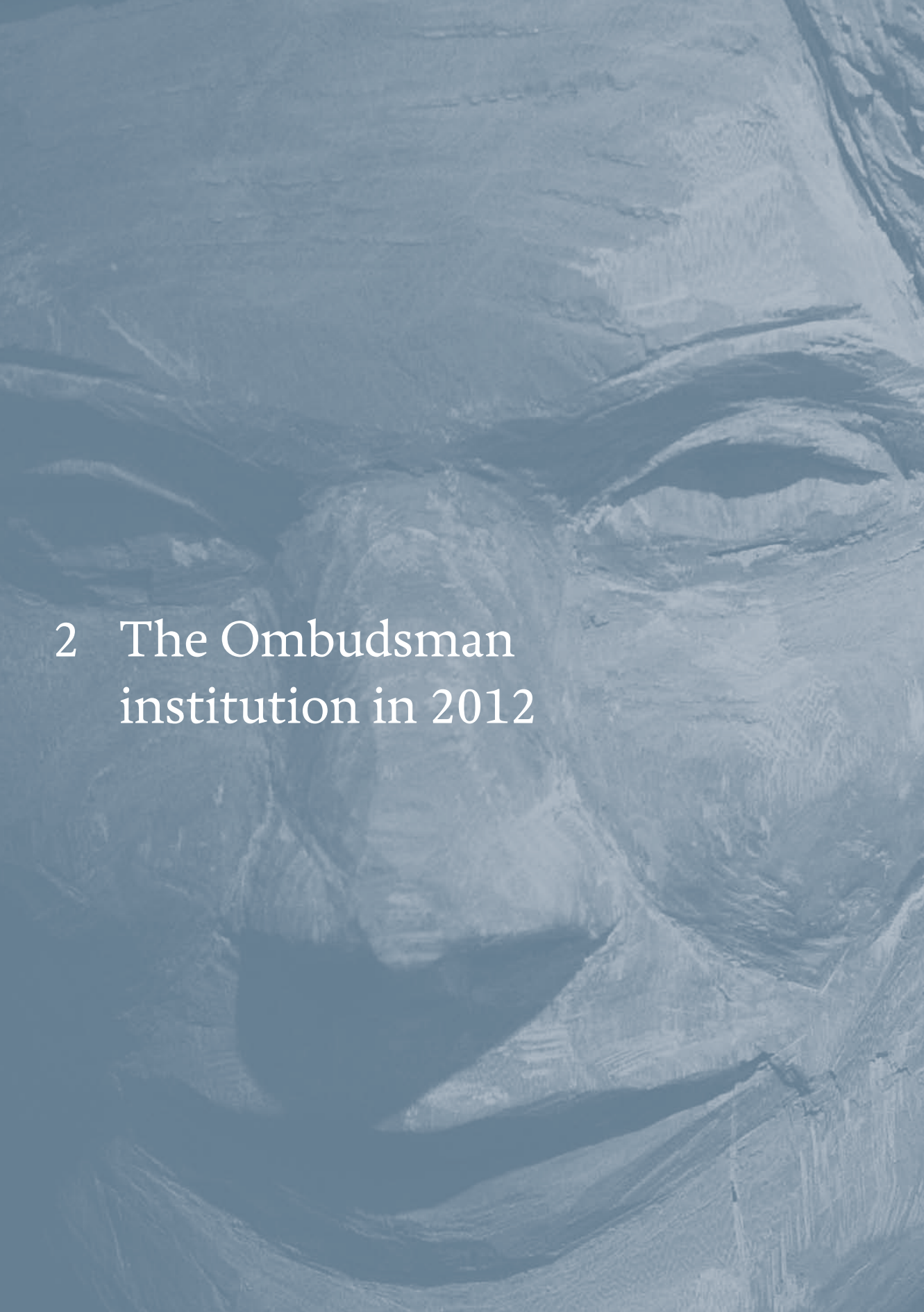
In one of my decisions I focused the procedure that one city had followed in reorganising its service structure. The complainant called into question a procedure through which several institutional care places for the elderly had been changed into service housing. I took the view that the procedure had been unlawful in that notification of the change had not been done appropriately and in good time. For this reason, a guardian's opportunity of overseeing his principal's interest had been prevented or made more difficult. In addition, the procedure was flawed, because in conjunction with the change in mode of care, decisions concerning client fees had been made, but not other client-specific decisions. In the cases of several persons, the change meant that being a client of institutional care was changed to being a client of service housing. Decisions outlining in what way the need for care and related circumstances had changed and how it had been assessed that, based on the need for care, they were suited to become clients of service housing should have been made for them. Having received a decision they would, as I see it, have had the opportunity to refer the grounds for changing the mode of service to an administrative court for examination if they had so wished.

I have drawn attention to these questions also in the context of one home for the aged being closed down. Several elderly persons, some of whom were suffering from memory impairment, were transferred to long-term hospital care provided by the city in its own facilities or purchased from outside providers and to places in service homes with an intensive service. Since the municipality's basic services board had not adequately looked into the wellbeing of the transferred elderly people, I asked the regional administration to, among other things, investigate the situation of every transferred elderly person as well as to study their service plans. Closing down an institution creates a sense of insecurity, especially when it is done to a rapid timetable. I saw it as violating elderly people's human dignity when they were transferred without them or their relatives being able to participate in the decision making.

In my view, an appealable decision concerning an internal transfer within the social welfare system must be made unless the transfer is based on a doctor's referral to hospital treatment. I also drew attention to the fact that an appealable decision on care fees must be made, because the transfers may also affect the sums the elderly clients pay for care, especially in cases where they are transferred from institutional care to service homes.

During the year under review, I drew attention in the course of inspection visits to both social welfare and municipal financial administration units to the effects that accumulating social welfare and health care charges have on the livelihood of many clients. Some residents have to resort to income support allowances. This may be caused by the fact that the charge is too high for the client to pay and it has not been lowered even though

the legislation on residents' fees indicates that this should be done. In my opinion, the body that levies the charge should, together with the instance responsible for granting income support, create procedures for identifying and rectifying situations that jeopardise clients' social and economic rights. As I have pointed out in my decisions on complaints, this can mean, among other things, that the authority responsible for income support must advise the client to apply for a lowering or waiving of the fee and if necessary also on its own initiative examine the prerequisites for altering the fee at least when the client is not able to pay it. A procedure of this kind implements also the principle of good administration. Instead of granting income support or alongside it, it would be more appropriate to consider lowering or waiving the fee. This procedure would be advisable when no changes can be anticipated in the client's life situation, such as when the person is in housing with enhanced services.



2 The Ombudsman institution in 2012

2.1 Review of activities

2012 was the Finnish Ombudsman institution's 93rd year of operation. The 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 created by the Riksdag in 1809. After Finland, the next ombudsman institutions were established in Denmark in 1955 and Norway in 1962.

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

2.1.1 TASKS AND DIVISION OF LABOUR

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

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

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

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

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

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

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

The leadership echelon of the Office of the Parliamentary Ombudsman in spring 2013. (From left) Ombudsman Petri Jääskeläinen, Deputy-Ombudsman Maija Sakslin, Substitute for a Deputy-Ombudsman Pasi Pölönen, Secretary General Päivi Romanov and Deputy-Ombudsman Jussi Pajuoja.

In 2012 Ombudsman Jääskeläinen dealt with cases involving questions of principle, the Council of State (i.e. Government) and other of the highest organs of state. In addition, his oversight included matters relating to courts and administration of justice, the prison service, health care and language. The matters for which Deputy-Ombudsman Pajuoja was responsible included police, the prosecution service and the Defence Forces, education, science and culture as well as labour affairs and unemployment security. Deputy-Ombudsman Sakslin dealt with matters pertaining to, for example, social welfare, children's rights, regional and local government as well as distraint and foreigners. A detailed division of labour is shown in Annex 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. When the Parliamentary Ombudsman Act was amended, the changes included one affecting the provision concerning a substitute for a Deputy-Ombudsman to the effect that the Ombudsman can invite a substitute for a Deputy-Ombudsman to perform his or her tasks on a basis of real need irrespective of whether the impediment to the Deputy-Ombudsman performing his or her duties is a long- or short-term one. Principal Legal Adviser Pasi Pölönen served as Substitute Deputy-Ombudsman for a total of 48 working days in 2012.

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

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

In conjunction with a revision of the fundamental rights provisions of the Constitution in 1995, the Ombudsman was given the task of overseeing implementation of fundamental and human rights. This changed the perspective from that of the obligations which the authorities must meet to that of implementing people's rights. Since the constitutional provisions were revised, fundamental and human rights have come up in nearly all of the cases referred to the Ombudsman. Evaluation of implementation of fundamental

rights means weighing against each other principles that tend in different directions and paying attention to aspects that promote implementation of fundamental rights. In his evaluations, the Ombudsman stresses the importance of a legal interpretation that is amenable to fundamental rights.

The tasks statutorily assigned to the Ombudsman provide a foundation also for determining what kinds of values and objectives can be set for both oversight of legality and the work of the Office in other respects as well. The values of the Office of the Parliamentary Ombudsman were confirmed in 2009. The key values that guide the Office of the Parliamentary Ombudsman have been examined from the perspectives of clients, authorities, the Eduskunta, the personnel and management. The values and objectives of the Office are summed up on the following page.

2.1.3 MODES OF ACTIVITY AND AREAS OF EMPHASIS

Investigating complaints is the Ombudsman's central task and activity. Under a legislative amendment that entered into force in 2011, the Ombudsman investigates those complaints that are within the scope of his oversight of legality and with respect to which there is reason to suspect an unlawful action or neglect of duty or if he takes the view that this is warranted for any other reason. Arising from a complaint made to him, the Ombudsman takes the measures that he deems warranted from the perspective of compliance with the law, protection under the law or implementation of fundamental and human rights. In addition to matters specified in complaints, the Ombudsman can also choose on his or her own initiative to investigate shortcomings that manifest themselves.

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

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

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

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

An emphasis on fundamental rights is reflected also otherwise in determining the thrust of the Ombudsman's activities. In addition to overseeing observance of fundamental and human rights, his duties also include actively promoting them. In connection with this, the Ombudsman has discussions with various bodies that include the main NGOs. On inspections and when investigating matters on his own initiative he takes up questions that are sensitive from the perspective of fundamental rights and have a broader signi-

The values and objectives of the Office of the Parliamentary Ombudsman

Values

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

Objectives

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

Tasks

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

Emphases

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

Operating principles

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

Operating principles in especially complaint cases

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

The importance of achieving objectives

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

ficance than individual cases. The special theme in oversight of fundamental and human rights in 2012 was equal status and equality. The content of the theme is outlined in Sub-Chapter 3.4 dealing with fundamental and human rights.

2.1.4 AFTER THE LEGISLATIVE AMENDMENT

Working methods and their effectiveness continued to be developed in the Office of the Parliamentary Ombudsman in 2012, in the way that the legislative amendment that entered into force on 1.6.2011 requires. The objective with the legislative amendment was to increase the efficiency of oversight of legality. It gave the Ombudsman a wider range of operational alternatives and greater discretionary powers. The citizen perspective was also emphasised and the period within which complaints can be made was reduced from five years to two. The aim is to help the complainant, if possible, by for example recommending that an error that has been made be rectified. In his comment piece in the beginning of the 2011 annual report, Ombudsman Jääskeläinen dealt in greater detail with the question of whether and in what way the Ombudsman can help a person who has made a complaint.

The provisions of the Parliamentary Ombudsman Act relating to the Human Rights Centre and the Human Rights Delegation entered into force on 1.1.2012. The Director of the Human Rights Centre, whom the Ombudsman had appointed on 21.12.2011 after he had been informed of the Constitutional Law Committee's opinion, took up her position on 1.3.2012, which is the date on which the actual work of the Centre can be regarded as having begun. The Centre's two experts, whose posts had been created in December 2011, were appointed on 30.3.2012. One of them began work on 3.5 and the other on 14.5.2012.

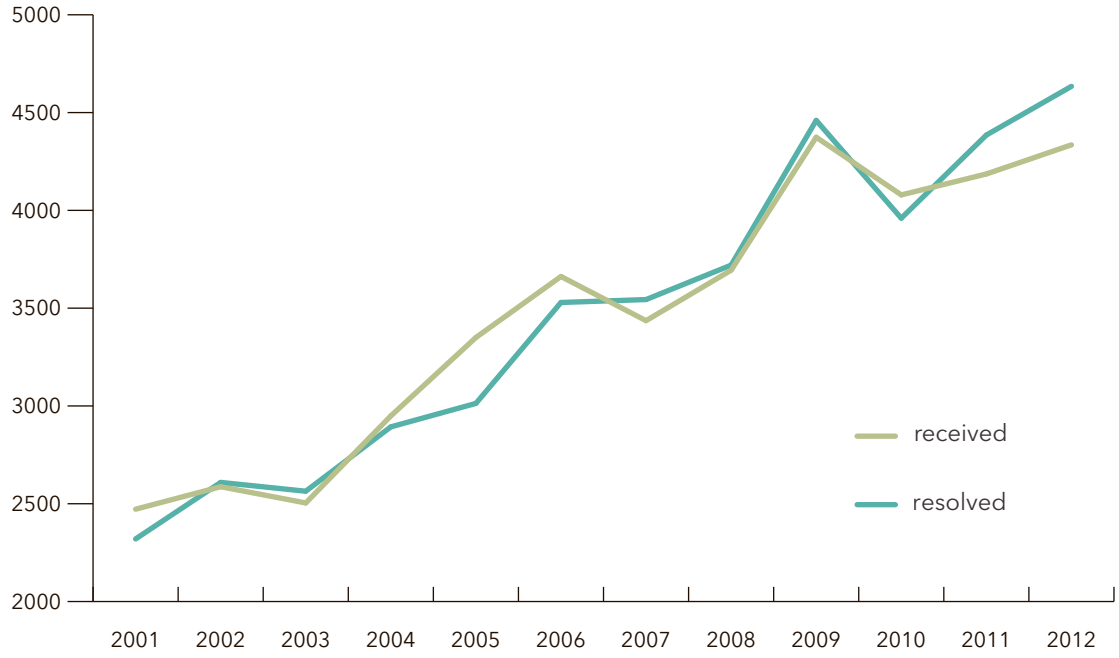
On 20.12.2012, after a long period of drafting, the Ministry for Foreign Affairs submitted to the Eduskunta a Government Bill (HE 182/2012) to accept the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as well as to enact legislation to bring those provisions of the Protocol that belong to the sphere of legislation into force and apply the Protocol. The Government Bill also includes a proposal that the Parliamentary Ombudsman Act be amended and the Ombudsman appointed as the national oversight body that the Protocol requires. By means of the Protocol, a system will be created within the framework of which independent international and national oversight bodies will regularly inspect places where persons who have been deprived of their liberty are kept. The Protocol obliges the States Party to the Convention to establish or appoint one or several independent national oversight bodies or to continue to maintain them. The Eduskunta adopted the legislative proposals on 5.4.2013.

2.1.5 COMPLAINTS AND OTHER OVERSIGHT OF LEGALITY MATTERS

The number of complaints received in 2012 was 4,335 or about 150 more than in the previous year. The number of complaints resolved during the year was 4,634, representing an increase of about 250 on the previous year and about 300 more than the number that were set in train.

The number of complaints arriving by post or telefaxed or delivered personally has been declining in recent years and, correspondingly, the number received via e-mail has substantially increased. The vast majority, slightly under 60%, of complaints arrived electronically in 2012.

Complaints that have reached the Ombudsman are recorded in their own subject category (category 4) in the register of the Office of the Parliamentary Ombudsman. Within about a week, the complainant is informed by letter that the complaint has been received. A notification that a complaint has arrived by e-mail is sent immediately.



Complaints received and resolved in 2001–2012

Some complaints are dealt with through an *accelerated procedure*. 838 complaints, or just over 19% of the grand total, were dealt with this way in 2012. The purpose in dealing with complaints through the accelerated procedure is to ensure already at the reception stage that those matters recorded as complaints that do not require closer examination are preliminarily separated. The accelerated procedure is suitable in especially cases where there is manifestly no ground to suspect an error, the time limit has been exceeded, the matter is not within the Ombudsman's remit, the complaint is non-specific, the matter is pending elsewhere or what is involved is a repeat complaint in which no ground for a re-appraisal of the decision in the earlier complaint is evident. A notification letter about complaints that are being dealt with through the accelerated procedure is not sent to the complainant. If it emerges that a complaint

■ received ■ resolved	2011	2012
Complaints	4 147 4 385	4 302 4 634
Transferred from the Chancellor of Justice	38	33
Taken up on own initiative	82 64	74 61
Requests for submissions and attendances at hearing	37 42	51 52
Other written communications	239 237	263 255
Total	4 543 4 728	4 723 5 002

Oversight-of-legality matters received and resolved in 2011–2012

Average time taken to deal with complaints in 2001–2012

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

Letters of an enquiry nature received from citizens, clearly unfounded communications or those that concern matters that are not within the Ombudsman's remit or are non-specific in their contents as well as unanimous letters are not dealt with as complaints; instead, they are recorded in their own category of matters (Category 6, *other communications*). However, they are counted as oversight of legality matters and forwarded from the Registry to the Substitute Deputy-Ombudsman or the Secretary General, who distributes them to the notaries and inspectors. The person who has sent a letter of also this kind receives a reply, and reply concepts for this category of matters are examined by the Substitute Deputy-Ombudsman or the Secretary General. In 2012 there were 263 communications belonging to this register category.

Letters that are received *for information only* are likewise recorded, but not replied to. However, the Substitute Deputy-Ombudsman or the Secretary General examines them. Contacts that are made using the feedback form on the web site are dealt with in accordance with these principles. In 2012 a total of 1,018 written communications that had arrived for information were received.

81% of all the complaints that arrived in 2012 related to the ten biggest categories of matters. The numerical data for the ten biggest categories are shown in Annex 3.

A total of 61 matters were investigated on the Ombudsman's own initiative in 2012. Of these, 48, or 78%, led to measures by the Ombudsman.

The Office of the Parliamentary Ombudsman has set itself the goal of ensuring that all complaints are dealt with within a maximum of one year. The goal has been gradually approached in the course of recent years. Since 2008, not a single complaint that has been pending for longer than two years has been transferred to the following year at year's end. As 2012 was ending, 77 com-

plaints that had been pending for longer than a year and a half and 133 that had been pending for over a year were transferred to the following year. The number in the latter category was halved compared with the previous year.

The average time taken to deal with complaints was 5.4 months at the end of the year, whereas it had been 6 months at the end of 2011.

2.1.6 MEASURES

The most important decisions in the Ombudsman's work are those that lead to him taking measures. The measures are a prosecution for breach of official duty, a reprimand, the expression of an opinion or a proposal. A matter can also lead to some other measure on the part of the Ombudsman, such as ordering a pre-trial investigation or bringing an earlier expression of opinion by the Ombudsman to the attention of an authority. In addition, a matter may be rectified while it is under investigation.

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

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

Decisions and own initiatives that led to measures totalled 882 in 2012, which represented nearly 19% of all decisions. Complaints and own initiatives were investigated fully, i.e. by obtaining at least one report and/or statement in the matter, in 1,409 cases, or 30% of all cases. About 53% of these cases led to measures by the Ombudsman (see the graph on the following page).

In about 43% of cases, i.e. around 2,000, there was either no ground to suspect erroneous or unlawful behaviour or there was no reason for the Ombudsman to take measures. No erroneous action was identified in 461 cases, i.e. nearly 10%. The complaint was not investigated in about 29% of cases (1,340).

The most common reason for a complaint not being investigated was the fact that the matter was still pending in a competent authority. An overseer of legality does not usually intervene in a matter that is being dealt with in an appeal instance or other authority. Matters pending before other authorities that were not investigated represented slightly over 13% of cases (620) in which decisions were issued. In addition, matters that do not fall within the Ombudsman's remit and, as a general rule, those over two years old were not investigated.

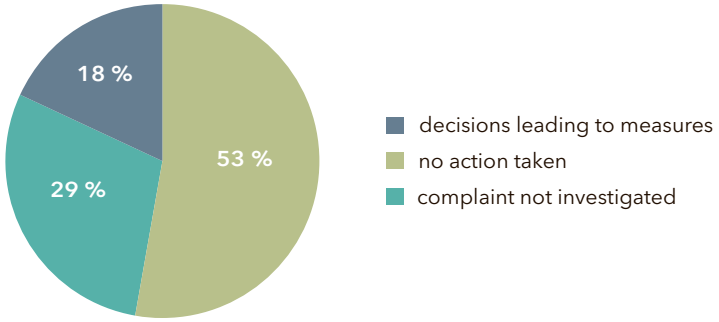
If complaints that were not investigated are excluded from the examination, the share of all investigated complaints which led to measures was slightly under 27%.

No prosecutions for breach of official duty were ordered during the year under review. 41 reprimands were issued and 698 opinions expressed. Rectifications were made in 43 cases in the course of their investigation. Decisions categorisable as proposals totalled 34, although stances on development of administration that in their nature constituted a proposal were included in also other decisions. Other measures were recorded in 66 cases. In actual fact, the number of other measures is greater than the figure shown above, because only one measure is recorded in each case, although sometimes several have been taken.

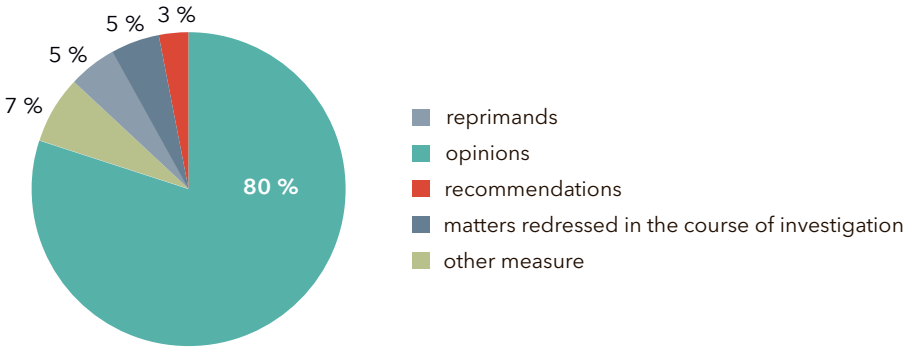
During the year under review, the Ombudsman considered charges in a case concerning

MEASURES TAKEN BY PUBLIC AUTHORITIES		Measure							Total number of decisions	Percentages*
		Prosecution	Reprimand	Opinion	Recommendation	Rectification	Other measure	Total		
Public authority	Social security		9	226		6		241	1 001	24,0
	- social welfare		8	162		4		174	663	
	- social insurance		1	64		2		67	338	
	Health care		19	83	9	2	15	128	529	24,2
	Prisons		5	64	12	3	22	106	380	27,9
	Police		1	74	1	2	5	83	730	11,4
	Labour administration			42			1	43	189	22,8
	Education			27		11		38	197	19,3
	Environment			30		1		31	166	18,7
	Local government		4	19	1	2	3	29	170	17,1
	Distraint		1	24		2	1	28	146	19,2
	Asylum and immigration			24		1		25	81	30,9
	Transport and communications			12	2	6	3	23	109	21,1
	Other subjects of oversight		1	10	1	4	6	22	156	14,1
	Defence			14		1		15	59	25,4
	Courts			11	1		2	14	265	5,3
	- civil and criminal			7	1		1	9	239	
	- special									
	- administrative			4			1	5	26	
	Guardianship			9	2		2	13	97	13,4
	Agriculture and forestry			12				12	90	13,3
	Customs			7	2		2	11	30	36,7
	Taxation			3	2		2	7	66	10,6
	Public legal counsels		1	3			1	5	42	11,9
	Prosecutors			3		1		4	81	4,9
	Church			1		1		2	19	10,5
	Highest organs of state				1		1	2	75	2,7
	Private parties not subject to oversight								17	
	Total		41	698	34	43	66	882	4 695	18,8

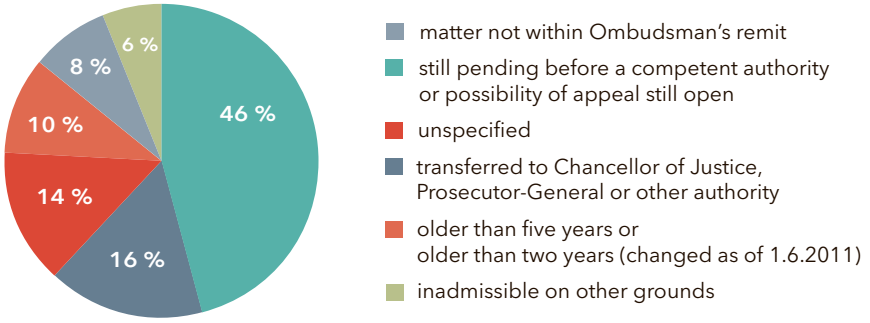
* Percentage share of measures in decisions on complaints in a category of cases and measures investigated on own initiative



All cases resolved in 2012



Decisions involving measures in 2012



Complaints not investigated in 2012

the death of a prisoner, in which he had earlier ordered a criminal investigation. There were grounds for suspicion in the case that one or several of the officials responsible for monitoring prisoners and for their health care had been in breach of their official duty or of gross negligence occasioning harm. The Ombudsman concluded after the criminal investigation that there was not sufficient evidence in the case of breach of official duty and decided not to lay charges. However, he deemed it appropriate to draft a report on the observations he had made as an overseer of legality and make a general assessment of procedures by means of which suicides in prison could be prevented.

2.1.7 INSPECTIONS

Inspection visits to 147 places were made during the year under review. That was nearly 30 more than in the previous year (118). A list of all inspections is shown in Annex 4.

Just under two-thirds of the inspections were conducted under the leadership of the Ombudsman or the Deputy-Ombudsmen and the remainder by legal advisers. Six unannounced visits were made to prisons and 10 to police detention facilities.

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

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

2.1.8 COOPERATION IN FINLAND AND INTERNATIONALLY

Events in Finland

The Parliamentary Ombudsman's annual report for 2011 was presented to the Speaker of the Eduskunta on 8.6.2012.

Numerous groups from Finland visited the Office of the Parliamentary Ombudsman and discussions with them focused on topical matters and the Ombudsman's activities. Speaker of the Eduskunta Eero Heinäluoma as well as First Deputy-Speaker Pekka Ravi and Second Deputy-Speaker Anssi Joutsenlahti visited the Office on 14.3. Representatives of the Constitutional Law Committee visited on 16.3 and representatives of the Legal Committee on 21.3.

Negotiations on cooperation with Ombudsman for Children Maria Kaisa Aula took place in the Office on 24.1.

Representatives of the National Police Board visited the Office on two occasions during the year, on 21.9 and 1.11. The theme for the first visit was police detention facilities and the visitors were from the National Police Board's monitoring and emergency unit. The theme for the second visit was oversight of legality and the visitors were from the National Police Board's oversight of legality unit. A police crime team from the Office of the Prosecutor General visited the Office on 22.5 and the police command echelon from the Åland Provincial Assembly paid a visit on 20.11.

Representatives of Amnesty International visited the Office on 2.10.

The Ombudsman, the Deputy-Ombudsmen and members of the Office staff paid visits to familiarise themselves with the activities of other authorities, made presentations and participated during the year in numerous formal hearings and other events. In addition, legal advisers from the office made presentations at numerous different events, seminars and theme days.

Kenyan Ombudsman Mr. Otiende Amollo (right) visited Finland in March and, with his accompanying party, spent two days familiarising himself with the Ombudsman's work. In the picture are (from left) Deputy-Ombudsman Maija Sakslin, Head of Secretariat Mr. Leonard Ngaluma, Director Mr. Vincent Chahale, Ombudsman Ms. Regina Mwatha and Ombudsman Ms. Saadia Mohamed.

International contacts

Several foreign visitors and delegations were received at the Office of the Parliamentary Ombudsman during the year. The Kenyan Ombudsman Mr. Paul Otiende Muya Amollo and his accompanying party acquainted themselves with the Ombudsman's work and the activities of the Office on 19–20.3 and met, among others, Ombudsman Jääskeläinen as well as both Deputy-Ombudsmen. The Council of Europe Commissioner for Human Rights Mr. Nils Muižnieks visited the Office on 11.6.

Latvian Ombudsman Juris Jansons and officials from his office visited on 25–27.9. The group participated together with Ombudsman Jääskeläinen and personnel from the Office in inspection visits to Hämeenlinna Prison, Vanaja Prison, the Hämeenlinna Prison Hospital and Kellokoski Hospital. Four legal advisers, who specialise in children's rights, from the Office of the Chancellor of Justice in Estonia took part in an inspection visit to the City of Helsinki's Outamo student home and school on 6.9.2012. Officials from the NPM (National Preventive Mechanism) unit of the Office of the Ombudsman in Sweden also visited the Office; the NPM was established under the aegis of the Office of the Ombudsman after the Ombudsman had been appointed as the national oversight body that the Optional Protocol to the Convention against Torture (OPCAT) requires. In reciprocation, officials from the Office of the Par-

liamentary Ombudsman visited the NPM unit in Sweden and one official participated in an inspection visit to a children's home in Estonia that the Ombudsman for Children there had ordered.

European Ombudsman Nikoforos Diamandouros met Ombudsman Jääskeläinen as well as Deputy-Ombudsman Pajuoja and Deputy-Ombudsman Sakslin during his visit to Finland on 5.10. Ombudsman Jääskeläinen and the Director of the Human Rights Centre, Sirpa Rautio, met the International Criminal Court's new chief prosecutor Ms. Fatou Bensouda on 28.11.

The Office also received visits by parliamentarians and delegations of officials from countries including Bhutan and Afghanistan. A delegation, led by its chairperson Mr. Salar Mahmood, from the parliament of Kurdistan in Iraq visited the Office on 13.11.

On 5.3, as part of a conference of Central Asian ombudsmen held in Helsinki and arranged by the Ministry for Foreign Affairs, the Office of the Parliamentary Ombudsman hosted a seminar in which the participants included ombudsmen or equivalent actors from the five Central Asian countries. The conference was a part of the Central Asian legal sector project "Equal before the law: Access to justice" launched in summer 2011. It featured presentations dealing with the Finnish ombudsman system and the work of the Office of the Parliamentary Ombudsman. One of the aims was also to use the seminar as a means of creating trusting relations between ombudsmen from the countries represented there. The speakers at the seminar included the former President of the Supreme Administrative Court, Pekka Hallberg, and the Deputy-Chair of the Venice Commission, Professor Kaarlo Tuori.

An international meeting of ombudsmen from the Baltic States and the Nordic countries was held in Riga on 19–20.6.2012. The themes were hate speech, covert coercive measures and prisoners' rights. In the picture are (from left) Latvian Ombudsman Juris Jansons, Ombudsman Petri Jääskeläinen, Lithuanian Ombudsman Romas Valentukevičius and Swedish Ombudsman Elisabet Fura.

The role of the Ombudsman in the 21st century was examined at the 10th International Ombudsman Institution's world conference in Wellington, New Zealand. The IOI President and New Zealand Ombudsman Dame Beverley Wakem greeted the participants in Parliament House, with IOI Secretary General Peter Kostelka beside her.

The biennial meeting of ombudsmen from the Nordic countries was held in the Faeroe Islands on 22–25.5. It was attended by Ombudsman Jääskeläinen, Deputy-Ombudsman Pajuoja, Deputy-Ombudsman Sakslin as well as Senior Legal Adviser Håkan Stoor.

Deputy-Ombudsman Maija Sakslin was elected as chair of the Management Board of the European Union Agency for Fundamental Rights (FRA) on 27.9.2012. She attended meetings of FRA bodies on 24.2, 14–16.5 and 25–28.9. She has been a member of the Management Board since 2010. On 17–21.6 she was also a member of the Finnish delegation at the world conference "Justice, Governance, and Law for Environmental Sustainability" in Rio de Janeiro.

Ombudsman Jääskeläinen and Principal Legal Adviser Pasi Pölönen attended a meeting of Baltic States ombudsmen in Riga on 18-20.6.

President Emomali Rahmon of Tajikistan and the country's Ombudsman Zarif Alizoda met Ombudsman Jääskeläinen in the Eduskunta on 24.10 during their visit to Finland. Ombudsman Jääskeläinen also attended a luncheon arranged in the Presidential Palace in honour of the visit.

Ombudsman Jääskeläinen attended the celebrations marking the 50th anniversary of the Norwegian ombudsman institution in Oslo on 30–31.10. In honour of the occasion, he presented a Finnish Ombudsman sculpture to the Norwegian ombudsman institution.

The world conference of the International Ombudsman Institution was arranged in Wellington, New Zealand on 9–19.11. Ombudsman Jääskeläinen and Secretary General Päivi Romanov attended. The theme of the conference was "Speaking Truth to Power. The role of the Ombudsman in the 21st Century." The event was also the 50th anniversary of the New Zealand ombudsman institution, in honour of which Ombudsman Jääskeläinen presented it with the Finnish Ombudsman sculpture. The previous world conference took place in Stockholm in 2009.

The Parliamentary Ombudsman belongs to the European Ombudsmen Network, the members of which exchange information on EU legislation and good practices at seminars and other gatherings as well as through a regular newsletter, an electronic discussion forum and daily electronic news services. Seminars intended for ombudsmen are arranged every other year by the European Ombudsman together with a national or regional colleague. The liaison persons, who serve as the network's nodal points on the national level, meet in Strasbourg every other year. Principal Legal Adviser Riitta Länsisyrjä attended a meeting of the network's liaison persons on 25–26.6.

Senior Legal Adviser Jari Pirjola was chosen as Finland's representative on the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment for a four-year term from December 2011. The Committee oversees the rights and treatment of persons who have been deprived of their freedom in the Council of Europe member states and strives to improve protection of these persons by visiting closed institutions, such as prisons, police stations and psychiatric hospitals. Pirjola participated in the Committee's inspection trips four times during the year.

Officials from the Office also participated in seminars and other conferences abroad.

2.1.9 SERVICE FUNCTIONS

Services to clients

The Office of the Parliamentary Ombudsman has tried to make it as easy as possible to turn to the Ombudsman. There is a brochure, which contains a complaint form, outlining the Ombudsman's tasks and how to make a complaint. A complaint can be sent by post, email, fax or by filling in the electronic complaint form on our web site. The Office provides clients with services by phone, on its own premises or by email.

Two lawyers at the Office are tasked with advising members of the public on how to make a complaint. They dealt with some 2,000 telephone calls last year and about 130 people visited the Office in person.

The Registry at the Office receives complaints and replies to enquiries about them, in addition to responding to requests for documents. Last year, the Registry received about 2,900 telephone calls. There were around 240 personal visits by clients and around 240 requests for documents. The archives of the Office mainly provide researchers with services.

Communications

The media are informed of those decisions by the Ombudsman that are deemed to be of special general interest. 40 bulletins outlining decisions made by the Ombudsman or a Deputy-Ombudsman were issued in 2012 and a brief so-called network tip in 20 cases. The bulletins are also posted on the Internet in Finnish, Swedish and English.

In addition, decisions of considerable legal significance or special general interest are posted on the Internet. 238 of them were posted during the year. Publications, such as annual reports, are likewise posted on the Ombudsman's web site.

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

2.1.10 THE OFFICE AND ITS PERSONNEL

The Office of the Parliamentary Ombudsman, which the Ombudsman heads, is there to do the preparatory work on cases to be decided by him and to assist him in his other duties as well as to perform tasks that are the responsibility of the Human Rights Centre.

The Office comprises four sections, with the Ombudsman and the two Deputy-Ombudsmen each heading a section of their own. The administrative section, which is headed by the Secretary General, is responsible for general administration. The Human Rights Centre, which works under the aegis of the Office, is headed by the Director of the Human Rights Centre.

The regular staff totalled 60 at the end of 2012. The number of posts increased by three compared with the previous year when the three new ones in the Human Rights Centre were created. The new posts were created with effect from 1.1.2012.

There was one vacant post in the Office in 2012. From summer 2012 onwards, the tasks of one principal legal adviser and the archivist were handled by rearranging duties since the actual holders of the posts in question were to retire at the end of their annual leave.

In addition to the Ombudsman and the Deputy-Ombudsmen, the regular staff of the Office comprised the Secretary General, 10 principal legal advisers, 8 senior legal advisers and 11 legal advisers and 2 lawyers with advisory functions. There were also an information officer/an online information officer, 2 investigating officers, 4 notaries, a records clerk, a filing clerk, an assistant filing clerk, 3 departmental secretaries and 7 office secretaries. In addition, a total of four other persons worked in the Office for all or part of the year on fixed-term appointments. A list of the personnel is shown in Annex 5.

In accordance with its rules of procedure, the Office has a Management Group comprising, in addition to the Ombudsman, the Deputy-Ombudsmen, the Secretary General and three representatives of the personnel. Discussed at meetings of the Management Group are matters relating to personnel policy and the development of the Office. The Management Group met 8 times in 2012. A cooperation meeting for the entire staff of the Office was held on three occasions in 2012.

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

2.1.11 THE FINANCES OF THE OFFICE

To finance the activities of the Office, it is given a budget appropriation each year. Rents, security services and a part of the costs of information management are paid by the Eduskunta and these expense items are not included in the Ombudsman's annual budget. The operational appropriation for the Human Rights Centre in 2012 is included in the sum allocated for the Office of the Parliamentary Ombudsman, because it was the Centre's first year of operation.

The Office was given an appropriation of €5,894,000 for 2012. When the Human Rights Centre's salary costs and other operational expenses for the year are deducted from this total, the Ombudsman's share of the appropriation is €5,634,000. Of this total, €5,493,373 was spent in 2012.

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, 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 discharge of his duties, the Ombudsman monitors the implementation of fundamental and human rights. Section 10 of the Parliamentary Ombudsman Act states that the Ombudsman can, among other things, draw the attention of a subject of oversight to the requirements of good administration or to considerations of promoting fundamental and human rights (for a more detailed treatment of this matter, see Ombudsman Jääskeläinen's opinion piece in the beginning of this annual report, section 1).

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, with special attention 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 emphasis in the Ombudman'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 funda-

mental and human rights is deliberated specifically in hundreds of decisions and in principle in every case.

Now the section deals with, in addition to the Ombudsman's fundamental and human rights mandate, the Human Rights Centre and its work (3.2), shortcomings and improvements in implementation of fundamental and human rights as well as recommendations by the Ombudsman that recompense be made (3.3), the Ombudsman's observations relating to the fundamental and human rights theme chosen for 2012 (3.4) and decisions of the European Court of Human Rights concerning Finland (3.5). The section ends with an extensive review, systematised by fundamental right, of the Ombudsman's observations and stances that are based on complaints on which decisions were issued during the year under review as well as on investigations conducted on the Ombudsman's own initiative and information that came to light in the course of inspection visits (3.6).

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
Human Rights Centre

The idea of establishing a national human rights institution first arose in Finland as long ago as the beginning of the present century. Groups and various other instances dealing with fundamental and human rights pointed out in various conjunctions that our system was fragmented, lacked coordination and that the resources available for promoting these rights were scant. Recommendations that a human rights institution in accordance with the UN's Paris Principles be established were also received from various international bodies.

The Human Rights Centre was established in connection with the Office of the Parliamentary Ombudsman through legislation that entered into force on 1.1.2012. It is administratively part of the Office, but operationally autonomous and independent. The Ombudsman appoints the Director of the Centre for a four-year term, having first obtained a submission from the Constitutional Law Committee. The Centre has a 40-member Human Rights Delegation, which the Ombudsman appoints for four-year terms after having heard the views of the Director of the Centre. The Director of the Centre chairs the Delegation.

The Ombudsman, the Human Rights Centre and the Human Rights Delegation together constitute Finland's national human rights institution.

3.2.1
TASKS OF THE HUMAN RIGHTS CENTRE

- Promoting information, education, training and research associated with fundamental and human rights.
- Drafting reports on implementation of fundamental and human rights.
- Presenting initiatives and issuing statements in order to promote and implement fundamental and human rights.
- Participating in European and international cooperation associated with promoting and safeguarding fundamental and human rights.
- Taking care of other comparable tasks associated with promoting and implementing fundamental and human rights.
- The Centre does not handle complaints or deal with other individual cases that belong to the remits of the supreme overseers of legality.

3.2.2
COMMENCEMENT OF THE HUMAN RIGHTS CENTRE'S WORK

The Human Rights Centre began its work on 1.3.2012 when its Director, Sirpa Rautio, assumed her position. The Human Rights Delegation met for the first time in April 2012.

The Human Rights Centre's statutory tasks are extensive and its personnel resources smaller than the Ministry of Justice working group that studied its establishment had recommended. In addition to the Director, the Centre has posts for two experts. One of the key domestic objectives when the Centre was established was that of improving cooperation and flows of information between various actors in the field of fundamental and human rights. The concentration during the first year of operation has been on publicising the Human Rights Centre and its work as well as getting the work of the Human Rights Delegation under way. Education, training and information in relation to human rights are the areas of emphasis in the work that the centre is doing in the initial stage.

The Human Rights Delegation approves the Centre's annual operational plan and annual report and in this way guides and supports the Centre's operations. The Human Rights Delegation acts as

a collaborative body for the sector and helps intensify flows of information between various actors. The Human Rights Delegation also deals with fundamental and human rights questions that are of far-ranging import and important in principle.

The term of the present Delegation is from 1.4.2012 to 31.3.2016. It is chaired by the Director of the Human Rights Centre and its deputy-chair is one of its members, Pentti Arajärvi. The permeating theme chosen for the Delegation's full term was implementation of human rights on the practical level, i.e. Access to rights.

The aim in choosing the composition of the Human Rights Delegation was to achieve a broad palette of expertise and representativeness as well as an open selection process in the appointment procedure. The members of the Delegation, who are legally protected from dismissal, have been chosen on the basis of their personal expertise from, among others, persons nominated by organisations, research institutions, advisory boards and other bodies in the sector of fundamental and human rights. Special Ombudsmen and the Sámi Parliament are, by virtue of the relevant legislation, permanently represented in the Delegation.

3.2.3 THEMATIC PROJECTS: HUMAN RIGHTS EDUCATION AND TRAINING AND CORPORATE RESPONSIBILITY FOR HUMAN RIGHTS

Information, education, training and research pertaining to human rights as well as promoting cooperation relating to these matters are among the Human Rights Centre's statutory tasks.

Immediately after it had begun its work, the Centre launched an exploration of implementation of human rights education and training in Finland. This will be completed in summer 2013 and will comprehensively cover the Finnish education system. Based on the results of the survey, the Centre will recommend measures to systematically develop human rights training in Finland and also plan its own activities as a promoter of fundamental and human rights in the sector of education and training.

It had become evident already during the first year of operation that there is much demand for high-quality human rights education and training in Finland, but rather little is available. Persons from the Centre attended numerous events to provide training in and talk about fundamental and human rights in the course of 2012.

Another theme on which the Centre concentrated during the early phase of its work was the responsibility that companies bear for human rights. In autumn 2012 it began having meetings with key linkage groups in the sector. It also commented on the renewal of the Government's decision-in-principle on social responsibility in November 2012 and there was a presentation on the theme to the Human Rights Delegation in December 2012.

A decision was made in autumn 2012 to produce a publication dealing with this theme in 2013. It will be designed to meet the needs of Finland, because up-to-date information on this theme is not available in our national languages. The intention with the publication is to outline the UN principles concerning corporate activity and human rights and present other initiatives, documents and actors associated with the theme.

3.2.4 INTERNATIONAL COOPERATION: A STATUS AS THE AIM WITH UN

The Human Rights Centre's statutory tasks include also participation in European and international cooperation that is associated with promoting and safeguarding fundamental and human rights. The Ombudsman retains the international links that are connected with his tasks.

Cooperation was activated during the first year with the office of the UN High Commissioner for Human Rights, the Organisation for Security and Cooperation in Europe, the Council of Europe and the European Union Agency for Fundamental Rights. In November 2012 the Human Rights

Centre together with the Ministry for Foreign Affairs' Advisory Board for International Human Rights Affairs arranged a seminar, which was attended by over 150 people, to deliberate the recommendations in the report made by the Council of Europe Commissioner for Human Rights following his visit to Finland in June 2012.

The Human Rights Centre has networked with national human rights institutions in other countries and participated in especially cooperation and activities between European human rights institutions. It has also been in contact with the UN International Coordinating Committee of National Human Rights Institutions (ICC) and participated in November 2012 in the biennial international conference of national human rights institutions, which was held in Amman, Jordan. The Centre also paid a visit to Geneva in July 2012 to see the ICC secretariat and UN representatives, who were told about Finland's new human rights institution and its activities.

ICC accreditation for the Finnish national human rights institution will be applied for in 2013. The goal is to obtain A status, which is granted to those institutions that fully meet the criteria set forth in the UN Paris Principles. A status brings with it the right to participate and speak in *inter alia* the UN Human Rights Council.

3.2.5 EXPERIENCES IN THE FIRST YEAR

Already the experiences of the first year have shown that the Ombudsman, the Human Rights Centre and the Human Rights Delegation support and complement each other's work in promoting and safeguarding fundamental and human rights in Finland. Cooperation has gotten off to a promising start. In June 2012 the forms of cooperation were enshrined in the new Rules of Procedure of the Office of the Parliamentary Ombudsman and the opportunity to assign tasks between the Ombudsman and the Human Rights Centre was also provided for.

In the field of promoting fundamental and human rights, the work of the Human Rights Centre and the Human Rights Delegation broadens and diversifies the work that the Ombudsman is doing within the framework of his own activities to promote these rights. In addition to promotion, general monitoring of implementation of these rights and systematic development of monitoring are natural tasks for the Centre and its Delegation.

A joint strategy for the Finnish national human rights institution will be drafted in 2013 and this will add further clarity to the synergetic benefits of the model that has been adopted in Finland in safeguarding and promoting fundamental and human rights.

The Finnish national human rights institution is, to the best of our knowledge, the first of its kind in the world where its composition is concerned. Indeed, it has prompted quite a lot of attention in international contexts. In the final analysis, the Human Rights Centre – like the entire Finnish national human rights institution - must suit the national context and demonstrate its usefulness as an effective promoter and safeguarder of fundamental and human rights in Finland.

3.3 Shortcomings and improvements in implementation of fundamental and human rights

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

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

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

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

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

3.3.1 DEVELOPMENT HAS NOT ALWAYS BEEN ENOUGH

International conventions

Ratification of international human rights conventions has not made sufficiently rapid progress in all respects. Examples include the 1989 ILO Convention no. 169 on the rights of indigenous peoples and the UN Convention on the Rights of Persons with Disabilities (signed by Finland on 30.3.2007). Ratification of these conventions has

been delayed, something that, in addition to causing problems with full implementation of human rights, is unsatisfactory when the matter is looked at from an international perspective.

Treatment of persons who have been deprived of their liberty

For years, both the Ombudsman and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have expressed criticism of the so-called slopping-out cells still being used to accommodate inmates in Finnish prisons as violating human dignity. The cell modernisation timetable has been put back from time to time and, despite a partly positive development, the number of slopping-out cells was 198 at year end (222 in 2011 and 338 in 2009).

During the year under review, as also in earlier years, it was found that some inmates have to spend as much as 23 hours a day in their cells. In practice, their only activity outside the cell can be the opportunity that they have each day for one hour of outdoor exercise. The reasons for this situation can be the nature of the prison wing, prisoners' fear of other inmates, unwillingness to participate in activities or the prison's inadequate opportunities to arrange activities for inmates outside their cells. Circumstances of this kind can not be considered acceptable. According to the CPT, for example, the time that prisoners spend outside their cells should be 8 hours or more.

There is a high level of overcrowding in some prisons. So many inmates have had to be accommodated in the same cell that the minimum requirements that international standards set for housing conditions are not met.

The Ombudsman has made over thirty (three during the year under review) recommendations concerning revision of the prison legislation that entered into force in 2006. The Ministry of Justice has appointed a working group to review legislation, but a revision package has been delayed, for which reason the shortcomings and inclarities observed have not been eliminated. In some case this has led to an unlawful circumstance or practice continuing.

Despite strict and precise regulation under the Act, appropriate attention is not paid in prisons to inspecting prisoners' correspondence. During the year under review, again, several cases of interference with correspondence between a prisoner and his legal representative or a prisoner and an oversight authority, such as by opening a letter, came to light. The Ombudsman has issued several reprimands for inappropriate actions of this kind.

According to international prison standards, crime suspects should be kept in remand prisons rather than police detention facilities, where conditions are suitable only for short stays and with which the danger of remand prisoners being put under pressure is associated. Excessive use of police prisons to house remand prisoners is a matter that both the Ombudsman and the CPT have been drawing attention to for years, but the problem does not seem to be going away. During the 2008 periodic visit, the CPT stressed that it is not acceptable that in over 16 years no significant progress has been made in this matter.

Numerous *de facto* coercive measures, which restrict the freedom of the person being cared for without their being statutorily provided for or even being thought of as coercive measures, manifest themselves in health care, care of the aged and care of the mentally handicapped. The Ombudsman has repeatedly highlighted these procedures, which are problematic in the light of, *inter alia*, personal liberty and bodily integrity. At the moment, for example, there is no legislation as required by the Constitution that would confer a right to intervene in an aged person's right of self-determination. In practical care situations, however, the personnel have to resort to measures for which they have no authorisation based on legislation.

The Ministry of Social Affairs and Health has appointed a working group to study the right of self-determination of social welfare and health clients. It was supposed to have completed its work

in autumn 2012, but has now been given extra time until 31.12.2013. The objective is to bring about legislation by means of which the above-mentioned shortcoming could be redressed.

Courts

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

Shortcomings in the security arrangements at several courts are continually noted in the protocols of inspections conducted by courts of appeal. Despite recommendations made in negotiations about results, the appropriations needed to rectify these defects have not always been obtained. Resources-related reasons are also limiting the ability of district courts to arrange sessions in three-judge composition.

The police and home affairs administration

Situations in which incompatibility between police information systems and the information systems used by prosecutors and courts causes problems in operations have for several years been revealed in oversight of legality. For example, the police have difficulty finding out what a court has ordered with respect to property that they have seized during a criminal investigation. The so-called VITJA project to upgrade the police information systems and ensure compatibility throughout the entire criminal process is expected to bring about an improvement in this respect. Unfortunately the Ministry of Justice's corresponding project, known by the acronym AIPA, which is intended to develop documents management in the prosecution service and general courts of law, has not progressed well enough to enable it to be inaugurated at the same time as VITJA in early 2014. It will still take years for AIPA to be complete.

As in earlier years, it was observed on inspection visits that investigations of especially white-collar crimes can take so long that the requirement in the law that a criminal investigation be conducted without undue delay is not met. In several cases, the delay begins already with commencement of the criminal investigation when, for example, a lack of resources does not allow the investigation to be launched immediately.

Despite some measures indicating a good development (see below) it has still been observed on inspection visits that most police prisons are unsuitable for long-term accommodation of inmates, among other reasons because of their inadequate standard of equipment, and development in conditions has not taken place although the matter has been continually brought up.

Despite an amendment of the provisions of the Coercive Measures Act concerning house searches that entered into effect in August 2011 – under which the party on whose premises the search has taken place can refer the preconditions for the search and the procedure followed to a court for evaluation – it is questionable whether a legal remedy in the way required by the European Convention on Human Rights, i.e. one that ensures effective protection under the law for the object of the house search has in practice been created to the standard that it should meet. As was the case in earlier years, the most common theme of criticism in decisions on complaints concerning house searches was that the occupant of the dwelling had not been given the opportunity to be present at the search or to invite a witness of his or her own to be present.

Delays in handling matters relating to foreigners by the Finnish Immigration Service have featured in several decisions on complaints.

Distraint and other insolvency-related procedures

As long ago as 2005 the Ombudsman drew attention to the inadequacy of financial and debt advice services as well as to the fact that it had not been possible to safeguard even moderately equitable services and their availability. Once again it could be seen that adequate measures to ensure the equal status of clients throughout the country had not been taken. The problems that afflict the arrangement of financial and debt services include at least constant under-resourcing; the fact that in the course of over a decade no generally acceptable new grounds for distributing State compensation have been found; non-uniform operational methods; too-small units producing services and paucity of guidelines as well as shortcomings in oversight of agreements.

Military matters and the defence administration

A survey conducted by the University of Tampere found that about one-third of male conscripts and about half of (voluntary) women military personnel had randomly experienced unfair treatment or bullying. The women performing civilian expert tasks had generally found that their expertise was not respected. More than one-third of women officers had experienced sexual harassment, which had generally been the use of inappropriate language.

A further concern expressed on inspection visits was that the arrangement of monitoring of equality matters could be difficult in the future since, in the context of a structural overhaul, the posts of equality planner and social affairs managers were being abolished.

In a decision made as long ago as 2008, the Deputy-Ombudsman drew attention to shortcomings in the Defence Forces' explosives safety. Despite a positive development, the objective situation meeting the requirements of the regulations had not been achieved by the deadline of 31.12.2012.

The poor situation regarding doctors in the Defence Forces was brought up during an inspection visit to the Military Medicine Centre. It had been especially difficult to get doctors to work in Sodankylä and Kajaani. It was also reported that supply doctors changed often. A further problem was the rapid turnover of care personnel and the fatigue from which they suffered.

Customs

The practice a customs district followed was to deduct and receipt its own receivables from a taxliable person's tax rebate. This practice was not provided for in an Act. The Deputy-Ombudsman took the view that this procedure was problematic from the perspective of the requirement that the matter should be statutorily regulated at least when receipting is not done in the context of an authority's self-correction on its own initiative, for example between a Customs receivable and a Customs obligation to pay. The Ministry of Finance announced that it would not, at least at this stage, begin drafting an amendment to the Excise Duty Act.

Social welfare

The Deputy-Ombudsman underscored in a decision concerning the arrangement of children's day care that it was essential to meet the demand that the guardians of children be treated on a basis of equality. On the basis of the legislation currently in force, no clear solution with respect to getting word to a guardian who lives elsewhere (i.e. a so-called absent guardian) that day care has been arranged for the child exists. From the perspective of the service principle, which is an aspect of good administration and in order to safeguard the right of guardians to receive information, it would be a better procedure if also the absent guardian were informed of a decision concerning day care.

Year after year, delays in handling applications for income support have been observed in various

municipalities, as a result of which the constitutionally guaranteed right to essential subsistence and care is not being implemented legally in all respects. Differences between municipalities with respect to their ability to handle these applications lead also to people being treated unequally depending on where they live.

In decisions concerning care for the elderly and on inspection visits to units where they are cared for, attention was paid to the arrangement of the treatment and care provided, the content of care and its quality as well as realisation of elderly persons' opportunities for participation. Problems and shortcomings with respect to implementation of the requirement that adequate opportunities for outdoor exercise and social interaction be maintained were observed in the course of oversight of legality. Shortcomings also manifested themselves with respect to arrangements for privacy in the rooms where old persons were accommodated as well as in the arrangement of rehabilitation services in the units that provide long-term care for the elderly.

Health care

There are still problems with respect to availability of treatment. The access to treatment that Treatment Guarantee legislation is supposed to ensure has not yet been implemented in full. It is a cause of concern that there are still shortcomings in implementation of the Treatment Guarantee where mental health services for children and adolescents are concerned, even though the Treatment Guarantee in these health services has been in effect since 1.1.2001. There are likewise inadequacies in the way the Treatment Guarantee is being implemented in care of oral health. Examples of these shortcomings are presented in sub-section 3.3.15.

The availability of treatment can be limited by means of a municipality's own application guidelines regulating the arrangement of health services. The guidelines are a priori necessary and justified, because they make it possible for uniformity to be observed in application practice and thereby increase equality among municipal residents. However, they can only be complementary to legislation and they must not limit or preclude entitlement to rights that are safeguarded in legislation. Insofar as guidelines do not leave room for the individual need of a person requiring a service, they are in conflict with legislation. Guidelines that, for example, rigidly limit the quantities of care requisites, such as strips for the blood sugar meters that diabetics use, are unlawful.

Another matter that has become a problem is the use of guards and their powers in health care operational units. The Ombudsman has drawn attention to the matter especially on his inspection visits to psychiatric hospitals. He has decided to investigate the matter on his own initiative.

Constant defects in entries in patient records can endanger implementation of good treatment and place difficulties in the way of oversight of the legality of health care.

Children's rights

A child in foster care has the right throughout the period of its placement to maintain contact with and meet its parents and other close persons. The municipality that decided on the child's placement and the place where it is in foster care have an obligation to support and promote implementation of this right of the child's. If it has not been possible in the client plan concerning the child to agree on the maintenance of contact and the child's right to contact is limited, an appealable decision on the matter must be made. The issue in several complaints was restriction of contacts between the child and persons close to it without a decision of the kind that the law requires having been made.

In complaints relating to custody of children, attention was drawn – as also in earlier years – to the time taken to complete a report into the child's circumstances when a court requested one.

The City of Oulu's social welfare department delayed unduly in preparing a report that a district court had requested into a child's circumstances.

The City could not invoke a shortage of resources, but was required to ensure that it had appropriate resources to take care of its statutory tasks, *inter alia* by channelling its resources correctly. The city had been rebuked already in 2009 in a decision by the Ombudsman concerning delay in reporting on circumstances (4040/4/08). On that occasion it had invoked a dearth of resources. The Deputy-Ombudsman informed the Regional State Administrative Agency of his decision so that it could oversee the City's actions in drafting reports into circumstances (2000/4/10).

Social insurance

In social insurance cases, backlogs of applications and processing times constantly feature in oversight of legality. With respect to the Social Insurance Institution (Kela), especially unemployment security matters have often had to be assessed in recent years. Unemployment security is a benefit that is very sensitive to swings in the economy and the number of cases can grow powerfully within even a very short time. For example, Kela reported in summer 2012 that the backlog of applications to be processed had again grown and mentioned a processing time of up to 8 weeks. However, a processing time guarantee of 30 days is provided for in the Act, and not even the summer holidays season justifies deviation from this. In addition, a report received by the Deputy-Ombudsman revealed that processing times varied greatly between Kela insurance districts, which jeopardises the equality of Kela clients.

Education

When investigating complaints and on inspection visits to educational establishments it was again observed (viz. annual report for 2011, p. 82) that additional resources had not been obtained for regional educational administration. Thus municipalities preparing for a major revision of the municipal structure have not received sufficient support in their efforts to deal with such matters as situations of conflict between homes and schools, instances of school bullying and in general matters of protection under the law. In addition, deliberation of means of maintaining discipline in schools and the future reduction in the number of places for vocational school students have brought uncertainty into the everyday reality of educational establishments.

Nearly one in five Finnish schools is suffering from significant damp and mould problems, which draw teachers and pupils into a spiral of illness.

The Constitutional Law Committee (PeVL 59/2010) had considered it important that the right of children applying for international protection to receive cost-free basic education be safeguarded in legislation as soon as possible. The right of children receiving international protection to basic education was contained also in the Programme for Government adopted by the coalition headed by Prime Minister Jyrki Katainen. This is a right that both Section 16 of the Constitution and Article 28 of the UN Convention on the Rights of the Child recognise that every child has. For this reason, in the context of a matter that he had taken under investigation on his own initiative, the Deputy-Ombudsman called for legislation to be drafted as a matter of urgency.

The position that the Ministry of Education and Culture adopted on a child's right to cost-free basic education was different from that of the Constitutional Law Committee and the Deputy-Ombudsman. When the Deputy-Ombudsman requested an explanation, the Ministry announced that problems in the arrangement of teaching had been caused by an incorrect interpretation of the law and that it intended to make guidance through information more effective in order to find a correct interpretation of the law.

Language matters

Once again the Ombudsman had to issue a reprimand concerning language-related shortcomings in the automated camera traffic monitoring system (viz. summary of the annual report for 2011, p. 78), although it had subsequently been announced that the system had been put in order. However, that had taken over four years from the original inauguration of the system and still nearly one and a half years after the Ombudsman's earlier reprimand. The Ombudsman considered the case a regrettable example – and not the only one – of how language-related fundamental rights do not receive the attention they deserve in the planning of new information systems.

The Ministry of Employment and the Economy has on several occasions been informed of the Ombudsman's opinion that translating a set of guidelines concerning good audit practices into Swedish would be desirable from the perspective of the obligation that the public authorities have to safeguard fundamental rights, even though the Ministry is not under a specific obligation founded on an Act to translate these guidelines, which are published by a body constituted under private law. Despite the positions adopted by the Ombudsman, the Ministry has not taken measures in the matter.

Ecclesiastical matters

Looked at from the perspective of courts and oversight of legality, the 1986 decision by the Synod of the Evangelical-Lutheran Church of Finland to approve the ordination of women transformed the matter from a doctrinal question to one that must be assessed from the perspective of the laws relating to public servants and administration. However, the question of holy office in relation to women pastors still causes problems in the work community and conflicts in some congregations.

3.3.2 EXAMPLES OF GOOD DEVELOPMENT

During the year under review, the Ombudsman and the Deputy-Ombudsmen issued about 100 decisions in which an authority was asked to report what measures it had taken as a result of a stance adopted or a proposal made in a decision.

Some examples of cases of this kind in various sectors of administration are shown in digest form in the following. Presented in the digest is first the Ombudsman's or Deputy-Ombudsman's stance or proposal, and after that the authority's response. The aim with the digest is to give a general picture of the impact of the Ombudsman's work and positive development of the state of law or official actions. The Ombudsman's recommendations concerning recompense for mistakes or violations are compiled in sub-chapter 3.3.3. These proposals have mostly led to a positive outcome.

International conventions

A Government Bill to bring the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT, signed by Finland on 23.9.2003) was finally introduced in the Eduskunta during the year under review (HE 182/2012 vp).

Courts

The scope of legal remedies against trial delays was broadened to include administrative law. From now on, recompense for delay will become possible also in relation to matters dealt with by administrative courts and appeal boards.

Police

The National Police Board has been informed, during the Ombudman's annual inspection of it and also in other contexts, of observations made on inspection visits to police detention facilities. The Board has announced that it is drafting, among other things, new guidelines for police detention facilities and a training package, which is intended for police chiefs and supervisory staff in the facilities.

The observations made during inspections have also been responded to in individual police services. For example, the visiting arrangements in the Pasila police prison were changed so that the prison personnel, and not the criminal investigation officers, decide on and arrange meetings with legal counsel. In addition, a basic renovation project is in progress at the Pasila police prison.

Prison service

Vantaa Prison has consistently had considerably more inmates than there are places for them. The Ombudsman considered it necessary that measures be taken with regard to the overcrowding in the prison, because obviously due at least in part to it, treatment of prisoners has not been lawful in all respects.

The criminal policy department of the Ministry of Justice and the Criminal Sanctions Agency's central administration unit announced that several different measures were being taken as a result of the overcrowding in Vantaa Prison. To ease overcrowding, remand prisoners can nowadays be housed also in prisons in Riihimäki and Helsinki. A comprehensive assessment of locating places for remand prisoners in various parts of Finland and of the need for these places will be carried out. Transfers of prisoners within the EU is becoming easier, something that will contribute to freeing up prison places and allow them to be used for remand prisoners. The intention is to, among other things, examine the possibility of transferring the psychiatric section of Vantaa Prison to the Turku Psychiatric Prison Hospital as well as to study the personnel resources that are needed for transporting prisoners. The criminal sanctions regional organisation also recommended that additional places be built on the Vantaa Prison site. Neither the Ministry of Justice or the Criminal Sanctions Agency's central administration unit considered it probable in the present economic situation that additional resources would be received.

Distraint

Attention has been drawn to the contents and the clarity of presentation formats of distraint forms in most years.

The National Administrative Office for Enforcement has taken measures to redress this shortcoming by explicating the information that must be supplied to debtors arising from a fee. In future, two documents will be sent to debtors as a distribution notification: a receipt for a payment to a distraint officer and a statement of balance.

The Border Guard

The Border Guard is trying to promote opportunities for women to join the force. The recruitment system for the basic course has been changed to make it possible for women to apply for training already before they have completed voluntary service in the Defence Forces.

Customs

Since at least as far back as 2005, the Office of the Parliamentary Ombudsman has been paying attention to the powers provided for in the Customs Act and especially regulation of personal searches. In order to safeguard the fundamental rights of persons who have been subjected to

such measures as well as to clarify the duties and rights of customs personnel, the matter should be provided for with sufficient clarity in the Act.

The Ministry of Finance has commenced drafting of revised legislation. The Deputy-Ombudsman made a submission on the draft of a Government Bill to amend the Customs Act. The draft contains proposals to redress the shortcomings that oversight of legality revealed.

The Deputy-Ombudsman expressed the view in a decision issued by him in August 2011 that the Customs should correct the erroneous car tax decisions that could still be rectified in accordance with the provisions concerning rectification of a factual error (1664/4/09).

Since the Deputy-Ombudsman's decision, Customs has compiled a table, intended for use by the customs districts, of car tax percentages that were confirmed at an excessively high level and the erroneous tax decisions have been corrected and the excess tax levied repaid with respect to the five years since the Customs noticed the error in the tax percentage table.

Social welfare

The Deputy-Ombudsman took the view in a decision on a complaint that the practice followed by the City of Helsinki social welfare department in calculating the number of free days to which home carers were entitled was erroneous and asked the department for a report on what measures had been taken arising from the erroneous practice (2324/4/11*).

The social welfare department announced that it had complemented its guidelines concerning the matter.

Health care

Follow-up checks to a medically warranted measure are the responsibility of the public health care system and must not be transferred to a private doctor, with the patient him- or herself having to pay. Something that the Ombudsman finds unsatisfactory is the present situation, in which the patient's right to the necessary follow-up checks did not appear to be implemented on a basis of equality in public health care in various parts of Finland (3283/4/10*).

The National Supervisory Authority for Welfare and Health (Valvira) informed the Ombudsman that, at his request, it had studied national practices relating to follow-up checks in specialist health care and the grounds for these practices in the various hospital districts in Finland. Valvira had sent all hospital districts a set of guidelines, in which it outlined the conclusions of the study of follow-up checks and instructed the hospital districts to follow lawful procedure when arranging follow-up checks.

The Ombudsman stressed that also low-income persons have a right to public oral health care. No position on a patient's financial situation or ability to pay is taken in the regulations concerning access to treatment; instead, the only criterion against which access to treatment is assessed is the client's individual state of health and the need for treatment arising from it. Payment of overdue fees by the client or a commitment to pay provided by a social welfare office can not be stipulated as preconditions for receiving treatment. It appeared that in this respect several health centres were following an unlawful procedure (3323/4/10*).

Valvira informed the Ombudsman that it had, at his request and in collaboration with the Regional State Administrative Agencies, examined the legality of the practices used to determine access to oral health care. Health centres were asked to explain whether access to care had been limited on the ground of unpaid client fees as well as whether access had been restricted or prioritised on other grounds. The Regional State Administrative Agencies

have informed the health centres of the Ombudsman's decision, with the result that an inappropriate procedure that had restricted access to care because of unpaid patient fees has been discontinued at several health centres.

It was found in hospital districts that the guidelines concerning taking a possible blood clotting problem in foetuses into consideration were flawed (18/4/10).

Valvira reported that it had, at the Ombudsman's request, studied the matter in the hospital districts. The guidelines were flawed in nine of the districts. Valvira instructed the Kymenlaakso, Etelä-Karjala, Itä-Savo, Keski-Suomi, Vaasa, Keski-Pohjanmaa, Kainuu and Länsi-Pohja hospital districts as well as Ålands hälso- och sjukvård to issue guidelines to ante-natal clinics in their areas to send pregnant women to a maternity polyclinic if either of the parents or their close relatives suffered from haemophilia, which can be passed down to a foetus.

Children's rights

The Deputy-Ombudsman drew attention in his decisions and on inspection visits to child welfare institutions to the question of compensation for any damage a child has caused in an institution. In his view, the perception that the funds available for the child should be used to compensate, on the basis of an agreement made with the child, for damage it has caused is not lawful. The Deputy-Ombudsman informed the National Institute for Health and Welfare (THL) of his decision (3572/4/11*).

THL announced that it had given State approved schools a set of guidelines on a child's obligation to pay compensation for damage it has caused.

Guardianship

Notification of an application for guardianship had been delayed. An administrative court and a district court had subsequently developed their cooperation in a way that promoted notification of guardianship-related matters (2799/4/12*).

Social insurance

Kela succeeded within a relatively short time in the course of the autumn in dismantling the backlog of applications that had built up and also in levelling out the differences that had existed between insurance districts with respect to processing times. It announced also that it was increasing the effectiveness of its efforts to reduce the differences between the numbers of applications in various districts (3145/4/11). Indeed, Kela has as a general rule always reacted rapidly to complaints concerning lengthening of its processing times and to enquiries made on the Ombudsman's own initiative. When managing large numbers of applications, an ability to anticipate backlogs and react rapidly to them is of first-rank importance. In the stage where a complaint is made to the Ombudsman about a matter, a backlog of applications has generally already come into being. In this respect, there is room for Kela to improve its monitoring of application volumes. In addition, it can be concluded from the statistical data published by Kela that differences between insurance districts with respect to processing times are so great that equal treatment of Kela clients is jeopardised. With respect to this, there is indeed a need to level out differences in application volumes more effectively.

Growth in the number of applications can also be the result of changes in legislation. That happened in the case of the Appeal Board for Unemployment Security when the number of removal applications reaching it each year increased by over a thousand. The increase had prevented the Board from achieving its processing-time

goal. The growth in volume was explained by an increase in the number of applications made by Kela in situations where a person had been absent from a service intended to promote employment. Among other things, Kela had responded rapidly to the matter and proposed to the Ministry that legislation be amended, which happened with effect from the beginning of 2013 (289/2/12*).

Appropriate handling of matters without undue delay presupposes also that sufficient personnel resources be ensured. In this respect, Kela reacted with commendable speed to a backlog of overseas debt collections in the Helsinki collection unit by increasing the number of persons doing this work from one to four (47/4/11*).

Labour administration

When shortcomings in the information the authorities in the labour administration sector give their clients became evident, they quickly changed and improved it. The City of Tampere clarified its recruitment procedure, which had earlier created the impression that the only way to apply for open positions was using an electronic route (1468/4/11*). The Ministry of Employment and the Economy, in turn, announced that in conjunction with a legislative amendment it was revising its guidelines on training so that in future invitations for applications must mention the exploration stage that is part of the training and the subsequent choice of students and the decision that must be issued with respect to this (957/4/11*).

Educational matters

Something that must be regarded as positive is the fact that efforts are being made to improve the inadequate pupil care in comprehensive schools and the learning results in these schools have remained on a good level in the international PISA evaluations.

Language matters

The Ombudsman assessed on his own initiative whether regulation of the language of traffic direction devices was in compliance with the provisions of the Constitution regarding regulations on issuance of a Decree and transferring legislative power. In his view, there were solid grounds for revising regulation. The Ministry of Transport and Communications announced that it had launched a project to prepare for a revision of the Road Traffic Act, in which the aspects highlighted by the Ombudsman would be taken into consideration (2903/4/12 and 3109/2/12*).

It had emerged on inspection visits to prisons with a bilingual section that there were shortcomings with respect to the availability of key documents and forms in Swedish. The Ombudsman had also on his own initiative looked more broadly into the implementation of language-related fundamental rights in the prison system (3459/2/10*). It was an unlawful situation when not all prisons where a bilingual section had been created could provide the rules of order or familiarisation guide for new arrivals or various forms in Swedish. The situation had subsequently improved in these respects when the documents mentioned were translated. An improvement with respect to the information provided on notice boards can likewise be expected since the Criminal Sanctions Agency drew the attention of the prisons in question to the matter (3656/4/11* and 3459/2/10*).

After the Office of the Parliamentary Ombudsman had drawn the attention of a police service to an observation that the recorded message on a service telephone was in Finnish only, the police service immediately corrected the message (3851/2/12).

After the Deputy-Ombudsman had issued his decision concerning language rights in making emergency announcements (viz. summary of the annual report for 2010, p. 102), the Ministry of the Interior had had the matter further studied by a working group that it had appointed and a legis-

lative proposal which concerned also the language to be used when warning of danger had been submitted to the Eduskunta (3141/2/10*).

Errors had repeatedly been found in the Swedish-language tests that were part of the matriculation examination. After an earlier decision by the Ombudsman (3753/4/09*) the examination board had taken measures to ensure the appropriateness of the Swedish-language test questions and the Ministry had taken up the matter in the results agreement (3506/4/11* and 1302/2/12*).

Taxation

The Deputy-Ombudsman took the view that the Ministry of Finance should begin legislative drafting so that the right to entrust optical reading of Tax Administration forms to a private company be enshrined in an Act. When the task is not taken care of on the basis of an Act, there is no obligation on the part of the company that performs it to comply with the general laws of administration and the persons in the company who handle tax data are not responsible for their actions in the way that public servants are (848/2/11*).

The Ministry of Finance announced on 31.10.2012 that the Government had submitted a Bill (HE 76/2012 vp) to the Eduskunta, proposing the addition to the Tax Administration Act of a new Section 2 b, in which the Tax Administration would be given the statutory right to transfer some of its tasks relating to the exercise of public power to private instances. Included in the Act were all of the auxiliary tasks that the Tax Administration had entrusted to private parties and which could be of significance from the perspective of tax-liable persons' interests, rights or obligations. The Eduskunta approved the amendment to the Tax Administration Act on 4.12.2012 and the amended legislation entered into force on 1.1.2013.

Ecclesiastical matters

The sluggish rate of progress that revision of church legislation to amend the regulations under the law governing public servants was making at the Ministry of Justice was brought up during an inspection visit to the Ecclesiastical Board (853/3/12) in March 2012. For example, a proposal to revise the provisions of the Ecclesiastical Act pertaining to the law governing public servants had been pending at the Ministry since January 2010. The protocol of the inspection was sent to the Ministry of Justice for information.

An amendment to the Ecclesiastical Act that concerned also the provisions relating to the legal status of public servants will enter into force at the beginning of June 2013. When the regulations concerning employment relationships are enshrined in the Ecclesiastical Act and the Church Rules of Procedure, the legal status of persons holding church office and their protection under the law will be brought up to an appropriate standard.

Other matters

The Deputy-Ombudsman found an announcement by the Population Register Centre that it would discontinue a refusal to disclose data on safety grounds imprecise with respect to both the nature of the prohibition and the date that it would come into effect. The Population Data Act should also be developed in a way that enabled the period of validity of disclosure bans to be made indefinite (1755/4/10).

The Population Register Centre announced that it had explicated the wording of the announcement of refusal to disclose data and that it had begun discussions with the Ministry of Finance concerning the need to amend regulation.

3.3.3 THE OMBUDSMAN'S PROPOSALS CONCERNING RECOMPENSE

The Parliamentary Ombudsman Act empowers the Ombudsman to recommend to authorities that they correct an error that has been made or rectify a shortcoming. Section 22 of the Constitution, in turn, obliges the public authorities to ensure implementation of fundamental and human rights. 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. The Ombudsman has made numerous recommendations regarding recompense over the years. These proposals have in most cases led to a positive outcome.

The Constitutional Law Committee likewise took the view in its report (PeVM 12/2010 vp) that a proposal by the Ombudsman to reach an agreed settlement and effect recompense in clear cases was a justifiable way of enabling citizens to achieve their rights, bring about an amicable settlement and avoid unnecessary legal disputes.

Recompense was recommended in 24 cases in 2012. The grounds on which the Ombudsman recommends recompense are explained more extensively in the 2011 summary of the annual report (p. 84).

During the year under review, the Supreme Court issued a judgment (KKO 2012:81) in which it defined the liability for compensation under public law in a situation where an authority has violated rights that are safeguarded in the Constitution and the European Convention on Human Rights. The Court referred to some of its earlier judgments, according to which compensating for suffering is possible with the aid of an interpretation that is amenable to fundamental and human rights also without the explicit support of a legal provision, just as long as an adequate legal ground to demonstrate liability for compensation exists. the Court took the view in its decision that the requirement that fundamental and human rights be effectively implemented supported an interpretation according to which a person must be entitled to compensation for serious violations of fundamental and human rights by persons acting in their official capacity also when the violation does not result from an intentional act. However, what was involved in the case that was the subject of the Court's judgment was a violation that had happened by mistake, and the effects of which had been minor. Therefore a right to compensation for suffering did not arise in this case.

Decisions in 2011 of which notification was made by an authority in 2012

Customs corrected about 300 car tax decisions

The Deputy-Ombudsman took the view in a decision she made in August 2011 that Finnish Customs had acted incorrectly in that it had no longer from 2008 onwards corrected errors in the car tax percentage tables that it had published. It had likewise failed to correct the taxation decisions in which too much tax had been levied as a result of the incorrect percentages in the tables. The Deputy-Ombudsman took the view that the Customs should correct the faulty decisions that could still be rectified in accordance with the provisions applying to rectification of factual errors.

The decision on a complaint concerned only one make and model of vehicle. However, in conjunction with requests for changes in the amount of car tax levied, it had come to the Customs' attention that there were other errors in tax percentages as well. After the Deputy-Ombudsman's decision, the Customs had compiled a table, for the use of customs districts, of tax percentages that had been confirmed as excessively high. The erroneous taxation decisions had been corrected and the excess tax levied had been returned for five years from the date on which the Customs had become aware of the error in the car tax tables (1664/4/09*).

About 300 decisions needing correction had been found. The smallest amount of tax to be re-

turned was €21.90 and the biggest €2,157.93. The average amount repaid was €221.39. All in all, €65,310.36 was repaid. The Customs published a table of erroneous tax percentages on its web site. If automatic screening has not found all individual errors, they will be rectified at the tax-liable person's request, the Customs announced.

Recompense for delay in handling a request for rectification concerning taxation

The Deputy-Ombudsman noted in her decision that handling of a request by the complainant for rectification of an error had been unlawfully delayed in the corporate tax office. It was only on 1.7.2010, i.e. after five years and five months, that the complainant received the rectification board's decisions on the requests for correction that she had submitted on 27.1.2005. The complainant's right to have her matter dealt with appropriately and without undue delay, something that is safeguarded as a fundamental right, had been violated. As a consequence of the tax office's negligence, her property had now also been distrained. The Deputy-Ombudsman recommended to the Tax Administration that it should in some way or other make recompense to the complainant for the damage as well as the inconvenience that these unlawful instances of negligence had caused her (1330/4/10).

The Tax Administration and the complainant reached an agreement on 21.2.2012, under which the former paid the latter financial compensation of €11,000 for the work and inconvenience that the undue delay in handling her request for rectification had caused her. It was stated in the agreement that the compensation was related to the Deputy-Ombudsman's decision in which she recommended recompense.

Recompense for an erroneous records entry by a distraint office

An error made by a distraint office when it recorded interest on an overdue payment caused damage to a debtor. A receivable that had been entered in the records as collected in full had in fact not been paid and interest was accumulating on it. The Deputy-Ombudsman recommended to the distraint office that it consider how it could make recompense to the debtor for the damage caused by the error (3578/4/10).

The distraint office announced that by virtue of an order by the Ministry of Justice an error of up to €500 can be compensated for by decision of the distraint office. It decided to pay the debtor this sum as recompense.

Recommendations for recompense in 2012

The recommendations for recompense that the Ombudsman made during the year under review are set forth below. The authorities' responses have not yet been received in all cases.

Recompense for violations of fundamental and human rights

Deprivations of liberty caused by the police

The Pohjanmaa police service's action in keeping an involved party in custody was deemed unlawful by the Ombudsman. The police were investigating a suspected case of gross fraud and the complainant was an involved party in the case. They had taken the complainant into custody for his own protection under the provisions of the Police Act. He had earlier been temporarily assigned a public guardian, who had expressed his concern to the police about his ward's situation. The complainant had been found far from his actual home district, in addition to which the police cited what he said, his demeanour and behaviour as justification for

their action. The deprivation of liberty had lasted 23 hours.

Based on the available material, however, there was nothing to indicate that the complainant's life, bodily integrity, safety or health would have been threatened. In the Ombudsman's view, concern for the involved party's property could not have been invoked as justification for the arrest. He issued a reprimand, for future reference, to the detective inspector who had ordered the arrest and urged the police service to give serious consideration to how it could make recompense to the complainant for the unjustified deprivation of liberty to which he had been subjected (1317/4/11*).

The Pohjanmaa police service announced that it had apologised to the complainant for its action and paid him €200 in compensation.

In two of his decisions, the Deputy-Ombudsman criticised the Helsinki (2756/4/10*) and Varsinais-Suomi (2495/4/10*) police services for unfounded deprivations of liberty. In the Helsinki case, he was especially critical of the fact that a person taken into custody in the small hours had not been released until late the following afternoon. The reports received did not contain mention of any factors on the basis of which keeping someone in custody, at least for such a long time, would have been justified on grounds that the Police Act recognises.

In the Varsinais-Suomi case a person was suspected of a burglary at a service station when his DNA was found, about a year and a half later, on an empty beverage can that had been found in the courtyard of the service station on the day the crime was committed. However, only two boxes of cigars had been reported stolen, and no beverages at all. The Deputy-Ombudsman criticised the grounds that had been presented for the suspicion of a crime and also the fact that the officer in charge of the investigation had issued a warrant for the person's arrest, although the suspect was not on the wanted list or difficult to reach or attempting to avoid the criminal investigation. He had been under arrest for just under 24 hours.

The Deputy-Ombudsman urged the Helsinki and Varsinais-Suomi police services to consider whether they could, on the basis of the European Convention on Human Rights, make recompense to the complainants for deprivation of liberty.

The Helsinki police service took the view that any violation of rights had been so minor that there were not sufficient grounds for paying compensation for damages.

The Varsinais-Suomi police service, in turn, announced that it had paid the complainant €150 in compensation.

Unlawful restriction measures in a private child welfare institution

A complainant alleged that he had been subjected to humiliating treatment in the Lahti and Heinola units belonging to the child welfare organisation Konstan Koti ja Koulu Oy. In the complainant's view, he had not been treated appropriately when he was the object of restrictive measures during the period of over a year that his placement had lasted. He was then 13–14 years of age. A report received revealed that the complainant's placement period contained more than ten spells of 1-2 weeks' duration during which his movements were restricted and the majority of which included so-called rooming-in for part of the time. The client documents written by the care personnel revealed that the rooming-in and restrictions of movement had included sitting in place wearing only underpants, being given the same food several days in a row and cleaning WC areas.

In the Deputy-Ombudsman's assessment, what had been involved was an isolation-type procedure, but it had been implemented more severely and for longer than the legislation then in force made possible. The Deputy-Ombudsman further noted that also isolation presupposed that the teaching and care personnel in the institution looked after the children's education and care very well and that the child had the opportunity to converse with a carer when it wanted to. She

took the view that through so-called rooming-in the complainant's personal liberty had been intervened in in a way that had meant a restriction of a fundamental and human right. In addition, the Deputy-Ombudsman pointed out that the task of the personnel of a child welfare institution was to raise the child and teach it to behave in the desired way. However, humiliating a child is not upbringing nor ever permitted. The Deputy-Ombudsman found that punishments associated with rooming-in were forbidden and humiliated the child. The action was unlawful and reprehensible.

Because the complainant had been the object of unlawful restrictive measures that humiliated him, the Deputy-Ombudsman took the view that the company should in some way or other make recompense to him for the suffering that the violation of his fundamental and human rights had caused. The Deputy-Ombudsman recommended that the company make recompense, at its discretion, to the complainant for its unlawful action (4547/4/10*).

The company announced that the complainant had been sent a letter in which it regretted its action and apologised for it.

Patient being taken to a health centre without reason

The Ombudsman found that a patient's being taken to a health centre in Espoo without his consent meant a forceful intervention in his right of self-determination and personal liberty. For this reason, a measure of this kind may not be taken without a reliable examination of its inescapability. Responsibility for ascertaining the matter resides with the authority.

A complainant's being taken to an on-call clinic against his will had been formally based on the Mental Health Act, but the Ombudsman took the view that it had been applied incorrectly. For this reason, he deemed the complainant to have been deprived of liberty contrary to the Constitution and the European Convention on Human Rights. The Constitution obliges the public authorities to safeguard implementation of fundamental and human rights. By "public authorities" is meant also *inter alia* municipalities and intermunicipal joint authorities. The Ombudsman asked a city's health services to consider whether they could make recompense to the complainant for the violations of fundamental and human rights to which he had been subjected (4407/4/11).

Violation of a patient's personal liberty in an outsourced health care service

A patient reported that he had been taken in the small hours to the health centre in Lohja and there locked into a "cubicle" for at least two hours. Because he suffered from claustrophobia, he had a panic attack. He shouted and cried, but no one paid any attention to him. Later he was taken to the central hospital and was bound for the entire 300-km trip. On arrival at the hospital, a doctor agreed to listen to him and he was allowed to go home. The complainant considered the way he had been treated at the health centre to be gross and reported that he was still having nightmares about the events.

The Ombudsman took the view that the patient's personal liberty had been violated more than would have been necessary. He was put without reason in an isolation room and had been caused extra suffering when he was not supervised appropriately there and when he was transported, bound, in an ambulance for longer than would have been necessary. Thus the measures were in part unjustified and in part contrary to the proportionality principle. Accordingly, the action had violated the patient's personal liberty and integrity as well as the protection of privacy that is safeguarded in the European Convention on Human Rights.

In the Ombudsman's opinion, it was clear that the way the complainant had been treated in the health centre on-call service had caused him feelings of distress and fear of such intensity that they could not be made up for merely by acknowledging that a violation had occurred or addressing rebukes to subjects of oversight. The city's

on-call health care services outside normal hours had been outsourced to a private company that provided medical services, Attendo Terveyspalvelut Oy. The violation had been caused by a private instance that was performing a public task, and whose liability for compensation can therefore be equated with that of an authority. The Ombudsman asked the company to consider whether it could make recompense to the complainant for the violation of fundamental and human rights that he had suffered (1319/4/11*).

Attendo Terveyspalvelut announced that it had decided to pay the complainant €300 by way of recompense.

Recompense for damage caused by other unlawful acts

Incorrect reason for financial support and undue delay in paying it

A complainant had, by a decision of a district court on the application of the City of Helsinki social welfare department, been made guardian of the children belonging to a family of friends. The children had been without a guardian since the death of their mother. However, the social welfare department took the view that the children's living with the complainant was based, in accordance with agreement that she had earlier given, on a private placement and on this ground paid a care grant as income support. An administrative court overturned the social welfare department's decision and ordered it to pay financial support in accordance with the principles applying to the family carer fees provided for in the Home Carers Act.

In the assessment of the Deputy-Ombudsman, clear errors had been made in handling of the matter by the social welfare department. The complainant had not been advised in the way the law requires when making the application concerning care of the children. She was not told of the effects that the intended care-related decision would have and the various alternatives that existed were not outlined to her. In addition, a decision of the compensation was founded on manifestly wrong application of the Act. Even after the administrative court had changed the decision, payment of the compensation and fees to which the complainant was entitled was still delayed without reason for several months. The Deputy-Ombudsman was of the opinion that the social welfare department should in some way or other make recompense to the complainant for her inconvenience and bother (801/4/10).

The social welfare department announced that it had decided to pay the complainant a total of about €3,500 in accordance with the rate of interest on overdue accounts.

Young person's liability to compensate for damage caused in a child welfare institution

A young person stated in a complaint that he had been required to pay compensation for breaking a window in the place where he was accommodated although in his opinion he had not broken it deliberately. The Deputy-Ombudsman pointed out that a child in care is entitled under the Child Welfare Act to decide for itself how to spend its pocket money. This money can not be used to compensate for damage on the basis of consent that the child has given on its own. A minor child is not competent to make legally binding agreements or other legal transactions. Agreements and legal transactions made by a legally incompetent person are not binding. However, a minor can make legal transactions that are in the circumstances ordinary and of slight importance.

In the Deputy-Ombudsman's assessment, the child welfare institution had acted unlawfully when the question of compensation for the damage had been decided on unilaterally by the personnel. An agreement on liability for compensation and the sum involved should have been made with the persons responsible for the child's care or its legal guardian. The agreed compensation sum could not be taken from the child's pocket money. The social workers in the municipality of place-

ment, who were responsible for the child's affairs, should not have approved the action, either. The Deputy-Ombudsman recommended to the child welfare institution that it consider how it could make recompense to the child for the damage its unlawful action had caused it. She also deemed it necessary that child welfare institutions be given guidelines on how to handle compensation matters and the use of children's pocket money (3572/4/11*).

The child welfare institution replied that in its view it could not be unambiguously established that the action in the case of the child had been wrong. However, it will review and revise its practices relating to compensation taking the content of the Deputy-Ombudsman's decision into consideration. In addition, the institution referred to a set of guidelines on compensation matters that is currently being drafted. The National Institute for Health and Welfare (THL) later informed the Deputy-Ombudsman that State-run approved schools had been given guidelines on the principles to be followed when dealing with instances of damage caused by children. In addition, the unit reported that the Deputy-Ombudsman's decision was being taken into consideration in editing an electronic handbook on child welfare.

Erroneous procedure in a case of fee exemption on maintenance arrears

In the perception of the Deputy-Ombudsman, officials of the Nurmes social welfare department were not sufficiently informed as to how the Maintenance Support Act that entered into force on 1.4.2009 should be applied to fee exemptions. This had led to a complainant being given flawed advice and an incorrect explanation. It was considered probable in the report drafted by the social welfare department that the complainant would have been given a fee exemption if he had applied for it at the right time from a competent official of the municipality. The Deputy-Ombudsman took the view that the flawed and inadequate advice that the complainant had been given may have caused him financial loss. For this reason, he recommended that the city's social welfare department evaluate whether it could compensate the complainant in some way or another for the damage it had caused him (380/4/11).

The social welfare department announced that it would compensate the complainant by paying him the amount of the maintenance arrears that had been the object of the fee exemption, i.e. €714.54.

Incorrect procedure in arranging free time for home carers

The complainant claimed that practice observed by the City of Helsinki social welfare department in a group home at a centre for the elderly, according to which the days when a person being cared for was brought in for short-term care or fetched from there were counted as free days for the home carer, although in reality the days when the person was taken to the centre or collected from there were half-days in terms of work. It was stated in the complaint that the person being cared for could be taken to the centre only at 2 p.m. and collected from there at 1 p.m.

The Deputy-Ombudsman pointed out that under the Home Care Act a home carer has an absolute right to have three full days free out of every calendar month in which the commitment to care has met the preconditions stipulated in the Act. A home carer is entitled either to take the free days every month or to accumulate them to be able to have a longer time free later. The Act does not contain provisions on when the accumulated free time is to be taken. The view taken in the case law of administrative courts is that a municipality is under an obligation to make up for free days that have not been received in some situations.

The Deputy-Ombudsman took the view that the social welfare department had not arranged free time for the complainant to the extent that the Home Care Act requires. She recommended that the department consider how it could make recompense to the complainant for its unlawful action. The report provided by the department re-

vealed that the procedure in question had applied to all clients in the group home at the centre for the elderly. For this reason, the Deputy-Ombudsman asked the department to inform her also of any measures it had taken with respect to those other clients (2324/4/11).

Neglecting to arrange health services

A complainant expressed criticism of the fact that after operations she had been directed from the Helsinki University Central Hospital Eye Clinic and Jorvi Hospital to the private sector to have follow-up checks at her own expense. She was also dissatisfied with the fact that the health centre in Espoo had not measured her eye pressure or given her an appointment with a doctor.

In the Ombudsman's view, the Helsinki University Central Hospital Eye Clinic and Jorvi Hospital should have arranged the necessary follow-up checks for the complainant either itself or by using the other alternative ways of arranging its statutory health services that are provided for in the law, for example by purchasing follow-up checks from a private service producer. The city health centre, in turn, had not been able to safeguard the complainant's right to adequate health services when it could not give her appointment times with a doctor. The health centre's action had not been lawful. The Ombudsman stressed that the law gives a municipality several alternative ways of arranging its statutory health services.

The Ombudsman recommended to the Helsinki and Uusimaa Hospital District (HUS) and to the Espoo Health Centre that they consider how recompense could be made to the complainant for the losses that their unlawful actions had caused him. He asked both bodies to get in touch with the complainant in the way necessary and to inform him of what final outcome in the matter had been reached (3283/4/10*).

The HUS senior physician for administration decided that HUS would compensate the complainant for gynaecological and eye check-ups performed in the private sector to a total of €152.

Publication of confidential personal data and information concerning health service clientship

The agenda for a meeting of the municipal board in Ylöjärvi concerned a request from the Ombudsman for a statement and explanation in the client's matter. The agenda, which revealed that the complainant and his wife had been in need of dental treatment, had been published on the municipality's web site. The Ombudsman pointed out that the municipal board had acted unlawfully when it published this confidential information online. The individual must be able to have confidence that confidential information entrusted to an authority will not be divulged to outsiders. The Ombudsman recommended to the municipal board that it consider how it could make recompense to the complainant for the violation of protection of privacy that its unlawful action had caused him (4420/4/10*).

The Ylöjärvi municipal board announced that it had on 22.5.2012 apologised in writing to the complainant for the suffering that had been caused him.

Correspondingly, the Ombudsman found that also the intermunicipal joint health centre authority for the Riihimäki area had acted unlawfully when it published a complainant's name on its Internet site. The complainant's name also ended up in a newspaper, which had obtained the information for an article it published from the web site. The Ombudsman recommended to the board of the joint authority that it consider how it could make recompense to the complainant for the violation of protection of privacy that its unlawful action had caused him. He asked the board to inform him of what final outcome in the matter had been arrived at (4092/4/11*).

The board announced that an apology had been made to the complainant for the mistake that had occurred and that agreement on compensation for damage had been reached with him.

Compensation for harm caused to a ward through a public guardian's negligence

The Ombudsman recommended to the Ministry of Justice that it should evaluate the action of a public guardian from the perspective of the liability that a authority bears for compensation for damages. The public guardian had not in good time taken out insurance on a moped that the ward had bought, with the result that when the ward had been in an accident, no insurance compensation had been paid. There were strong grounds in the matter in support of the argument that the public guardian's failure had at least in part contributed to the ward suffering unfavourable financial consequences (2748/4/10*).

The Ministry of Justice concluded in its examination of the matter that as a consequence of the public guardian's negligence, the ward had been deprived of the €5,240 in compensation to which he would have been entitled under the Traffic Insurance Act, which sum it was paying to the ward as compensation for damages.

Negligence by a Kela insurance district of its duty to examine in processing an application for a benefit

Officials in a Kela insurance district had not handled an applicant's benefits applications carefully in that a so-called preventive benefit should have been taken into consideration in decision making. As a consequence of negligence of the duty to examine and carelessness, the complainant was on four occasions in the period 2007–2009 given a benefit decision that was contrary to the Study Grant Act or the Housing Subsidy Act. On the basis of these decisions, the complainant was paid, until the spring of 2009, benefits to which he was not, owing to a preventive benefit, entitled. Correction of the decisions and a demand for repayment of the benefits did not happen until 2.5 years after the information concerning the preventive benefit that had been granted to the complainant was available in Kela's registers.

The Deputy-Ombudsman gave the Kela insurance district a reprimand for future reference for having acted unlawfully. In his assessment, the unlawful action of Kela's Satakunta insurance district had weakened the confidence that the complainant felt towards Kela's activities (1867/4/10).

Kela paid the complainant €700 by way of recompense.

Error made by the police in transferring data to a register of firearms

An error had occurred when data were being transferred from a manual register of firearms to a national register and the data relating to the client's permits had not been entered. As a consequence of this carelessness, the complainant had not been given duplicate copies of his firearms permits when he applied for them, because no entry relating to them could be found in police registers. An administrative court rejected the complainant's appeal against the negative police decision. The complainant had subsequently found the permits, which he had thought he had lost, and on their basis his parallel permit was recorded in the national firearms register (2085/4/11).

When the complaint was being looked into, the police service announced that it was willing to compensate the complainant for the costs, totalling €157, that its own decision and that of the administrative court had caused him.

Unlawful data in Legal Register Centre's judgments system

A complainant had checked through the Legal Register Centre to see if there were any crimes or fines recorded against him before applying for a position as a peacekeeper. Since records of the "pranks" that he had committed in his youth had been expunged from the registers, he had decided to apply for peacekeeping tasks. However, his application had been rejected and when he looked

into the matter, it emerged that a security report drafted on the basis of his application contained a mention of his having been convicted of assault.

The information in the security report was based on data that should have been expunged from the judgments records system after the passage of five years. The Substitute Deputy-Ombudsman considered it evident on the basis of reports that the entry concerning a judgment had had negative effects for the complainant; his application to be recruited for crisis-management tasks had been, in the light of the reports, to an important extent rejected on the basis of register data that should have been deleted earlier. The factual effects of the erroneous judgment data having been mediated remained in the final analysis imprecise. However, the unlawful action by the authority had undeniably caused the complainant immaterial harm at the least. The unwarranted intervention in the complainant's constitutionally safeguarded right to privacy could not be regarded as a matter that was of trivial importance in principle. The Substitute Deputy-Ombudsman took the view that it would be appropriate for the Ministry of Justice to contact the complainant to find out whether he had demands in the matter and to decide on any follow-up measures after that (150/4/11*).

According to a report received from the Ministry of Justice, the complainant had not responded to the Ministry's efforts to contact him.

Prohibition on using indoor swimming baths was unlawful

The staff at an indoor swimming baths owned by the municipality of Kauhajoki had decided that they would not sell admission tickets for the hall to a person whose utterances relating to religion were, in the view of the staff, causing a disturbance.

In the assessment of the Deputy-Ombudsman, the use of the swimming baths was restricted on the basis of activities that belonged in the constitutionally guaranteed sphere of freedom of religion and conscience and freedom of speech. The use of a municipal physical exercise service can be restricted only exceptionally. Since the refusal of admission was associated with exercise of a fundamental right, the municipality had an accentuated obligation to show that there was an acceptable ground for the ban. The action did not meet the demands of the principles of protection under the law and good administration that are safeguarded in the Constitution because, among other reasons, the view of the person himself was not heard in the matter, the matter had also in other respects not been examined in an appropriate manner and no appealable decision relating to the ban had been made. The municipality had not shown that it had factual and acceptable grounds for prohibiting the complainant from using the swimming baths.

Because the action was clearly incorrect, the Deputy-Ombudsman recommended to the municipal board that it consider the possibility of in some way or other making recompense to the complainant for the feeling of injustice and sense of wrong that its unlawful action had caused (2720/4/11*).

The Kauhajoki municipal board apologised to the complainant for what had happened and offered him a month's free admission to the recreational bathing facility in the town.

Errors in electronic housing search system and neglect to process applications for dwellings appropriately

Arising from the complainant's first complaint, the Deputy-Ombudsman had asked the home rental firm VVO to explain why, despite the complainant's family's great housing need, they had not received the rental dwelling they had requested. VVO responded with an explanation to the effect that the complainants had applied for a rental dwelling in only one place and that the choices of residents for this place did not suit *arava* (subsidised dwellings) legislation. The Deputy-Ombudsman replied to the complainant in accordance with this explanation. It later emerged that VVO had given false information to a supreme overseer

of legality. In actual fact, the complainants had since the beginning of 2010 applied to VVO for housing in a total of nine places built with arava subsidies or interest subsidies on their loans and two places that had been freely financed. They had updated their applications 47 times.

VVO's electronic housing search system did not meet the demands set by the principles of appropriate handling of a matter and good administration that are enshrined in the Constitution. In choosing residents for rental dwellings that have been constructed with the aid of public funding, VVO must observe the principles that are enshrined in the legislation on arava dwellings and other principles that are included in the norms relating to choosing residents. Persons seeking housing should be able to trust that their applications will be handled appropriately on the basis of the need for housing and urgency-related information that they have provided. The Deputy-Ombudsman recommended that VVO make recompense to the complainant in some way or other for the harm and inconvenience that its action had caused (4333/4/10).

VVO announced that it had changed its housing search system. In accordance with the Deputy-Ombudsman's recommendation it had, by way of recompense, sent the complainant a letter from the customer relations manager apologising for its actions.

Unwarranted debt-default entry

An error made by a court district distraint officer with the Päijät-Häme distraint office meant that an entry indicating he had defaulted on a debt was placed in the complainant's credit record. The complainant did not present demands for compensation (604/4/11).

By way of recompense, the head enforcement officer for the court district apologised to the complainant.

Locking of a mobile phone in conjunction with a confiscation

In conjunction with a search of a club premises by officers from the Pohjanmaa police service, the SIM card in a complainant's mobile phone had been locked and he was no longer able to switch the phone on. The phone had a prepaid connection, for which a PUK code was not available and the SIM card could not be accessed. The Deputy-Ombudsman noted that the complainant had not stated the amount of damage that he had suffered. He recommended that the police service separately ascertain from the complainant whether the locking of the SIM card had caused damage and if so in what way it could be compensated for (2202/4/11).

The police service compensated for the damage that the compensation had caused and regretted it and apologised most politely for it.

Error that happened in an optical reading service that the Tax Administration had outsourced

The focus of criticism in the complaint was that data relating to the complaint's company had been transferred onto a tax form belonging to another company. It emerged in conjunction with investigation of the complaint that the Tax Administration had entrusted optical reading of tax reports to Itella Oyj. The Deputy-Ombudsman took the legality of the Tax Administration's action under investigation on her own initiative.

The Deputy-Ombudsman had stated in the decision she gave the complainant that it had not been evident from the Tax Administration's reports that it had appropriately accepted responsibility for the error that had happened with the complainant's company's data in the optical reading company's service. Although the error was corrected, the reason for it was not explained to the complainant when the Tax Administration got in contact and no regret for what had happened was expressed to the complainant or the com-

plainant's company. Thus the Tax Administration had not tried to restore the complainant's trust in the appropriateness of its actions. The Deputy-Ombudsman recommended that it should make recompense to the complainant for the trouble and inconvenience that its erroneous procedure had caused him (3314/4/10*).

The Tax Administration announced on 30.10.2012 that in a letter signed by the Director-General it had extended an apology and expression of regret for what had happened to the complainant.

Compensation for cancellation of a supervised visit

A complainant's spouse in Kylmäkoski Prison had been placed in isolation for observation. The complainant had on the day prior to the supervised visit checked whether the prisoner had a visit. A telephone enquiry elicited the answer that there was a meeting at 1 p.m. However, the supervised visit did not take place, because the prisoner remained in isolation for observation. The complainant had travelled 120 kilometres in vain.

A point highlighted in the explanation given was that the prisoner had been aware that he would be placed in isolation for observation. In the view of the Ombudsman, however, it is probably difficult for a layperson to conceive of this measure lasting several days. In that light, the complainant could reasonably have trusted what the prison official said about the visit. The Ombudsman recommended to the prison governor that he assess, in view of what had happened in the matter, whether the prison should make recompense to the complainant in the form of reasonable travel costs with respect to the visit that had not taken place (302/4/11*).

The governor of Kylmäkoski Prison announced that he had concluded that it would be appropriate by way of recompense to pay the complainant a sum corresponding to the cost of making the trip that had proved to be in vain by public transport.

Compensation of extra telephone expenses caused by advice from the State Treasury

A complainant was directed by the State Treasury to call the old telephone number of the Service Centre for the Justice Administration. This caused him additional costs, because calls to the old telephone number in question were still being charged for at an extra rate.

The State Treasury was asked in a letter from the Office of the Parliamentary Ombudsman to consider initially whether the problem could be resolved in discussions with the complainant, for example by agreeing on recompense. If success could be achieved in this, the State Treasury was asked to inform the Ombudsman of this and the agreed outcome (2556/4/12).

In its reply to the Ombudsman's recommendation, the State Treasury announced that it had reached an agreement with the complainant and compensated him for his telephone expenses amounting to €74.04.

3.4 Special theme for 2012: Equitable treatment and equality

3.4.1 INTRODUCTION

The special theme chosen for the Office in 2012 was equitable treatment and equality. The theme is taken up on all inspection and familiarisation visits and is taken into consideration also in other activities, such as when considering investigations on our own initiative (for handling of the theme and how it is highlighted in the Ombudsman's work in general, see summary of the annual report for 2010, p. 105).

The theme proved to be very multifaceted and broad. For this reason, discussion of it has had to be limited in this annual report. Presented in the section is a compilation of observations made in the course of inspection and familiarisation visits in relation to equality of citizens from the perspective of how the availability and quality of services correspond to the needs of various kinds of clients. The beginning of the section contains a compilation of observations made in the course of inspections in various sectors of administration and with a bearing on certain categories of matters (language rights, client service and outsourced services). The end of the section contains a compilation of observations relating to the availability and quality of services for certain special groups, such as elderly persons and children.

3.4.2 AVAILABILITY AND QUALITY OF SERVICES IN CLIENTS' OWN MOTHER TONGUE OR A LANGUAGE THEY UNDERSTAND

A hospital's special task was to treat Swedish-speaking patients, but almost without exception the material on the notice boards there was in Finnish only; even a notice concerning the activities of the patient ombudsman was only in Finnish (992/3/12).

The Ombudsman urged the hospital to improve its provision of Swedish-language information for patients, at least in those wards where Swedish-speaking patients are treated.

The daily programme and the written information on the rights of persons who have been deprived of their liberty that must be provided were available only in Finnish in the detention facility attached to a police station (3388 and 3389/3/12).

The proportion of legal aid clients that foreigners account for is growing all the time, which means that the services of interpreters are needed more and more. Something that has been found to be a general problem in legal aid offices is the educational level and availability of interpreters. Something that has also caused concern is that controlling the activities of an interpreter is impossible in practice (1406/3/12).

Clients speaking foreign languages are a growing challenge also in distraint matters. Conducting a distraint examination using a friend or relative of the debtor as an interpreter does not always guarantee that the debtor fully understands the nature of the matter (3771/3/12).

It was not possible in a municipality where Sámi were in the majority to have the names of properties and roads recorded in the Sámi language in the register of properties, something that was apparently caused by shortcomings in the information system (2336/3/12).

The Deputy-Ombudsman decided on her own initiative to examine the question of property names in Sámi being recorded in the register of properties.

Only one mother tongue can be declared for inclusion in the Population Information System. Where Sámi is concerned, it is possible to state only "Sámi" in general, although three different Sámi languages are actually spoken in Finland (2341/3/12).

The Deputy-Ombudsman decided to conduct a separate examination of the question of whether it would be possible in the Population Information System to declare one's mother tongue as being Northern Sámi, Inari Sámi or Skolt Sámi rather than just Sámi.

In conjunction with an inspection tour of Lapland, the Deputy-Ombudsman stated, as her general view, that she considered it important that ministries pay attention to ensuring that key legislation in their respective sectors of administration be translated into Sámi. For example, the Administrative Procedure Act has not been translated into this language (2341/3/12).

3.4.3 CUSTOMER SERVICE

Clients in one legal aid district did not have the possibility to transact their business electronically – whereas it was possible in all other districts. Clients also found themselves in unequal positions is that those who transacted electronically were a priori not required to give reports on their income, whereas this was always demanded when clients came to offices in person (1406/3/12).

The inauguration of a new information system led to delays in invoicing. A city's provision of information should have been equally effective also with respect to those who did not have the possibility or ability to use electronic media (1507/3/12).

A director of library services regarded the reservation fee charged by libraries as inequitable, because e.g. persons with foreign backgrounds may have to reserve material in their own languages from other libraries to a greater extent than others have to do (2187/3/12).

One of the service points belonging to a police force did not have regular licensing services; instead, the aim was to deal with these matters using a police van that had a reception time once a week. However, it was not possible to take care of all matters, such as the suitability test associated with obtaining a firearms permit, from the van. Clients had complained that people transacting business had to queue outside the van. The van also operated on the reservation principle, for which reason it could also happen that someone who had not made an appointment would not manage to take care of business during the time that the van was parked (1289/3/12). Licensing matters were dealt with only on three days during the summer at a service point operated by another police force (2340/3/12).

There was only one policeman on duty at a police service point. This caused problems in, for example, urgent call out tasks, because the policeman could not embark on a dangerous call out alone and it could take time to receive executive assistance from elsewhere, if it could be obtained at all (2340/3/12).

Owing to its large workload, matters were not dealt with as expeditiously at one public prosecutor's office as at the other offices in the country (1598/3/12).

Looked at from the perspective of a social insurance client, there was no acceptable reason for the differences in processing times between insurance districts in an insurance region or between different offices within the same insurance district (1085 and 1086/3/12).

3.4.4 OUTSOURCED SERVICES

As a consequence of outsourcing of public guardianship services, a principal who had been transferred to an outsourced service, possibly even against his will, incurred higher costs than a principal receiving the benefit of a guardianship service produced by the State. Namely, the principal had to pay also the VAT share on the fee he was charged by the public guardian, whereas tax is not levied on a guardianship service produced by a legal aid office itself. The changeover to outsourcing had caused disquiet among the staff of the legal aid office and a tendency to seek employment elsewhere, for which reason the guardian for one principal could change as many as three times. With respect to the quality of the service, a suspicion had been aroused in the legal aid office as to whether all service providers' experience of guardianship work was sufficiently solid, because acting as a guardian presupposed knowledge of the benefits (all in all, 69 can be applied for) to which the principal might be entitled (1260/3/12).

The Ombudsman recommended, as his general view, that if privatisation can be observed to cause something of such a nature that it directly or even indirectly affects the interests of the principal, who is in guardianship and already a priori in a vulnerable position relative to other persons, by weakening those interests or violating the equality of the person in guardian, the Ombudsman is entitled within the framework of his official powers to intervene in the situation. The Ombudsman launched an investigation on his own initiative into legal questions associated with privatisation of public guardianship services.

The Ombudsman paid an inspection visit to one law practice that produced outsourced guardianship services. The service producer's attention was drawn during the visit to the necessity of making an overall exploration of the principal's circumstances more efficient on a case-by-case basis in order to ensure that every principal received from among the numerous different benefits that exist those to which he or she is entitled under the law (4157/3/12).

A city's social welfare department had put burial services for its clients out to tender. The party chosen on the basis of the tender to produce the service was an entrepreneur whose sector of business did not include a burial service, in addition to which the entrepreneur lacked experience of the sector. The complainant had been granted supplementary income support towards the burial costs. In the opinion of the Deputy-Ombudsman, a municipality arranging burial services for clients of social welfare must ensure that the service provider chosen has knowledge or experience of the burial sector or that the entrepreneur has otherwise shown that he understands the requirements of the sector and his obligation to perform a burial service, observing the general principles set forth in the Burial Act, in such a way that the deceased is treated with dignity, respecting his memory and the feelings of his relatives (4195/4/11).

There was no regular doctor in a Swedish-speaking military unit, for which reason supply doctors had to be resorted to. Some of them had difficulty working through the medium of Swedish (3379/3/12).

Health care for a serviced home for elderly Sámi-speaking people had been outsourced. However, the company that provided supply doctors did not have any Sámi-speaking one on its books (2334/3/12).

3.4.5 AVAILABILITY AND QUALITY OF SERVICES FOR SPECIAL GROUPS

The elderly

In conjunction with inspection visits to care homes that provide enhanced services for the elderly, the Deputy-Ombudsman drew attention to the fact that elderly persons receiving round-the-clock care are older and in worse condition than earlier and to an increasing extent suffer from not

only physical illnesses, but also dementia. These people in a vulnerable position are not able to take care of their fundamental and human rights nor their right to good care and to be treated with dignity. The Deputy-Ombudsman emphasised that when long-term care for the elderly and protection of their interests is being arranged, attention must be paid to the quality of the care and protection provided. The right to privacy, the safety of housing and care and its significance, the way the client is treated as well as maintaining the elderly client's social interaction as well as other aspects of the elderly person's participation in ordinary life, such as for example outdoor exercise and transacting matters are among the factors that affect the quality of the services to be arranged.

In several of the units inspected, it had not been possible to protect the privacy of the elderly persons being cared for who had been placed two or three to a room (e.g. 2638*, 2642* and 4225/3/12). Owing to shortage of space, privacy could not be ensured in treatment situations even by means of screens (2635/3/12*). Nor could privacy during visits by relatives be ensured under these circumstances (e.g. 2641/3/12*).

Good care for elderly people includes the ability of an old person needing help being able to have a shower more than once a week, something that was not the case in one care home (2644/3/12*). It was told in one unit that the city social welfare department had reduced the number of diapers for old people, which was not considered sufficient in the unit (2643/3/12*).

In almost every unit inspected, the regularity with which elderly people were able to get outdoor exercise at different times of the year was not sufficient (e.g. 2639*, 4224, 4226 and 2334/3/12). In three units, in addition, rehabilitation had not been arranged to a sufficient extent or at all (2638*, 2641* and 2644/3/12*).

Measures by the Deputy-Ombudsman with respect to observations on inspection visits are reported in the social welfare section.

Children and young adults

In the opinion of a school principal, not enough attention was paid by a social welfare department to arranging teaching for children when a location place was being chosen. For example, the school did not have the opportunity to arrange teaching in their mother tongue for any pupils other than those whose mother tongue was Finnish (3175/3/12).

In the view of the staff of a child welfare department, teachers often got round a pupil's poor performance by transferring him from one class to another, although the child had not sufficiently internalised the matters taught during the school year (2302/3/12). Also in the view of a comprehensive school psychologist, children whose ability and skills did not at all correspond to the standards defined in the teaching plan were continually coming to the school, but the child had nevertheless always just been transferred to the next class (3175/3/12).

Preparatory courses prior to basic education do not appear to include sufficient teaching of Finnish in all cases. This manifested itself in the fact that children with immigrant backgrounds often had a poor command of Finnish even though they had been living in Finland for a long time (2302 and 4596/3/12).

A student's home had not found an instance that would finance neuropsychological examinations for children with immigrant backgrounds. As a result of this, these children remained unexamined, undiagnosed and without rehabilitation (3175/3/12). According to a comprehensive school psychologist, there were shortcomings in diagnosing learning difficulties on the part of children placed outside the home. There was no functioning structure by means of which children could be given diagnoses that illustrated their learning difficulties and be provided with the rehabilitation that this called for – especially diagnosing difficulty in concentrating was, in the psychologist's assessment, especially inadequate (3175/3/12).

It was nearly impossible to send a young person who had been placed in a family support centre for a period of examination at a psychiatric clinic, because the polyclinic's position was that a child displaying symptoms would not be taken in for examination before it had sufficiently settled into a "permanent" location, which the support centre was not regarded as being. However, the average time spent as a client of the support centre was 53 days (37 days for those who returned home) and the longest placement had lasted even nine months (3596/3/12).

The Deputy-Ombudsman pointed out that adequate care of young people must be safeguarded also during the time that they are placed in a family support centre.

Mentally handicapped persons

A serviced home for mentally handicapped persons that catered for autistic patients, seriously mentally handicapped adults and moderately mentally handicapped adults with behavioural problems (age range 20–70) had too many residents in the same place when six autistic patients shared the same cell. In addition, all of the residents' own rooms were so small that they were suitable only for sleeping in (4366/3/12).

Psychiatric patients

Due to the danger of their absconding, involuntary patients of a psychiatric hospital could not be brought even to a fenced-off outdoor exercise area. They could have had to remain indoors even for weeks (3155/3/12).

The Ombudsman had earlier expressed his opinion that a daily opportunity for outdoor exercise, at least an hour in duration, should be arranged for all patients if their state of health permits it. The Ombudsman launched an investigation on his own initiative into how outdoor exercise is arranged for patients receiving involuntary care in the hospital.

3.5 Complaints against Finland to the European Court of Human Rights in 2012

In 2012 a total of 317 new cases (432) against Finland were registered at the European Court of Human Rights (ECHR or the Court). A Government response was requested arising from 24 (24) complaints. The number of cases pending after the end of the year was 289. Thus the number of complaints made from Finland has declined.

Screening and handling of complaints by the ECHR were made more efficient in 2010. Simple matters can be dealt with by the court in a slimmed-down composition (a single-judge formation and the committee formation now has greater powers), and a new admissibility criterion ("significant disadvantage") has been adopted. The Council of Europe Commissioner for Human Rights has been given the power to intervene by submitting written comments and taking part in oral hearings before all Chambers or the Grand Chamber.

A very large proportion, about 95%, of the complaints made to the European Court of Human Rights are ruled inadmissible. This is done either in a single-judge formation or through a so-called Committee decision (3 judges). The respondent State is not informed of this decision; instead, notification is made, in writing, only to the complainant. Thus the matter does not call for measures with respect to the State. In 2012 a complaint was ruled inadmissible or was struck from the list of cases in 620 (485) cases concerning Finland. In nearly all of these, i.e. 603 complaints, a decision was reached in a slimmed-down composition. Since Finland acceded to the European Convention on Human Rights, a total of 3,974 complaints against it have been ruled inadmissible.

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

The Court issued five (7) judgments concerning Finland during the year under review. A violation of rights was confirmed in two of them.

In addition to judgments, the European Court of Human Rights issued 24 (16) decisions. Half of these, i.e. 12, were issued in Chamber formation and half in Committee formation.

Eight decisions (14) ended in a friendly settlement after the complainant and the government had reached agreement and four (6) cases were struck from the Court's list of cases after Finland had conceded that a violation of a human right had occurred (what was at issue in three cases was the duration of a trial and in one legal remedies associated with a house search). In 12 Chamber-formation decisions no violation of a human right was established, or the complaint was ruled inadmissible on processual grounds.The ECHR issued 42 (98) decisions on applications for interim measures, only two of which were approved.

By the end of 2012 Finland had received a total of 163 judgments from the Court, and 89 complaints had been decided on (through a decision or a judgment) as a result of a friendly settlement or a unilateral declaration by the Government. The number of times that the Court found against Finland in the period 1.11.1998–31.12.2012 is strikingly large, at 126. However, the number of findings against Finland has declined in recent years. The total number of times that all of the other Nordic countries have been found to have violated Convention

rights during the same period is 99 (in 2012 the other Nordic countries were the subject of a total of 21 judgments, in 8 of which the Court found against them).

It is still too early to assess what the decline in cases and findings against Finland is due to.

3.5.1 SUPERVISION OF THE EXECUTION OF JUDGMENTS IN THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS

The Committee of Ministers of the Council of Europe supervises the execution of judgments and decisions by the Court. The Committee's oversight focuses on three different matters: payment of any sum awarded by the Court as well as introduction of individual measures and general measures to remedy the violation. The means of oversight are primarily diplomatic. The Committee of Ministers can when necessary refer a question of implementation for confirmation by the Court.

The oversight system was restructured with effect from 1.1.2011. Within six months of an ECHR judgment becoming final, States must provide either an action report or an action plan, i.e. report on measures that have been carried out and/or are planned. The reports are published on the Committee of Ministers web site.

During the year under review, the Committee of Ministers completed its supervision of the execution of several Court judgments concerning Finland. Supervision of the execution remained pending with respect to a further 52 judgments concerning Finland.

Supervision of the execution of a total of 35 judgments, issued in the period 2004–2011, concerning unreasonable length of criminal and civil cases and effective legal remedies with respect to them was concluded in June 2012 (with the *Kangasluoma* judgment as the leading case). The Committee of Ministers took the view that the Finnish Government had taken adequate measures in the matter (Resolution CM/ResDH (2012)75).

Supervision of the execution of also the following ECHR judgments was concluded:

- the *Marttinen* judgment, issued in 2009, concerning protection against self-incrimination (Resolution CM/ResDH(2012)22)
- the *Suuripää* judgment, issued in 2010, concerning oral hearing in the Supreme Court and the duration of the trial (Resolution CM/ResDH(2012)23).

3.5.2 JUDGMENTS DURING THE YEAR UNDER REVIEW

Violation of rights in deprivation of liberty for mental treatment and forcible medication

In case *X* (3.7.2012), a paediatrician had been ordered to receive involuntary treatment in a psychiatric hospital, where she was given medication without her consent. The doctor was suspected of having helped a mother to abduct her child when she suspected that it had been sexually abused by its father. A district court ordered the complainant to undergo a psychiatric examination within the framework of a criminal prosecution brought against her. The complainant was subsequently convicted of being an accessory to gross deprivation of liberty, but was not sentenced to punishment because she was deemed mentally incompetent.

The Court found that Article 5.1 (e) had been violated in the case. The rights violation did not relate to the first instance of a decision to order involuntary treatment. By contrast, the court found that decision making relating to continuation of involuntary treatment lacked adequate guarantees of legal remedies against arbitrary action. In particular, the Court drew attention to the fact that the decision was made by two doctors belonging to the hospital in question and no independent expert was involved in the decision making. The court also pointed out that domestic law did not make it possible for the complainant to independently challenge the decision to continue treatment;

instead, the matter was decided on at intervals of six months on the initiative of the authority. In the view of the ECHR, the situation was further exacerbated by the fact that involuntary psychiatric treatment automatically includes also the possibility of forcible medication, against which there is no right of appeal. With respect to forcible medication, the ECHR found that there had also been a violation of Article 8.

The court awarded the complainant €10,000 compensation for suffering and €8,000 to cover costs.

The judgment led to exceptionally many measures. The Finnish Government applied to have the case referred to the Court's Grand Chamber. In September 2012 the Supreme Administrative Court (KHO), in plenary session, issued a decision in another case concerning involuntary psychiatric treatment and in it dealt specifically with the *X* judgment (KHO:2012:75). In the view of the KHO, it had not been proven in the reasons for the *X* judgment that the ECHR had taken into account the totality of other guarantees that safeguarded the appropriateness of legal remedies and procedure founded in national law. KHO took the position that the system as provided for in the Mental Health Act can not be regarded as incompatible with Article 5 of the European Convention on Human Rights.

In November 2012, however, the ECHR rejected the Government's request to have the *X* judgment deliberated by the Grand Chamber. The court has chosen the judgment for publication in the Reports of Judgments and Decisions series, i.e. has deemed it to be especially important. In January 2013 the Kuopio Administrative Court, in plenary session, issued a decision in which it did not accept the solution line staked out in the decision KHO:2012:75.

The Ministry of Social Affairs and Health announced in December 2012 that it would soon be commencing legislative drafting to amend the Act and issued an interim set of procedural guidelines on application of the Mental Health Act. Under these guidelines, a patient confined to involuntary treatment must be accorded an opportunity to have a doctor from outside the hospital to assess the need for treatment before a decision to continue the treatment is made. The assessment can be made by a health centre doctor, but the recommendation is that preferably it will be done by a psychiatric specialist or other doctor with psychiatric training.

Violation of freedom of speech

The issue in the *Lahtonen* case (17.1.2012) was the limits on journalistic freedom of expression in the context of a trial report. An article by the complainant, based on public documents obtained from a district court, had been published in a newspaper. Mentioned in the article were the name of a police officer who had been convicted of a criminal offence, his year of birth, background information and his then workplace. The Council for Mass Media in Finland issued a warning to the complainant for having revealed the convicted person's name and that a psychological examination had been carried out. The complainant was fined for having disseminated information that violated privacy. He was later ordered in separate legal proceedings to pay the policeman compensation for mental suffering.

The Court found that events had been reported objectively in the newspaper article mentioned. The facts presented had not been disputed. It had contained a report of how an experienced police officer had acted during his free time, when he had exercised his public powers. Nothing about the policeman's private life had been mentioned other than his name and the fact that he had wanted to undergo a psychiatric examination and that this had been ordered by a court. The police officer had given this information to another newspaper in an interview that he had granted it. In the view of the Court, given the objective way in which the complainant's article was written, it was not problematic from the perspective of presumption of innocence, although it had been published before the court reached its verdict. The Court also found the sentence that the complainant had been given unreasonable and took the view that Article 10 of the European Convention on Human Rights had been violated.

Changing a transgendered person's personal identity code

The issue in the *H.* case (13.11.2012) was protection of the privacy of a transgendered complainant and alleged discrimination on especially the ground that she had not been given a personal identity code corresponding to the new gender when the spouses wished to continue their marriage. Domestic law would have made it possible for a personal identity code indicating the new female gender to be assigned only if the complainant's spouse had agreed to the marriage being changed into a registered civil partnership. The Court examined the matter from the perspective of private life. Weighed against the complainant's interests was the State's interest, which is based on preserving the inviolability of the traditional institution of marriage. The Court noted that Articles 8 or 12 of the European Convention on Human Rights do not justify an obligation on participating states to grant same-sex couples the right to marriage and did not find that there had been a violation in the case.

No violation in two cases

The issue in the case *Keskinen ja Veljekset Keskinen Oy* (5.6.2012) was the necessity of an oral hearing in appeals instances in a criminal case. In the background was a precedent ruling by the Supreme Court, KKO:2008:119, in which the outcome had been the imposition of a fine for a breach of the Lotteries Act in the so-called Miljoona Pilkki (ice-fishing) event. Neither the Court of Appeal that dealt with the case or the Supreme Court had arranged oral main hearings. The Court found that the Court of Appeal and the Supreme Court had examined only legal questions, on which it was possible to decide in appeal instances without the complainant being heard in person.

In the case *Huhtamäki* (6.3.2012) the Court rejected the complainant's claims that the principle of legality in criminal law had been violated. In the background was a situation in which person A had been convicted of aggravated dishonesty as a debtor and the complainant in connection with this offence of gross receipt of stolen goods. Arising from the judgment that had been given in the Court's *Marttinen* case (viz. summary of the annual report 2009 p. 44), the Supreme Court subsequently quashed the sentence that A had been given (KKO 2009:80). By contrast, the complainant's application to have his sentence quashed was rejected (KKO 2010:41), the decision that the judgment now issued by the Court applied to. The Court took the view that, according to the Penal Code in force at the time the complainant was convicted, the corpus delicti had existed and he had not been convicted contrary to the provisions of Article 7 of the Convention. The application to have the conviction quashed involved a new situation, in which the Supreme Court had for the first time to adopt a position on whether protection against self-incrimination could affect also others than those involved in the crime in question. The Court took the view that the Supreme Court had remained within its margin of discretion when making its decision and that Article 7 of the Convention had not been violated.

Cases that ended in friendly settlements or with a unilateral declaration

In cases that ended in friendly settlements the complainant had withdrawn the complaint to the European Court of Human Rights after the government of Finland had offered to make recompense and pay the costs of legal proceedings. This happened in the following complaints during the year under review (see the upper table on the following page).

The Court can end handling of a complaint also with a unilateral declaration by the Government, i.e. an admission that a breach of human rights had occurred; an offer to pay compensation and/or recompense is often associated with this. The following complaints (see the lower table on the following page) ended this way.

K.	child being taken into care	€5,000
Tolppanen	duration of administrative procedure and legal remedies	€2,000
Panajoti	house search and personal search	€4,000
Kanerva	length of criminal proceedings and legal remedies	€12,500
Åberg	house search and legal remedies	€4,000
Majuri	restrictions on movement arising from the Domicile Act	€4,900
Kivioja	time limit for bringing an action under the Paternity Act	€8,600
J.N.	prerequisites for defence in criminal proceedings	€3,500

Cases that ended in friendly settlements

Sillanpää	length of criminal proceedings	€2,850
Jalava	house search and personal search	€2,850
Kangasluoma	length of criminal proceedings	€2,850
Räty	length of civil proceedings	€2,850

Cases that ended in a unilateral declaration

Complaints otherwise ruled inadmissible by Chamber decision

A total of 12 (11) complaints were rejected or ruled inadmissible in Chamber or Committee composition on the ground that no breach of a right was established or on a variety of processual grounds.

The Court ruled the complaint in the *Rautonen* case (15.5.2012), which concerned the duration of a criminal trial, inadmissible on the ground that the complainant was not deemed to meet the victim requirement stipulated in Article 34 of the Convention. This was due to the fact that in the domestic proceedings the Court of Appeal had taken the duration appropriately into consideration when not sentencing the complainant to a penalty. In the circumstances of the case, the Court accepted that the demand for recompense for delay had been rejected.

In the case *S.V.* (24.1.2012) a complaint concerning the duration of civil proceedings was ruled inadmissible because domestic legal remedies had not been exhausted and the complaint was deemed unfounded in other respects as well. In the *Kesko Oyj* case (25.9.2012) the Court rejected claims relating to unreasonable length in dealing with a taxation matter, the reasons advanced for decisions and discrimination.

The Court rejected as unfounded claims of violation of the privacy of family life, discrimination, failing to hear the views of children and the duration of the proceedings in the *M.I. et al.* case (13.11.2012), which concerned urgent decisions to take children into care. In the case *A.A.S.* (3.7.2012) the Court rejected as unfounded claims of a violation of Article 8 of the Convention in relation to a limitation of rights to visit a child.

The issue in the case *E.J.* (6.11.2012) was the rejection of an asylum application by an Iranian per-

son of Kurdish background and a decision to return him to his homeland. The Court found that his claims that he risked being treated contrary to Article 3 of the Convention in Iran and that there were defects in the reasons presented by an administrative court were unfounded.

In the case *Suzi* (10.1.2012) the Court deemed the matter inadmissible by virtue of the six-month rule, i.e. on the ground that it had been made too late. The issue in the case was the complainant, who was old and in poor health, being returned to Russia. In the case *H.A.U.* (10.1.2012) it had been decided to refuse entry to and return to Italy a Somali asylum seeker on the basis of the so-called Dublin II system. The Court ruled the complaint, in which *inter alia* a risk of inhuman treatment was claimed, inadmissible because it took the view that in the circumstances of the case (a residence permit granted in Italy and the complainant having come of age) there was no reason to examine the complaint on the grounds set forth in Article 37.1 (c) of the Convention.

The Court ruled the *Lechouritou et al.* complaint (3.4.2012) against Germany and 26 other EU Member States, including Finland, inadmissible as unfounded. The subject of the complaint was a judgment (C-292/05) in which the Court of Justice of the EU rejected claims for compensation based on mass destruction committed by the German army in a Greek village during the Second World War.

In the cases *Kärkkäinen*, *Puttonen* and *Kaikko* (all 4.12.2012) the Court ruled as inadmissible complaints alleging gender discrimination in the Bank of Finland's early pension system mainly on the ground that national legal remedies had not been resorted to and partly as unfounded.

Compensation amounts

In the cases finding a violation, the State of Finland was ordered to pay the complainants compensation totalling €25,650 (about €59,000 in 2011).Cases that ended with friendly settlements or unilateral declarations incurred a payment obligation of over €55,900 (€19,500). Thus complaints about breaches of human rights cost the State of Finland a total of over €81,550 (€79,000) in payments ordered during the year under review.

New communicated complaints

A response from the Government was requested in relation to 24 (17) new complaints. In five of these cases, the Court managed to issue a decision already during the year under review either because a friendly settlement had been reached and/or the Government had made a unilateral declaration.

In two cases the Government was asked for a comment on claims to the effect that legal consequences caused by the book *Pääministerin morsian* ("The Prime Minister's Bride") (KKO 2010:39) violated the freedom of speech of the book's author and the publishing company. Violation of freedom of speech was the theme also in two other new complaints, in one of which what was involved was a case concerning publication of tax information that had been resolved by the Supreme Administrative Court in its judgment KHO:2009:82, and in relation to which the Court of Justice of the EU had issued a judgment on 16.12.2008 in response to a request for a precedent ruling (C-73/07).

Four communicated complaints concerned legal remedies in house search situations and one related to a personal search. The issue in three cases is an alleged violation of the prohibition on dual punishment in a situation where tax increase and tax frauds were combined. What is involved in one case is the prerequisites for defence in a criminal trial, since a Court of Appeal had ruled a complaint inadmissible because the complainant was absent, although his legal counsel was present.

In addition, the new communicated complaints concern *inter alia* a person being refused entry and returned to Iran and the process of taking a child into care.

3.6 The Ombudsman's observations

3.6.1 FUNDAMENTAL AND HUMAN RIGHTS IN OVERSIGHT OF LEGALITY

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

The purpose of the section is to outline a general picture of implementation of fundamental rights in administration and other activities that fall within the Ombudsman's powers of oversight. The feature of the decisions that is specifically highlighted here is their key fundamental and human rights-related content. Several solutions are dealt with in greater detail further on in this text in the sections dealing with specific categories of matters, where the angle of examination is broader. It has not been possible to include here all of the decisions that are of significance from the perspective of fundamental and human rights; instead decisions that are important from this perspective are explained also in the category-specific sections.

3.6.2 EQUALITY, SECTION 6

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

Equal treatment was taken up in several decisions concerning flawed arrangement of health care. Patients have a right to both the urgent and the non-urgent care that their state of health requires irrespective of their economic situation or ability to pay or in which hospital district they live (3323/4/10*, 2106/4/11* and 4012/2/12*). Nor may a prison sentence being served by a patient or the duration of imprisonment constitute a decisive ground when deciding on his treatment and its urgency (3797/4/10).

Regional equality came up also in a case concerning the nationwide availability of customs declaration services. It was found in the case that in order to safeguard equal access to the service provided by the Customs, the possibility of developing other forms of making written customs declarations besides only one based on making declarations through the Internet should be considered (3911/4/11*).

It is contrary to the principle of equality to put a person in an a priori different position as a recipient of support for the reason that he is a student.

Because the amount allowed for reasonable housing costs had been set in a city's guidelines at a priori a considerably lower rate for students than in the case of other persons living alone, this could guide the decision making of the authorities that grant income support in such a way that the right of the individual student to last-resort security of livelihood is jeopardised (4171/4/11*). The Day-Care Act guarantees parents an absolute right to obtain municipally arranged full-time day care without the parents having to present a more precise explanation of their need for full-time day care. A decision by a city's early education and schooling board to limit the daily time a child spends in day care and which applied to families in which one or both parents were mainly at home, was problematic from the perspective of equality (1172/4/11*).

Prohibition on discrimination

The prohibition on discrimination enshrined in Section 6.2 of the Constitution complements the equality provision. It requires that no one may, "without an acceptable reason", be placed in a different position on the basis of gender, age, origin, language, religion, conviction, opinion, state of health, handicap or other reason relating to the person.

The prohibition on discrimination does not prevent so-called positive special measures, which are aimed at promoting rather than just formal equality, but also factual equality that can be implemented in practice. This special treatment must always serve an acceptable purpose and treatment that is more favourable than others receive must always be properly proportionate to the desired goal. One example of something that was acceptable was an arrangement, founded on religion, under which persons of the Muslim faith had been provided with a place for quiet prayer and meditation during Ramadan. The arrangement in the library was temporary and of brief duration (3031* and 3033/4/10*).

Placing people in a different position on the basis of language was what was involved when a client transacting business in Swedish with the Social Insurance Institution (Kela) had to reserve a separate time irrespective of what matter was concerned. The arrangement tended to create the impression that clients were placed in different positions relative to each other on the basis of language if persons speaking one of the national languages *de facto* had to go to more trouble to get service than the others (2216/2/10*).

The right of children to equal treatment

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

Staff from an on-call social welfare office had made a house call to determine a 7-year-old child's need for protection. After this, a police patrol that provided executive assistance took the child to a police station, where it was questioned as an involved party in a criminal investigation concerning assault. The police had not presented acceptable reasons for questioning the child before a substitute guardian had been summoned (4570/4/11).

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

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

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

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

The right to life

Section 7.1 of the Constitution guarantees everyone the right to life.

The obligation that a prison has to protect inmates from self-harm and their right to life featured in a decision in which the Ombudsman took the view that prisoner suicides called for guidelines on procedures by means of which these deaths can be prevented (2357/2/12*).

Personal integrity and security

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

Personal integrity and safety in health care and social welfare

The actual question involved in numerous cases concerning health care as well as care services for elderly and mentally handicapped persons has been that of restrictions on the right of self-determination that are not statutorily provided for and which have therefore had to be evaluated from the perspective of the provisions on self-defence or a situation of necessity.

A health centre does not have the power to restrict a patient's right of self-determination. However, restriction may be permitted in a so-called

situation of necessity, but even then the measures taken must be absolutely inescapable and in accordance with good care practice (1319/2/11*).

A doctor in a hospital's on-call polyclinic did not have a right, based on the Mental Health Act or the Patient Act, to prevent a patient from leaving the polyclinic in a situation in which the patient was being sent to a hospital for observation. Neither did a guard belonging to a private company that took care of security at the polyclinic have a right, based on his powers as a guard, to intervene in the patient's personal liberty, even though the doctor asked him to prevent the patient from leaving. However, the action may be justified under the provisions applying to a situation of necessity (2810/4/10).

The burden of proof that a patient has not been treated inhumanely or degradingly resides with the State, and there must be convincing proof of the inescapability of the measure. For this reason, records of a psychiatric patient having been placed in restraints must clearly show that the action has been absolutely essential in light of the patient's behaviour and why isolation in a room has not been a sufficient measure (4102/4/11*). It follows from the principle of proportionality, which must be observed in all official actions, that when a person is taken to a health centre for an examination of his or her mental state, milder methods than using an ambulance or executive assistance by the police must primarily be used. The primary measure is to invite the patient to the health centre or a visit by a doctor to the patient's home (3365/4/10*).

Intervention by the police in personal liberty and integrity

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

The police had, in conjunction with a suspicion of gross fraud that they were investigating, arrested an interested party in the offence for his own protection, citing as their justification a provision of the Police Act that allows involuntary restriction of a person's liberty in order to protect him or her. However, nothing had even indicated that the life, bodily integrity, safety or health of the complainant had been under threat. The involved party had, without a lawful reason, been deprived of liberty in a way that could clearly be regarded as a violation of his personal freedom, which was protected as a fundamental and human right. It was a serious matter given also the duration of the deprivation of liberty, about 23 hours (1317/4/11*).

Conditions of persons who have been deprived of their liberty

The last sentence of Section 7.3 of the Constitution contains a constitutional imperative which means that the treatment afforded a person who has been deprived of freedom must meet the demands of, *inter alia*, international human rights conventions. One of the special focuses in the Ombudsman's oversight of legality is on the rights that persons who have been deprived of their liberty for reasons that are in and of themselves legal enjoy while they are deprived of liberty. Numerous cases concerning these matters are resolved each year. The fundamental rights of persons who have been deprived of freedom must not be limited without a reason founded in law.

The conditions under which remand prisoners were held in two prisons were unlawful. In practice, there were no leisure activities for remand

prisoners and opportunities to spend time outside their cells were otherwise very few. Other than the outdoor exercise that the law requires, these prisoners were locked into their cells virtually round the clock. No reasons founded in law had been presented for restricting their rights. Reasons relating to resources and workload can not be used to justify actions that do not correspond to the requirement enshrined in the Constitution that the public authorities safeguard implementation of fundamental rights (4732/2/09* and 377/4/12).

The use of so-called observation jumpsuits in prisons restricts a prisoner's freedom of will and right of self-determination in a different way than, for example, video monitoring. The use of these jumpsuits is the kind of restriction of fundamental rights for which it is essential that a clear provision exists in law (2011/2/10*).

Prohibition on treatment violating human dignity

Section 7.2 of the Constitution states that no one may be sentenced to death, tortured or otherwise treated in a way that violates human dignity. The prohibition on treatment that offends human dignity applies to both physical and mental treatment and is intended to cover all cruel, inhuman or degrading forms of punishment or other treatment. The provision has largely the same content as Article 3 of the European Convention on Human Rights, according to which no one may be tortured or treated or punished in an inhuman way. When evaluating what is treatment that violates human dignity, one is always to some degree bound by the changing values and perceptions in society and the case law with respect to application of the Constitution and of the Convention does not always have the same content.

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

Rooming-in and restriction of freedom of movement were involved when a child was forced to sit down wearing only underpants, the same food was served several days in a row and WC areas were cleaned with a toothbrush. The child had not been allowed to say anything without first raising its hand, whereby the supervisor gave it permission to speak or, for example, request permission to go to the toilet. In a child welfare institution, restriction measures can be applied to a child only when the prerequisites stipulated in the Child Protection Act are met. The task of the staff of a child welfare institution is to bring up the child and teach it to behave in the desired way. However, humiliating a child is not a part of its upbringing and is never permitted (4547/4/10*).

It was not in accordance with treatment worthy of human dignity that on a stop during prisoner transports the prisoners had to make their visits to the WC in the presence of others. Also the absence of hand-hygiene facilities especially in conjunction with visits to the WC or eating as well as having to be in a full cell for longer than a brief period, with no option other than to stand or sit on the floor, gave ground for criticism from the perspective of treatment worthy of human dignity (4012/4/11).

Contact between persons resident in a treatment unit for the mentally handicapped with their relatives can be restricted only to the extent that arrangement of special treatment or the safety of another person inescapably demands. The restrictive measures must be justified from the perspective of treatment of the mentally handicapped person or inescapable with another person's safety in mind. The personnel resources in accommodation units for mentally handicapped persons must be dimensioned in a way that ensures restrictive measures do not have to be resorted to because the staffing level is too low. Punitive measures must not be taken against residents of accommodation units for mentally handicapped persons (4626/4/10).

A policemen commented in a TV programme reporting on police activities that his guess as to the cause of death of a deceased person found on the street at an incident scene was consumption of a large quantity of alcohol. The principle of least harm that has to be observed in police actions as well as the prohibition on causing unnecessary harm and hurt in the provision of information requires that caution be exercised in the way that the estimated cause of death is announced. Sensitivity and the possibility, as expressed in several statements by the Eduskunta's Constitutional Law Committee, that the effect of the demand for treatment worthy of human dignity that is enshrined in the Constitution extends further than only to the treatment of living individuals make it advisable in such situations to refrain from public evaluations that might offend against the memory of the deceased or hurt the feelings of relatives (3374/4/10*).

A city's social welfare department had put burial services for social welfare clients out to tender. The party chosen on the basis of the tenders to produce the service was an entrepreneur whose sector of operation did not include a burial service. The entrepreneur lacked experience of the sector. Clients of social welfare have a right to receive good social care and good treatment without discrimination from the party implementing social care. Clients must be treated in a way that does not violate their human dignity and respects their convictions and privacy. When arranging burial services for clients of social welfare, a municipality must ensure that the entrepreneur providing the service has knowledge or experience of the burial sector or has otherwise shown that he understands the demands of the sector and his obligation to carry out a burial service in compliance with the general principles set forth in the Burials Act and in such a way that the deceased is treated with dignity, respecting his memory and the feelings of his relatives (4195/4/11).

3.6.4 THE PRINCIPLE OF LEGALITY UNDER CRIMINAL LAW, SECTION 8

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

3.6.5 FREEDOM OF MOVEMENT, SECTION 9

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

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

A child had been under supervision in one room during a rooming-in period in a child welfare institution. It had been outside the room, for example for outdoor exercise or to take meals, only with the supervisor and even then had not been allowed to talk with other children. Also cutting off the child's social contacts had distinguished the restriction of freedom of movement that the institution had imposed during the rooming-in period. The rooming-in practised by the in-

stitution represented an intervention in the child's personal liberty in a way that meant a restriction of fundamental and human rights. The child's liberty had been restricted in such a way that a decision to limit its freedom of movement should have been made (4547/4/10*).

3.6.6 PROTECTION OF PRIVACY, SECTION 10

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

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

Respect for the privacy of home

House searches conducted by the police

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

The Coercive Measures Act was amended with effect from 1.8.2011. The change means that the party on whose premises a house search has been conducted can refer the preconditions for the search or the actions during it to a court for examination. This will probably affect to some degree the number of complaints about house searches that the Ombudsman is asked to investigate.

When a house search is conducted, rights such as domestic peace as well as protection of privacy and family life are regularly intervened in. Therefore there must be effective legal remedies against these interventions within the framework of the national legal order. When there is good reason for asking whether the legal remedy that has been created through the above-mentioned legislative amendment is effective in practice in the way required by the European Convention on Human Rights (regarding this see a more precise report in the Police section), the criminal investigation authorities can also through their own measures improve legal protection when home searches are conducted. The aim in a decision to conduct a house search should be to limit and focus the search in such a way that it does not lead to an unnecessarily extensive intervention in the target's rights. This means a written house search warrant being drafted more generally than is currently the case. Secondly, it would be advisable to try to ensure that whenever it is at all possible, the house search is conducted by an official with the right to make an arrest (3236/2/11*).

Protection of family life

Section 10 of the Constitution does not contain a mention of protection of family life. However, this is considered to fall within the scope of the protection of privacy that is enshrined in the Constitution. In Article 8 of the European Conven-

tion on Human Rights family life is specifically equated with private life.

Protection of family life arose in several cases relating to arrangements for inmates of closed institutions to meet family members.

A psychiatric hospital can not totally forbid unsupervised visits between spouses or couples within the sphere of protection of family life if the hospital has areas suitable for this purpose and the patient's state of health does not prevent the arrangement of a meeting (903/4/11*).

Confidentiality of communications

Opening and reading a postal despatch or eavesdropping on and recording a telephone conversation are examples of restricting the confidentiality of communications. These measures must be based on an Act.

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

The confidentiality of communications as a fundamental right of both sender and receiver arose in a case in which a letter sent by a prisoner had been – for reasons that were in and of themselves lawful – read and this fact told to the prisoner, but not to the recipient of the letter. Regulation of the obligation to notify was found to be flawed. A priori, both parties must have the right to be informed if an authority has intervened in protection of a confidential communication. The Ministry of Justice was informed of the Ombudsman's opinion that the obligation to notify, or exceptional situations when it need not be done be provided for in legislation (437* and 2659/4/10).

Protection of privacy and personal data

Ensuring protection of data is a key component of the statutory obligation on authorities to promote good information management practice. The individual must be able to trust that confidential information entrusted to an authority will not be divulged to any outside party.

Publication of confidential information was involved in a case where the agenda for a meeting of a City Board had been posted on the city's web site and revealed information on a complainant's and his spouse's need for dental treatment (4320/4/10). In another case, a municipal protocol was open to interpretation with regard to whether a complainant had intervened in the arrangement of the municipality's transport services on only a general level or whether he himself had received a transport service. This kind of openness to interpretation does not accord with good information management practice when one considers that information that a transport service has been received is required by law to be kept secret (3793/4/10).

Under the practice followed at a city-owned indoor swimming baths facility, persons using the service there wore different coloured bracelets indicating whether they were paying the full fee for using the baths or entitled to pay a reduced rate. Those entitled to the lower fee included pensioners, handicapped persons and those unemployed who were not entitled to pay-related per diem benefits. Information on the reason for the reduction was stored on the red bracelet. The reasons that the city presented for this procedure were supervision and the goal of reducing the cost of ticket sales. However, these considerations do not constitute an adequate ground for treating users of the baths differently depending on whether they were entitled to a lower admission fee for social, health or other person-related reason. The procedure was likewise not in accordance with the requirements that the Personal Data Act sets with respect to handling personal data nor with the confidentiality-related provisions of the Act on the Openness of Government Activities. For all

the time that a person was in the swimming baths, the bracelet divulged information that was required to be kept secret (3514/4/11*).

A municipality's cultural affairs department had the established practice of requiring all persons being appointed to regular jobs or offices to undergo testing for drugs. The procedure was criticised, because already when the employer was planning how to handle the information relating to the drug tests, he had to assess on a case-by-case basis whether handling of these data was necessary and justified in each task. The employer must within the framework of the codetermination procedure deal with the itemised work tasks in which the employee is required to or may on the basis of consent present a certificate relating to a drugs test (4036/4/10).

A person's photograph is personal data in the meaning of the Personal Data Act if the person is recognisable in it. If there has not been a lawful reason for taking the actual photograph, obtaining and handling the personal data associated with it are not lawful actions, either. The right to take and process a photograph must be founded on an Act that sets forth the authority's powers sufficiently precisely. There were no lawful grounds for photographing complainants as well as their clothes and vehicles while conducting a border inspection (2595/4/11).

Expunging data from a register within the statutory time limit for doing this arose in a case in which the application by a person who had sought to perform peacekeeping tasks was rejected, invoking data from the courts system that should have been deleted before the register search was conducted. This unlawful procedure had caused the person undue harm. Data relating to a registered person must be expunged from the register as soon as there is no longer any lawful reason for keeping them in it, because what is involved is protection of privacy in handling, registering and using data as well as of the registered person's protection under the law (150/4/11*).

Privacy in health care and social welfare functions

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

A patient's privacy was violated by the action of a youth psychiatry department when, in a situation of overcrowding, it placed the patient's bed in a corridor (2164/4/11) and by an action in which a hospital patient was not informed in advance that a student would be present, for teaching purposes, in a reception situation and his consent for this was not requested. As a result of this flawed procedure, the student, who was an outsider in the meaning of the Patient Act, divulged information about the complainant that was required by law to be kept secret (3427/4/11 and 3534/4/12*).

The tasks of a security guard working in the first-aid section of a health centre did not include participating in giving a patient treatment and he did not belong to the category of others working in a health care operational unit in the meaning of the Patient Act. The guard's obligation to respect confidentiality was founded on the confidentiality provisions of the legislation applying to private security services and publicity of official actions. The guard breached his duty to maintain secrecy when he told the police the name of a person who had attended the health centre at the same time as he handed a drug syringe that the person had had in his possession over to the police, because he should not have given the police information concerning the person's attendance as a client at a health care unit or that person's lifestyle, such as using drugs, he had obtained while performing his task (2953/4/10*).

When long-term treatment and care are being arranged for elderly patients, attention must be paid to the quality of the treatment and care that is given. The right to privacy, safety of housing and treatment and its significance, the way the client is treated as well as maintaining the elderly person's social interaction in addition to other par-

ticipation by an elderly person in ordinary life are among the factors that influence the quality of the services that are to be arranged. So many residents had been placed in rooms in a care home that it was not possible to ensure their privacy or their opportunity to live in a homelike environment (2641/3/12*).

3.6.7 FREEDOM OF RELIGION AND CONSCIENCE, SECTION 11

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

Both positive and negative freedom of religion – the right to practise a religion but also the right not to participate in others' practice of religion – can also mean causing an obligation on the public authorities to take positive action, since the provisions of the Constitution have the goal of promoting factual and not just formal equality. General ideas of a pluralistic and tolerant society are in the background to freedom of religion and freedom of speech. Diversity, tolerance and broad-mindedness are often counted as belonging to the basic values of western democratic society. The foundation of values in question also includes, as an essential element, respect for the rights of minorities. Since many of the minority groups whose religion differs from that of the majority population often belong to ethnic or racial minorities at the same time, safeguarding minorities' freedom of religion also contributes to preventing racial intolerance and discrimination. Taking the above into consideration, there was no ground for criticising an arrangement whereby a place for silent prayer and meditation had been provided for Muslims in a city library during Ramadan (3031 and 3033/4/10*).

3.6.8 FREEDOM OF SPEECH AND PUBLICITY, SECTION 12

Freedom of speech

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

Freedom of speech includes also photographing. Complaints are made both because an authority has, without a valid reason, prohibited photographing and also alleging that an authority has allowed photographs to be taken in a situation that, in the complainant's view should be kept secret. What is often involved is a matter of striking a balance between freedom of expression and some or other fundamental right – such as protection of privacy.

A complainant had taken a photograph of another person transacting business as a client in a Social Security Institution (Kela) office and posted it on the Internet. Kela had asked that the picture be removed and announced that photographs may not be taken in a Kela office. It was pointed out in the decision that a Kela office is a public space, where photographing can not be completely prohibited. Nor can it be required that advance permission be requested. From the perspective of protecting the privacy of Kela clients, however, it is justifiable that Kela includes in its guidelines a request that contact with the office personnel be made before taking photographs (1140/4/11*).

The facility-specific guidelines that a city sports department has issued include a prohibition on

photographing without permission both in indoor swimming baths and at outdoor pools. The view taken was that the department has reason, arising from protection of privacy as well as breach of public peace and voyeurism, which are punishable offences, to issue guidelines on photography at swimming facilities. What is involved is not binding regulations, but rather behavioural guidelines and recommendations, the basis for which is, on the one hand, safeguarding protection of privacy and, on the other, preventing the criminal offences of breaching public peace and voyeurism. The prohibition can also be justified in order to protect for example vulnerable groups of clients, such as children (2504/4/10*).

Publicity

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

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

When a close relative asks to see a deceased person's medical report, investigating the possibility of malpractice is sufficient as a ground. An authority's power of discretion with respect to what documents are essential for this purpose can not be interpreted broadly, because otherwise the authority could fail to provide documents that are unfavourable from its point of view (4084 and 4248/4/10). What was involved in the latter case was also the province of Åland's legislation on publicity of documents, which did not contain a provision stipulating within what period of time a request for documents must be replied to. When it is taken into consideration that the publicity of documents is safeguarded as a fundamental right, the time periods set in the Act on Publicity of Official Activities for responding to requests for documents must be regarded as indicative also for Åland.

A city's basic security department acted contrary to the Personal Data Act when it required that a relative had to request information on his mother as a social welfare client in writing. Under the Personal Data Act, a written request is not a prerequisite for the right to inspect; instead, the request can be made in person to the keeper of the register (3990/4/10*).

3.6.9 FREEDOM OF ASSEMBLY AND ASSOCIATION, SECTION 13

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

Freedom of assembly and association is generally dealt with in complaints associated with demonstrations. What is often involved is assessing whether the police have adequately safeguarded the exercise of freedom of assembly. Complaints concerning the procedure for registering an association are likewise received.

The Deputy-Ombudsman took the view in his decision on a complaint that unemployment funds must provide open, impartial information about various alternative ways of joining: a person can join the fund at the same time as he or she joins a trade union, or it is possible to join as an individual member. The funds should also offer the same kind of procedure for joining irrespective of which kind of membership a person chooses. Therefore the funds' Internet pages should con-

tain basic information on individual membership and a link to the relevant application form for joining (2256/4/11*).

3.6.10 ELECTORAL AND PARTICIPATORY RIGHTS, SECTION 14

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

Exercising the right to vote, which is safeguarded as a fundamental right, is a matter of such a fundamental nature that a municipality's central electoral board must ensure adequate bilingual service at a polling station, for example when choosing polling clerks as well as by arranging duty rosters and drafting written guidelines (218/4/12*).

Changes that are made in arranging care for elderly persons are of great significance for both residents and their relatives and they must have a real, and not just formal opportunity to influence decision making. When a hospital was being closed and residents' care was being rearranged to a speeded-up timetable, the matter should have been notified to the elderly patients, their relatives and the personnel in good time to give them a real possibility of influencing decision making in the matter. Arranging an information event two days before the board meeting at which the matter was dealt with did not meet this requirement (3577/4/10*).

Changing the place where a social welfare client is cared for means many kinds of changes in his or her living environment. In addition to the physical change of place of residence, a move means that relationships with familiar carers are severed and often also with other residents. Before important decisions of this kind are made, the elderly patients, their relatives and the staff must be guaranteed the opportunity to have their views heard already in the preparatory stage of decision making (3179/4/11).

3.6.11 PROTECTION OF PROPERTY, SECTION 15

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

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

It took the Defence Forces unduly long to correct errors in their salary-payment system. This involved a question of the personnel's basic livelihood, and the right to a salary is a key right that the law guarantees to public servants. Rights that are based on contractual relationships and are measurable in terms of wealth have been regarded as being a private person's property also in the meaning of the Constitution (2357/2/11*).

3.6.12 EDUCATIONAL RIGHTS, SECTION 16

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

The party arranging education has a duty to ensure that a physically, mentally and socially safe learning environment is put in place.

Arising from the aforementioned duty, preventive work to identify bullying at as early a stage as possible is an essential part of a school's everyday work. This presupposes for example that pupils are subject to adequate supervision during all school activities and also during breaks and that the school staff actively and on their own initiative monitor interaction between pupils also in school corridors and between lessons (2816/4/10).

Pupils' right to a safe learning environment was not implemented when the actions that a municipality took to eliminate problems with the air inside the school were inadequate. It was not possible to accord so much importance to the factors associated with the municipality's financial situation that they lessened the responsibility that the party arranging education bears for the safety of the pupils' learning environment. In addition to this, there was also the matter of the occupational safety of persons working on the school premises (2822/4/10*).

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

Guaranteed in the Constitution are, besides the equal status of Finnish and Swedish as the national languages of the country, the right of the Sámi, the Romani and others to maintain and develop their own language and culture.The language provisions pertaining to the province of Åland are contained in the Act on the Autonomy of Åland.

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

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

The time of day at which news broadcasts in the Sámi language were made had points of linkage with equal treatment, the prohibition on discrimination as well as safeguarding the rights of a national minority and indigenous people. What is involved is the right of the Sámi, as an indigenous people, to maintain and develop their own language and culture. In the light of this, the Finnish Broadcasting Company's action in transmitting news programmes around midnight in the part if the country south of the former province of Lapland is problematic from the perspective of the Sámi people who live there (3709/2/10*).

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

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

3.6.15 THE RIGHT TO SOCIAL SECURITY, SECTION 19

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

The right to indispensable subsistence and care

The Income Support Act does not discriminate between applicants on the basis of nationality; instead, the decisive factors are the applicant's need for support and, with respect to a municipality's responsibility for organising matters, the nature of the applicant's sojourn in the municipality. When assessing the nature of a person's sojourn in a municipality, attention must be paid to factors that illustrate the permanence of the sojourn, for example the reasons for being there, the length of time already spent there, dwelling place, family ties or other solid links, efforts to enter the labour market, studying and the applicant's life situation. When an authority is granting income support, it must apply the Income Support Act. The Aliens Act or the Act on Social Security on the Basis of Residence must not lead to additional conditions for granting income support being set. Something that can not be deemed a precondition for receiving income support is that a person is regarded as having been, in accordance with the Act on Social Security on the Basis of Residence, permanently resident in Finland. A precondition of this kind has no basis in the Act (3312/4/10).

No stance on the patient's financial situation or ability to pay is adopted in the regulations concerning access to treatment; the only criterion on the basis of which access to treatment is assessed is the patient's individual state of health and the need for treatment arising from it. Thus payment of overdue client fees or a payment commitment issued by the social welfare department can not be set as a precondition for access to treatment. A patient has a right to the treatment, both urgent and non-urgent, that his or her state of health requires (3323/4/10*).

The right to security of basic subsistence

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

On an inspection visit to a legal office that produced public guardianship services on an outsourced basis, the service producer's attention was drawn to a need to increase the efficiency with which the principal's circumstances are explored comprehensively on a case-by-case basis in order to ensure that every principal receives, from among the numerous different benefits that exist, those to which he or she is entitled by law (4157/3/12).

The right to adequate social welfare and health services

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

The exhaustion and self-destructive thoughts of which a child victim of school bullying had told a school nurse at her reception were not taken seriously enough and the child was left without sufficient and timely support in the situation. The nurse should have, in collaboration with the child's guardians, immediately referred the child to, for example, a school doctor or on-call health centre doctor for a more precise appraisal of the situation (1791/4/11).

A child's right to adequate health services was not implemented, because it had to wait over five months to be admitted to the care of a child psychiatrist. The health centre doctor should have tried more actively to ascertain the child's state of health earlier than was actually done. In the stage where he was informed that the child might be displaying psychotic symptoms, he should have tried more actively to examine the child himself and if necessary refer it already on an on-call basis to a youth psychiatrist for evaluation. If that had been done, the child's right to adequate health services would have been safeguarded. This would have been safeguarded also by organising more active cooperation between specialist health care and school health care as well as the child welfare authorities (4623/4/10*).

When authorities are performing their statutory tasks, they must take the interests of the child into consideration. An authority must ensure on its own initiative that a child is not, as a result of flawed information that its parents have provided or the authority has obtained, deprived of the services to which it is entitled (1523/4/10).

Some of the operational practices adopted by hospital districts and health centres limit the provision of auxiliary equipment for medical rehabilitation to persons living in serviced housing units in a way that can be regarded as contrary to the Auxiliary Equipment Decree. Oversight of implementation of adequate health services is a centrally important way of safeguarding this fundamental right. The Ministry of Social Affairs and Health must use all means at its disposal to direct hospital districts and health centres to adopt practices that are in compliance with the Auxiliary Equipment Decree (2495/4/11).

The articles used for piercing the skin to take blood samples when measuring blood sugar, i.e. lancettes, had not been distributed to diabetics. The reason given for this was that it had not been possible to allow in the city's operational health care plan for additional costs caused by an amendment to the Health Care Act that had taken effect in the middle of the year. The city acted unlawfully when it failed to perform a task that is assigned to it in the Health Care Act, namely distributing care supplies, in the manner that the legislation requires (3737/4/11*). An intermunicipal joint authority for health centres had instructed the health centres

to limit distribution of some care supplies by requiring patients to pay for anything in excess of a certain maximum quantity. This applied to, for example, the strips that diabetic patients use to measure blood sugar. This action was unlawful, because it did not allow for patients' individual needs (4092/4/11*).

During the year under review, as in earlier years, several cases in which treatment had not been provided within a set period, as required in Treatment Guarantee legislation, came to light. These cases are explained in the section dealing with health care.

The right to housing

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

A city's attention was drawn to the fact that if homelessness or substandard housing conditions on the part of a parent make it difficult to implement the right of a child in foster care to maintain contact or if they are an obstacle to taking the child out of care, the municipality must do everything in its power to try and arrange a dwelling suiting the need or redress the shortcomings in housing conditions (1188/4/12*).

A non-profit rental housing company had not when selecting a family as residents and assessing the urgency of their need for housing and prioritisation taken any account of the great need for housing for health reasons that housing applications revealed. The housing need arising from the size of the family, the ages of the children and their number and sex, had likewise not been taken into consideration in this assessment. The selection of residents had not been done in accordance with the relevant norms. The company's electronic housing search system also contained defects and errors, for which reason selection of housing applicants was not implemented appropriately. The electronic housing search system did not meet the demands of protection under the law for those seeking housing or the demands of the appropriateness and dependability that is required in the performance of a public task. Thus the system was unlawful (4333/4/10).

3.6.16 RESPONSIBILITY FOR THE ENVIRONMENT, SECTION 20

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

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

ceedings and the right to receive an appealable decision or the right of appeal in environmental matters.

In his decision on a complaint concerning the granting in Finland of permission for a ship to depart to be scrapped abroad, the Deputy-Ombudsman pointed out that several serious violations of human rights and instances of pollution of the environment had been observed in the ship-breaking sector. However, there was nothing to indicate that the Finnish authorities had acted unlawfully in the procedure that was the focus of the complaint (4543/4/10*).

3.6.17 PROTECTION UNDER THE LAW, SECTION 21

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

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

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

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

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

In the following we present an examination of sub-sectors of a fair trial and good administration that have featured a lot in the work of the Ombudsman. Owing to the large number of decisions, not nearly all of those issued during the year under review and that dealt with the rights safeguarded in Section 21 of the Constitution have been included. Besides, the various features of an individual decision may have been dealt with in several factual contexts. The presentation is based on an examination of the fundamental and human rights demands associated with a fair trial and criteria of good administration.

Obligation to provide advice and service

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

Quite many complaints concerning the answering of enquiries are dealt with each year. Good administration presupposes that factual letters addressed to authorities are replied to appropriately and without undue delay (2635/4/10* and 2314/4/11).

The issue in one case was the availability of debt advisory services when the only financial and debt adviser in a unit was on holidays. While that person was away, no appointments or advisory services had been arranged. The way the intermunicipal joint authority acted in this matter did not accord with the service principle and its obligation to provide advice and did not meet the requirement stipulated in an agreement between the Regional State Administrative Agency and the joint authority to the effect that services be provided also when personnel were on sick leave or their annual holidays. The Consumer Agency must arrange monitoring to ensure that the obligations included in the agreement covering the provision of financial and debt services and enshrined in the Administrative Procedure Act are complied with (2704/4/10*).

The way in which the authorities announce on their web sites how their e-mail addresses are formed for people to get in contact with them is a question of implementation of the service principle and advice. Advice and guidance must be so unambiguous and precise that a person can appropriately work out what an authority's official e-mail address is (3560/4/11*).

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

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

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

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

The effectiveness of legal remedies can in certain cases presuppose recompense being made in one way or another for the harm that rights violations have caused. In trial procedures Article 13 of the European Convention on Human Rights leaves room for choice in the way recompense is effected. The Ombudsman can not intervene in courts' decisions, nor can he have an input into the way recompense is made. However, the Ombudsman does have the possibility of making various proposals with a view to recompense. The immaterial damage caused by undue delays in criminal trials is in certain cases compensatable in trial procedures. (Viz. Supreme Court judgments KKO 2005:73, 2006:11 and 2011:38).

Regulations on legal remedies to prevent trial delays and effect recompense for them have now been included in the relevant legislation. Chapter 19 of the Code of Judicial Procedure contains provisions enabling a case to be declared urgent in a district court. The act on compensation for excessive duration of judicial proceedings stipulates the right of an involved party to receive compensation from State funds if legal proceedings in a civil, application or criminal case in a general court of law are delayed (see Supreme Court judgment KKO 2011:87). Recompense for delay in legal proceedings will become possible also in new cases initiated in administrative courts from June 2013 onwards.

In one case a complainant claimed that a health centre doctor had violated his duty of confidentiality by divulging information about the complainant's relationship with the doctor to the police. The doctor revealed this when he made a report to the police that the complainant had committed a crime. The Ombudsman considered it contrary to Section 6 and 21 of the Constitution if some or other professional group is deprived completely of the opportunity to obtain protection under the law for themselves insofar as they cannot have acts against themselves investigated by the police on the basis that by so doing they have to reveal some or other matter that is covered by their duty of confidentiality. The Ombudsman took the view that the doctor who reported a crime to the police was justified in informing them also that the person who was alleged to have committed the crime had been his patient (1480/4/10).

Doctors who have made a decision concerning involuntary psychiatric care must ensure that the patient is informed of the decision appropriately and is aware of his or her right to appeal against it. In one case, the decision had been placed in the patient's medical records folder with the result that it had not been presented to the patient for over two months (2675/4/10*).

Complainants had in letters sent to a municipality's building supervision department demanded that it take measures to remove a neighbour's building, which they regarded as having been erected without permission. Their written demands should have been forwarded to the oversight section of the environment board, which functioned as the municipality's building supervision authority, for an appealable decision. That way, they would have had the opportunity to refer the matter to an administrative court for a decision on whether the municipality's building supervision authority should have taken action arising from the construction situation (4551/4/10).

Prison authorities had acted incorrectly by placing an inmate in conditions that *de facto* meant keeping him isolated in the meaning of the Remand Prison Act, but without making a decision to this effect as the Act requires. The result of this action was that the prisoner did not have the opportunity to have the legality of the reasons for the isolation decision made the subject of a rectification demand to the governor of the regional prison and possibly also an appeal to an administrative court (531/4/11).

Expeditiousness of dealing with a matter

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

Questions relating to the expeditiousness of handling matters continually arise in oversight of legality. The attention of authorities has often been drawn, for the purpose of guidance, to the principle of expeditiousness, also when what has been involved in a concrete case is not something that can be branded as an actual breach of official duty. The Ombudsman has tried to find out the reasons for delays and often also to recommend ways of improving the situation or at least to draw the attention of higher authorities to a lack of resources.

What can be regarded as a reasonable length of time to deal with a matter depends on the nature of the matter. The demand for expeditiousness is especially accentuated in social assistance matters. Other things that demand especially speedy processing include protection of family life and matters relating to the state of health of an involved party, employment relationships, the right to practise an occupation, holding an official post, pensions or compensation for damages. Ensuring expeditiousness is particularly important also when the personal circumstances of an involved party mean that he or she is in a weak position.

Delay in processing is often associated with inadequacy of the resources available. Scarcity of resources was at least in part the reason for delay in especially some cases concerning the Social Insurance Institution (Kela) and the Supreme Administrative Court. Scarcity of resources likewise came up in cases concerning the National Supervisory Authority for Welfare and Health (Valvira), the National Institute for Health and Welfare (THL) and Regional State Administrative Agencies. In several cases, delays were caused also by the absence of staff during holiday periods. However, merely referring to "the general work situation" is not a sufficient excuse for exceeding reasonable processing deadlines.

On the other hand, delay can result from otherwise defective or erroneous handling of the matter in question. In such cases, there can often be also other problems from the perspective of good administration.

The Social Insurance Institution (Kela)

There was a six-week passive period, during which nothing was done about the matter, in a case of the collection unit in a Kela insurance district collecting a maintenance debt from abroad. An underdimensioned staffing level in the insurance district (mainly only one official handled the demanding task of collecting debts from abroad) was not an acceptable reason for delay in handling the matter. When the interests of a vulnerable party, such as a child, are involved, an authority must assess precisely whether the chosen measures and solutions accord with the child's interests and promote implementation of its rights. The Kela insurance district increased the number of staff dealing with debt collection abroad from one to four, after which the situation in the district improved (47/4/11*).

The police and prosecution authorities

A right to prosecute lapsed before a case was assigned to a prosecutor for consideration of charges. The Deputy-Ombudsman stressed the importance of agreement between, on the one hand, the police and the prosecutor and, on the other, the prosecutor and the district court, on procedures regarding cases approaching their expiry date so as to ensure that the urgency of a case coming before them is noticed both in the prosecutor's office and in the district court (3730/4/11*).

The right to prosecute in a case involving criminal discrimination lapsed during the criminal investigation stage and the officer in charge of the investigation did not adopt a position on whether the essential elements of the offence had been met. It was obvious in the case that the officer in charge of the investigation had not assessed the preconditions for a criminal investigation from the perspective of a possible criminal breach of official duty, with respect to which the five years in which it becomes statute-barred had not yet elapsed. When investigating the complaint, the police began a criminal investigation into a suspected breach of official duty in the case (717/4/11*).

Courts

The nearly three years that it took for a leave-to-appeal application in a tax case to be dealt with by the Supreme Administrative Court was unduly long. The court cited inadequacy of resources as the cause. The Ombudsman pointed out that questions of the public authorities' resources manifested themselves as fundamental and human rights questions and thereby also as questions of legality at the latest in the stage where, because the resources available to it are inadequate, it is not possible for an authority or a court to safeguard implementation of fundamental and human rights in matters within its competence. The Ombudsman informed the Ministry of Justice of the latter opinion (3897/4/11*).

It took a year and seven months for the Supreme Administrative Court to deal with a case involving a child being taken into care. The delay was due to the large number of cases to be dealt with relative to the Court's personnel resources in especially 2010, which was reflected also into 2011 (2307/4/11*).

Ensuring that a matter is handled without undue delay and that handling is expeditious when the matters involved are required by law to be dealt with urgently is a court's responsibility. Nothing had happened in a case relating to enforcement of a decision concerning a child visitation right for about six months after the enforcement mediator's report because it took that long for the interested parties to respond. The Ombudsman took the view that handling of the matter had not taken place with the urgency that the law requires once the mediator's report had arrived (301/4/12).

Other authorities

As a consequence of a failing in its internal documents traffic system, Valvira, the National Supervisory Authority for Welfare and Health, began examining an oversight matter relating to a doctor only four months after it had been informed that a judgment in a criminal case against a doctor who was suspected of malpractice, had acquired the force of law, with the charges being rejected (3652/4/11*).

Investigation of the right of a person, who had received training as a dentist abroad, to practice in Finland should have commenced immediately after the National Authority for Medicolegal Affairs (TEO) had become aware of a suspicion of forgery relating to documents that the person concerned had presented in Sweden and Estonia in support of his application for licensing (687/4/11).

It took the National Authority for Medicolegal Affairs (TEO) and Valvira, the National Supervisory Authority for Welfare and Health a total of 19 months to deal with a matter involving a Medicolegal submission. This was clearly longer than the average time needed to deal with a matter of this kind and was an unacceptable delay. Valvira's backlog of medicolegal submissions was cleared in 2010, when additional resources for dealing with these matters were obtained (163/4/11*).

Handling of a matter concerning an unemployment benefit took 19 months at the Unemployment Security Appeal Board, where the average time taken to process a matter was 6 months (2968/4/10).

Informing the person whom a district registry office had applied to be placed under public

guardianship took a district court more than three months, which was a very long time taking the special nature of the matter into consideration. Operational methods were developed to avoid similar situations from arising (2799/4/12*).

An application for a prolonged B2 pilot's licence had been unduly delayed in the Finnish Transport Safety Agency when the Agency demanded that an aircraft fitter supply test credit reports from his former vocational institute, which did not even have a statutory obligation to draft such documents (548/4/11*).

Publicity of proceedings

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

In a municipal complaint matter, it was not justified, also when looked at from the perspective of guarantees of a fair trial, to send personal assessments of applicants for office to two persons who had complained as members of the municipality for their information and to a vice-principal who had not complained (529/4/11*).

Hearing an interested party

A complainant had been barred from entering an indoor swimming baths on the basis of activities that belonged within the sphere of protection of freedom of religion and freedom of speech. The personnel at the baths had taken the view that the complainant was disturbing other clients with his talk about religious matters. The view was taken that the city had an especially accentuated obligation to explain and demonstrate that the grounds for the ban had been appropriate and acceptable and that the way the matter had been handled had met the demands of protection under the law and good administration. The prohibition of using the swimming baths had been based solely on operational guidelines that the staff had agreed on among themselves. Before the ban was imposed, the complainant should have been given an opportunity to be heard and a decision, complete with instructions for appealing against it, should have been made in the matter. The action was deemed to have been unlawful (2720/4/11*).

The Deputy-Ombudsman took the view that the National Administrative Office for Enforcement had acted in error when debtors were not informed in advance that tax rebates would be distrained nor notified that distraint was being set in train. Sending advance notifications to debtors had been discontinued in 2011 for reasons of cost. Under the relevant legislation, debtors need not be informed if notification of initiation of distraint proceedings has been made. It was not noticed in conjunction with the mentioned change that, on the basis of an earlier decision, notifications of initiation were no longer being sent. The procedure jeopardised the debtors' protection under the law, because the basic principles of good administration include the right of the party in question to be heard. The mass nature of tax rebates and a busy timetable can not be an obstacle to implementing fundamental rights (4139/4/11*).

A public guardian had not acted sufficiently in cooperation with his principal when he didn't even try to have a personal discussion with the principal about selling the latter's own home (2709/4/10*). A public guardian's action was not in accordance with the Guardianship Act's provisions concerning hearing and cooperation when he closed and opened bank accounts without asking his principal's opinion (3943/2/11).

A city's environment board had not reserved an opportunity for a company that owned a neighbouring plot to have its views heard when it was handling a permit matter relating to the building of two semi-detached houses. It was not possible to take the view that what was involved in the permit case was a situation of the kind in which, owing to the minor nature of the project

and its location or considering the content of the general plan, taking the neighbour's interest into consideration would have been manifestly unnecessary (550/4/10).

Providing reasons for decisions

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

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

Once again, shortcomings in presentation of the reasons for decision concerning criminal investigations (4085/4/10 as well as 138, 3223 and 3335/4/11) came to light. Being told the reasons for a criminal investigation not being commenced in the case is important from the perspective of exercise of the involved party's independent right to bring a prosecution. Setting forth reasons is important also from the perspective of the self-control of the person who makes the decision, because writing down the reasons forces one to reflect on the legal significance of the decision (5/4/11).

No facts on the basis of which there was reason to suspect that specifically the target person A had committed gross criminal damage was presented in a written demand for tele-surveillance. In the view of a district court judge, a detective inspector supplemented his requirements in a coercive measures session. However, additional grounds were not recorded anywhere. The district court judge's memories of the additional grounds were rather general in nature and a report received in the matter did not show that acceptable grounds for conducting tele-surveillance would have existed. The Deputy-Ombudsman did not find it acceptable that a district court fails to record facts that have influenced its decision. The Deputy-Ombudsman also criticised the detective inspector for the fact that the written demand for a coercive measure had not included factors itemising the suspicions against A (1514/2/12).

A Kela official wrote in a decision rejecting an application for per diem sickness benefits that the reason for the decision was the fact that the applicant had been found to be addicted to medicines and intoxicants. The official had misinterpreted the assessment of the applicant's incapacity for work, made by an expert doctor, that was used in the decision making. On what basis the addiction had been determined and by whom was not stated in the presentation of reasons. Likewise missing from the reasoning was an explanation of what effect the applicant's use of medicines had had on the decision (4525/4/10*).

Appropriate handling of matters

The demand for appropriate handling of matters contains a general duty of care. An authority must carefully examine the matters that it is dealing with and comply with the regulations and orders that have been issued. This extensive category includes cases of very different types relating to both court and administrative procedures. What was involved in some cases was an individual error due to carelessness, whilst in others the cause lay mainly in the procedural methods that authorities had adopted and in demarcations and assessments to do with factual power of discretion.

An administrative court had found a person to be severely handicapped in the meaning of the Services for the Handicapped Act and Decree, and thereby someone for whom the municipality had to arrange a transport service. The municipality's own opinion of the correctness of the court's judgment is of no significance when it is handling a matter that has been decided on with the force of law. An administrative authority reassessing a court's judgment is in conflict with independence of the judiciary and dilutes the appeals system (2178/4/10*).

A complaint made to an overseer of legality does not in and of itself influence the responsibilities that the Criminal Investigations Act imposes on a person conducting an investigation of this kind. The Ombudsman is not an authority who conducts criminal investigations and can order an investigation of this kind only in matters that fall within his powers of oversight. If the question in a complaint matter being investigated by the Ombudsman is whether a criminal investigation should be initiated or continued with, this is not generally an impediment to the police commencing a criminal investigation or continuing with one while the complaint is being dealt with. It would, however, be advisable for the police to get in contact with the overseer of legality in order to ensure, among other things, that no inclarities arise and prevent overlapping work from being done. It is also possible that the Ombudsman prefers, in matters within the scope of his power of oversight, to decide himself whether a criminal investigation is to be conducted (1590/2/11).

Attention had been paid to a question concerning the language of handling in a case in an administrative court only after the documents had been transferred to the referendary dealing with the matter. Prior to this, an office secretary had been in charge of questioning the person in writing in Finnish, although the appellant had been a person from Norway, who had announced that he didn't understand Finnish. Although the administrative court had discretionary power as to how it handled examination of a matter in practice, looked at from the perspective of protection under the law, a procedure in which written questioning is done in practice by a person other than the referendary dealing with the matter, may due to its routine character lead to a situation in which the special features of an individual case – such as language questions – do not receive appropriate attention (4155/4/11*).

A point that was emphasised in one case was that when the only persons in a dwelling during a house search by the police are a nine-year-old child and its friend of the same age, an effort should have been made to ensure that the child is not left alone, at least not for a long time, with the emotions and questions that a visit by a uniformed police patrol has prompted (2393/4/11).

The requirements of good administration extend also to the services that a municipality purchases. An intermunicipal joint authority for a hospital care district had not ensured that services outsourced from opticians corresponded to the standard that is expected of the equivalent municipal service (4067/4/10*). Outsourced services were involved also in *inter alia* a case concerning payments out of operating expenses; in the case, services had been produced by a public guardian from a legal office (4386/4/11* and 2052/4/12*). The issue in one case was the action of the Finnish Embassy in Nigeria in legalising wedding certificates. In the view of the complainant, the fee charged by the legal office that the Embassy used was excessive. The Deputy-Ombudsman took the view that diplomatic missions should try to choose their cooperation partners in such a way that parties transacting business in the Finnish administration receive, irrespective of their level of wealth, appropriate administrative services that meet the requirements of the Administrative Procedure Act (3715/4/11).

A separate entry must be made in the medical records when the right of self-determination of a patient in somatic care has had to be limited, for example in a situation of necessity (2576/4/11). Shortcomings in entries in patients' medical re-

cords were again observed in several other cases as well (2124, 2262* and 3638/4/11).

It emerged in several cases that procedures contrary to good administration had been followed in drafting submissions relating to benefits under labour policies (2164/4/10 as well as 588, 2063, 2359 and 2721/4/11). An Employment and Economic Development (TE) Office had neglected to draft, together with a complainant, a job search plan not later than at the point where the applicant had been unemployed for five months (1797/4/11*).

A matter that the Deputy-Ombudsman found to be unlawful was Kela's failure to separately send a copy of a study grant decision it had made for a 15–17-year-old also to the student's parents for their information (4529/4/10*).

Other prerequisites for good administration

The principle of the rule of law presupposes that the practices under which exceptional permits governing the hours of opening of shops are granted do not, examined in their entirety, become such that they jeopardise implementation of the legislator's will as expressed when limits were set to the hours during which shops can be open (72/4/11*).

An action contrary to the principle of proportionality was involved in a case in which a health centre refused to continue teeth-straightening treatment. Its decision was founded on its own criteria and was rigidly formal in character. When the treatment-related decision was made, the patient's individual situation was not taken into consideration, i.e. the fact that the treatment, which had begun in another municipality, was already in its final stage (2507/4/11).

Protection of trust was the issue in a case where a district distraint officer had abrogated a payment plan, which an earlier distraint officer had confirmed for a debtor, soon after the plan was confirmed. The only change compared with what the debtor's situation had been when the payment plan was confirmed seemed to be that a new distraint officer had taken the old one's place (558/4/11).

A prisoner was transferred against his will from one prison to another on the ground that he had made a notification of a crime against a prison official. What was involved was the use of legal means of ensuring protection under the law. The action was problematic from the perspective of the principles of purposefulness and proportionality, because the purpose of regulation of prisoner transfers is to ensure implementation of the general objectives of enforcing imprisonment and of the general demands that are to be set for the contents of enforcement of imprisonment (62/4/10*).

Guarantees of protection under the law in criminal trials

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

A prosecutor took a decision to limit a criminal investigation on the ground that the offence was trivial. A new notification of a crime was made in the case after this, and it included additions – which were in and of themselves quite minor – to the earlier notification. A detective inspector decided, invoking the limitation decision in the case, that a criminal investigation would not be conducted. The Deputy-Ombudsman considered it appropriate that, although there is no statutory provision requiring this, the assessment and decision as to whether a criminal investigation is to be carried out is made by a public prosecutor or at least measures are discussed with him (4566/4/10).

One of the most important components of a fair trial is the right to use legal counsel. The Deputy-Ombudsman criticised a police service for the way a letter sent by a legal representative to a remand prisoner had been handled. The practice under guidelines in the police prison was that the officer in charge of the investigation and the investigating officer were sent e-mails informing them of the arrival of a letter for a person who had been deprived of liberty. In the assessment of the Deputy-Ombudsman, the guidelines followed in the police prison were too simplistic insofar as they did not take adequate account of the special requirements of delivering letters from legal counsel. In addition, if delivering a letter has to wait for a response on the part of the officer in charge of the investigation or the investigating officer, there is the possibility that undue delay in delivering the letter will be caused (1638/4/11*).

The question of what is significant material in a criminal case can not be left entirely for the investigating authority or prosecutor to decide on. A document provided by a witness for a criminal investigation should have been recorded in the protocol of the criminal investigation when the document was not included as an appendix to the protocol. A criminal investigation measure or item of material that is "without result" or "insignificant" from the perspective of the police can indicate innocence from someone else's point of view (4741/4/11).

Impartiality and general credibility of official actions

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

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

The Ombudsman found it problematic on a general level if a public guardian working for a legal office that produces a service buys the services of a lawyer for his principal from the same office. It can, namely, be asked with good reason whether a public guardian would be able in such a case to faithfully exercise oversight on behalf of his principal to ensure that the commission (including the lawyer's fees) is appropriately performed (4157/3/12).

Attention was drawn in one case to the fact that a public service doctor may not refer a patient to his own private practice in such a way that the referral is in conflict with his official duties (4067/4/10*).

Scrutinising decisions to engage personnel was included in the duties of a director of administration. He was recusable when he scrutinised an order appointing his wife to an official post. This evaluation was not influenced by the fact that a notification by the director's wife about her salary was in and of itself factual (1075/4/11*).

Behaviour of officials

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

A policeman was criticised after he had sworn at a 14-year-old moped rider. Even when a rebuke is justified, it should be given in an appropriate manner without swear words and shouting. This applies especially when children are concerned (2617/4/11).

The attention of a cadastral surveyor was drawn to the importance of using appropriate language at a survey meeting. His choice of phrases was inappropriate in a situation in which a cadastral survey and providing information about related work in the terrain were being discussed (2284/4/10).

3.6.18 SAFEGUARDING FUNDAMENTAL RIGHTS, SECTION 22

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

The exercise of the Eduskunta's budgetary power is of key importance in determining how the public authorities are able to fulfil their constitutional obligations with respect to safeguarding fundamental and human rights. The Ministry of Finance has a responsibility to ensure *inter alia* that the regional administrative agencies have sufficient resources to take care of their statutory tasks. In one instance, handling of a complaint matter in the Provincial State Board and the Regional State Administrative Agency that replaced it took 3 years and 8 months. The unduly long time needed to deal with the matter was due mainly to organisational changes and in this context to a dearth of resources that had resulted from the expert personnel handling social welfare matters being reduced by two person-years in a situation in which there was already a significant shortage of expert personnel. The Ministry of Finance had not granted permission for replacement personnel to be recruited (4019/4/11*).

In some cases, relatives of deceased persons criticised delay in establishing the cause of death at the University of Helsinki's Institute of Forensic Medicine. In one case, it took over nine months to draft a death certificate and in another case over a year. The reason stated for the delay was the inordinately large number of obductions that each forensic pathologist had to perform, the urgency accorded to dealing with cases of violent death as well as administrative tasks. The purpose of a forensic examination of the cause of death is to ensure people's protection under the law and the correctness with which the cause of death is established. The Ombudsman drew attention to the fact that focusing of economic resources is one of the key means with the aid of which the public authorities must fulfil their obligation to safeguard implementation of fundamental and human rights. In his opinion, the Ministry of Social Affairs and Health must ensure that the National Institute for Health and Welfare (THL) has sufficient resources to perform its statutory task (203* and 871/4/11).

3.6.19 OTHER CONSTITUTIONAL OBSERVATIONS

Outsourcing a public administrative task

A municipality's health centre service was outsourced outside of office hours to a company that provided health care services. When a private party performs a public task, its operations in this respect come under the Ombudsman's oversight and its liability for compensation can be equated with that of an authority (1319/2/11*).

A city did not have a clear operational method for ensuring that the services outside bodies produced for it under a voucher system were of high quality. Services must correspond to at least the standard that can be expected of municipal services. A municipality's responsibility for monitoring is accentuated, because the service producer is performing a public task when social welfare and health care services are provided by means of service vouchers (1218/4/11*).

Many serious concerns and legally problematic questions are associated with privatised public guardianship services. In the view of the Ombudsman, the development of privatisation and the experiences gained of it must be precisely monitored (1260/3/12* and request for report 3108/2/12*).

An optical reading service for written forms sent by tax-liable persons to the Tax Administration is an auxiliary task associated with an authority's performance of its statutory duties. In the optical reading service, the data provided on the tax report forms sent in by tax-liable persons are converted into electronic form and transferred to the Tax Administration's systems to provide a basis for tax calculation. Section 124 of the Constitution stipulates that a public administrative task of this kind can only be entrusted to a private company under or by virtue of an Act. However, the matter is not provided for in an Act. Since the task is not performed on the basis of an Act, there is no obligation in the reading service to observe the general laws of administration and the persons in the company who handle tax data are not bound by the official responsibility that applies to public servants (848/2/11*).

Exercise of public power being based on an Act

Section 2.3 of the Constitution states that exercise of public power must be based on an Act. The law must be strictly observed in all public activity. The issue in one case was compliance with and implementation of the aforementioned principle of the rule of law in the administration of a municipality. Power of decision concerning establishment of the municipality's concern bank was vested in the supreme decision-making body, i.e. the municipal council. Since power to establish the concern bank had not been transferred in the concern guidelines from the municipal council to the municipal board or the mayor, the latter was not authorised to establish the bank. Power to grant a loan had likewise not been delegated away from the municipal council.

When, acting in his capacity as the chairman of the board of a subsidiary company, the mayor signed a promissory note, he bypassed authority that belongs to the municipal council, a decision of the municipal board and neglected the mayor's duty to ensure that decisions made by the municipal board are appropriately carried out. A majority of the municipal board had in its investigation of the matter approved the mayor's unlawful methods. The Deputy-Ombudsman issued a reprimand to the mayor for his unlawful action and informed the municipal board of his opinion that it had been unlawfully negligent of its duty to exercise oversight to ensure that the principle of the rule of law is observed in the administration of the municipality (3473/4/11).

Section 80.1 of the Constitution requires that the principles governing the rights and obligations of private individuals be set forth in Acts. The pro-

tection under the law and rights of the individual provided for in Section 21 are completely unregulated in a case concerning receipting of excise duty. The Deputy-Ombudsman took the view that the procedure followed by the Customs in receipting the duty was in some respects problematic from the perspective of the demand concerning enactment of legislation. He recommended to the Ministry of Finance that it consider taking measures to complement the Excise Duty Act with provisions concerning receipting. In the same conjunction, consideration should also be given to complementing the Customs Act with provisions concerning receipting of other Customs receivables and payment obligations (941* and 4167/4/10*).

4 Annexes

Constitutional Provisions pertaining to Parliamentary Ombudsman of Finland

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

Section 38
Parliamentary Ombudsman

The Parliament appoints for a term of four years a Parliamentary Ombudsman and two Deputy Ombudsmen, who shall have outstanding knowledge of law. 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 a 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

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

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

Section 6
Executive assistance

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

Section 7
Right of the Ombudsman to information

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

Section 8
Ordering a police inquiry or a pre-trial investigation

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

Section 9
Hearing a subject

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

Section 10
Reprimand and opinion

(1) If, in a matter within his or her remit, the Ombudsman concludes that a subject has acted unlawfully or neglected a duty, but considers that a criminal charge or disciplinary proceedings are nonetheless unwarranted in this case, the Ombudsman may issue a reprimand to the subject for future guidance.

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

Section 11
Recommendation

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

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

CHAPTER 2
Report to the Parliament and declaration of interests

Section 12
Report

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

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

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

Section 13
Declaration of interests (24.8.2007/804)

(1) A person elected to the position of Ombudsman, Deputy-Ombudsman or as a substitute for a Deputy-Ombudsman shall without delay submit to the 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 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 fundametnal and human rights as well as cooperation 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 quarum 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 4
Office of the Parliamentary Ombudsman and the detailed provisions (20.5.2011/535)

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.

. . .

20.5.2011/535
This Act shall enter into force on 1 January 2012.

Section 3 and the first paragraph of Section 19 a of the Act shall, however, enter into force on 1 June 2011.

The measures necessary to launch the activities of the Human Rights Centre may be taken before the entry into force of the Act.

Division of labour between the Ombudsman and the Deputy-Ombudsmen

Ombudsman *Petri Jääskeläinen*
decides on matters concerning:

- the highest organs of state
- questions involving important principles
- courts
- the prison service and execution of sentences
- health care
- legal guardianship
- language legislation

Deputy-Ombudsman *Jussi Pajuoja*
decides on matters concerning:

- the police
- social insurance
- public prosecutor
- Defence Forces, Border Guard and non-military national service
- traffic and communications
- trade and industry
- data protecton, data management and telecommunications
- education, science and culture
- labour administration
- unemployment security
- church affairs

Deputy-Ombudsman *Maija Sakslin*
decides on matters concerning:

- social welfare
- municipal affairs
- distraint, bankruptcy and dept arrangements
- children's rights
- taxation
- environmental administration
- agriculture and forestry
- asylum and immigration
- Sámi affairs
- customs

Statistical data on the Ombudsman's work in 2012

MATTERS UNDER CONSIDERATION

Oversight-of-legality cases under consideration — 6,695

Cases initiated in 2012		4,723
– complaints to the Ombudsman	4,302	
– complaints transferred from the Chancellor of Justice	33	
– taken up on the Ombudsman's own initiative	74	
– submissions and attendances at hearings	51	
– other written communications	263	
Cases held over from 2011		1,532
Cases held over from 2010		433
Cases held over from 2009		7

Cases resolved — 5,002

Complaints	4,634
Taken up on the Ombudsman's own initiative	61
Submissions and attendances at hearings	52
Other written communications	255

Cases held over to the following year — 1,693

From 2012	1,432
From 2011	245
From 2010	13
From 2009	3

Other matters under consideration — 267

Inspections [1]	147
Administrative matters in the Office	98
International matters	22

[1] Number of inspection days 89

OVERSIGHT OF PUBLIC AUTHORITIES

Complaint cases — 4,634

Social security		994
– social welfare	659	
– social insurance	335	
Police		720
Health care		525
Prisons		369
Courts		263
– civil and criminal	237	
– special	–	
– administrative	26	
Education		195
Labour administration authorities		187
Municipal affairs		168
Environment		164
Enforcement		143
Transport and communications		103
Guardianship		97
Agriculture and forestry		90
Prosecutors		80
Asylum and immigration		80
Highest organs of state		74
Taxation		65
Defence		56
Municipal councils		42
Customs		29
Church		19
Private parties not subject to oversight		17
Other subjects of oversight		154

OVERSIGHT OF PUBLIC AUTHORITIES

Taken up on the Ombudsman's own initiative			61
Prisons		11	
Police		10	
Social security		7	
– social welfare	4		
– social insurance	3		
Transport and communications		6	
Health care		4	
Defence		3	
Enforcement		3	
Education		2	
Municipal affairs		2	
Courts		2	
– civil and criminal	2		
– administrative	–		
Environment		2	
Labour administration authorities		2	
Taxation		1	
Prosecutors		1	
Asylum and immigration		1	
Customs		1	
Highest organs of state		1	
Other subjects of oversight		2	
Total number of decisions			4,695

MEASURES TAKEN BY THE OMBUDSMAN

Statistical records changed as of 1.6.2011.

Complaints		**4,634**
Decisions leading to measures on the part of the Ombudsman		**834**
– prosecution		–
– reprimands		39
– opinions		669
– as a rebuke	379	
– for future guidance	290	
– recommendations		27
– to redress an error or rectify a shortcoming	1	
– to develop legislation or regulations	15	
– to provide compensation for a violation*	10	
– to rech an agreed settlement	1	
– matters redressed in the course of investigation		40
– other measure		59
No action taken, because		**2,460**
– no incorrect procedure found		457
– no grounds		2,003
– to suspect illegal or incorrect procedure	1,420	
– for the Ombudsman's measures	583	
Complaint not investigated, because		**1,340**
– matter not within Ombudsman's remit		110
– still pending before a competent authority or possibility of appeal still open		620
– unspecified		188
– transferred to Chancellor of Justice		29
– transferred to Prosecutor-General		8
– transferred to other authority		171
– older than five years		4
– older than two years		133
– inadmissible on other grounds		77

* Recompense recommended also in three cases involving reprimand and nine involving an expression of opinion

MEASURES TAKEN BY THE OMBUDSMAN

Statistical records changed as of 1.6.2011.

Taken up on the Ombudsman's own initiative		61
Decisions leading to measures on the part of the Ombudsman		48
– prosecution		–
– reprimands		2
– opinions		29
– as a rebuke	14	
– for future guidanc	15	
– recommendations		7
– to redress an error or rectify a shortcoming	1	
– to develop legislation or regulations	5	
– to provide compensation for a violation	1	
– matters redressed in the course of investigation		3
– other measure		7
No action taken, because		11
– no incorrect procedure found		4
– no grounds		7
– to suspect illegal or incorrect procedure	7	
– for the Ombudsman's measures	–	
Own initiative not investigated, because		3
– still pending before a competent authority or possibility of appeal still open		1
– inadmissible on other grounds		1

INCOMING CASES BY AUTHORITY

Ten biggest categories of cases

Social security		961
– social welfare	668	
– social insurance	293	
Police		731
Health care		462
Prisons		324
Courts		259
– civil and criminal	237	
– administrative	22	
Labour administration authorities		186
Education		163
Environment		157
Municipal affairs		152
Enforcement		118

Inspections

* = inspection without advance notice

Courts

- District Court of Helsinki, coercive measures
- District Court of Keski-Suomi, coercive measures affecting telecommunications and house searches, Jyväskylä
- District Court of Oulu, coercive measures affecting telecommunications and house searches

Prosecution service

- Prosecutor's Office of Helsinki
- Prosecutor's Office of Keski-Suomi, Jyväskylä
- Prosecutor's Office of Oulu
- The Office of the Prosecutor General

Police administration

- City of Helsinki sobering-up station, Töölö Kisahalli*
- Etelä-Karjala police service, Imatra detention facility*
- Etelä-Savo police service, Pieksämäki detention facility*
- Helsinki police service Töölö holding facility*
- Helsinki police service, aliens police
- Helsinki police service, Pasila detention facility*
- Internet police
- Kainuu police service, Kajaani central police station detention facility*
- Kanta-Häme police service, neighbourhood policing
- Keski-Suomi police service, Jyväskylä
- Keski-Suomi police service, Jyväskylä central police station detention facility and holding facility for intoxicated persons*
- Lapland police service, Utsjoki service centre
- National Bureau of Investigation (twice)
- National Bureau of Investigation, White-collar crime prevention support unit
- National Police Board
- National Traffic Police, Helsinki-Vantaa Airport unit
- Oulu police service
- Oulu police service, Oulu central police station detention facility and sobering-up station*
- Pirkanmaa police service, neighbourhood policing
- Pohjois-Savo police service, Iisalmi detention facility*
- Pohjois-Savo police service, Kuopio central police station detention facility and sobering-up station*
- Pohjois-Savo police service, Varkaus detention facility*

Prison service

- Hamina Prison*
- Helsinki Prison
- Helsinki Prison polyclinic
- Hämeenlinna Prison
- Kuopio Prison*
- Naarajärvi Prison*
- Oulu Prison *
- Prison Hospital, Hämeenlinna
- Riihimäki Prison *
- Sulkava Prison *
- The Central Administration of the Criminal Sanctions Agency
- Vanaja Prison

Distraint

- City of Helsinki, economic management service commercial undertakingTalpa
- Åland Administrative Office for Enforcement, Maarianhamina

Defence Forces and Border Guard

- Aircraft and Weapon Systems Training Wing, Kuorevesi
- Archipelago Sea Naval Command, Turku
- Border Guard Headquarters, Helsinki
- Centre for Military Medicine, Lahti
- Engineer Regiment, Keuruu
- Gulf of Finland Naval Command, Upinniemi
- Häme Regiment, Lahti
- Karelia Air Command, Rissala
- Karelia Brigade, Vekaranjärvi
- Navy Command Finland, Turku
- North Savo Regional Office, Kuopio
- Nyland Brigade, Dragsvik

Foreigners' matters

- City of Helsinki Metsälä Reception Centre
- Helsinki police service, aliens police

Social welfare

- Care home Villa Lyhde (private care home), Espoo*
- Care home Vuoksela (private care home), Espoo*
- City of Espoo Aurorakoti 3 (care home)*
- City of Espoo Espoonlahti care home 2*
- City of Espoo Puolarkoti 4 E (care home)*
- City of Helsinki Kontula centre for the elderly*
- City of Helsinki Naulakallio care and fostering homes (child welfare institution)*
- City of Oulu Lassintalo care home*
- City of Oulu Lassintalo care home, Helminkoti section*
- City of Rovaniemi, Pihlajarinne (housing unit for mentally handicapped persons)*
- City of Tampere Metsola family support centre*
- Helsinki Alzheimer's Association*
- Iltala (private care home), Espoo*
- Inari Sámi "language nest" (group family day care centre maintained by an association), Ivalo
- Inari Sámi "language nest" Pierval (group family day care centre maintained by an association), Inari
- Kannelkoti service centre (private care home), Oulu*
- Konstan Koti ja Koulu Oy, Hollola operational centre (private child welfare institution)*
- Kumpuniitty (private children's home), Ylöjärvi*
- Kuusikoti (private care home), Espoo*
- Liminka approved school educational centre, Liminka
- Mäntyranta service centre (private care home), Espoo*
- Mikevan Helmi (private care home), Espoo*
- Municipality of Inari Männikkö serviced dwellings, Ivalo
- Municipality of Inari Skolt Sámi "language nest" (group family day care centre), Sevettijärvi
- Pohjois-Pohjanmaa Hospital District's Lounatuuli serviced dwellings (for mentally handicapped persons), Oulu*
- Pohjois-Pohjanmaa Hospital District's Metsäketo (serviced dwellings (for mentally handicapped persons), Oulu*
- Pohjois-Pohjanmaa Hospital District's Sateenkaari serviced dwellings (for mentally handicapped persons), Oulu*
- Pohjois-Pohjanmaa Hospital District's serviced dwellings Kotikoivu (serviced accommodation for the mentally handicapped), Oulu*
- Pohjolakoti approved school, Muhos (service unit for the handicapped, maintained by a private association)
- Sámi-language section, Duottaraski, of Municipality of Utsjoki's day-care centre
- Sámi-speaking day centre for the elderly, arranged by Folk Institute, Ivalo
- Sevettijärvi Skolt Sámi services for the elderly
- Skolt Sámi "language nest" (Municipality of Inari's group family day care centre), Ivalo
- Toivola-koti service centre, Muhos (service centre for the handicapped maintained by a private association)
- Villa Lauriina (private care home), Espoo*

Health care

- Helsinki and Uusimaa Hospital District's Kellokoski Hospital
- Pirkanmaa Hospital District's Tampere University Hospital, Pitkäniemi Hospital, Tampere
- Vanha Vaasa Hospital, Vaasa

Social insurance

- Kela East Finland regional centre
- Kela Espoo centre office, Espoo
- Kela Etelä-Pohjanmaa insurance district, Seinäjoki
- Kela Hakaniemi office, Helsinki
- Kela head office, Helsinki
- Kela Korso office, Vantaa*
- Kela Kuopio office
- Kela Petonen office, Kuopio
- Kela Pohjois-Savo insurance district, Kuopio
- Kela Seinäjoki office
- Kela Vuosaari office, Helsinki
- Kela West Finland insurance district, Seinäjoki

Labour and unemployment security

- East Finland Regional State Administrative Agency labour protection area of responsibility
- Lawyers' Unemployment Fund, Helsinki
- Metal Workers' Union Unemployment Fund, Helsinki
- Pohjois-Savo Employment and Economic Development Centre's Kuopio office

Education

- City of Espoo education and culture department
- City of Helsinki Outamo School (special school), Lohja
- City of Helsinki Outamo student's home, Lohja
- City of Helsinki Toivola School (special school)
- City of Helsinki Toivola student's home
- Finnish National Board of Education
- Municipality of Inari Sevettijärvi School
- Municipality of Raasepori education and culture department
- Sámi Region Educational Centre, Inari

Other inspections

- Åland Customs District, Maarianhamina and Maarianhamina port
- City of Helsinki administrative centre and legal services department
- City of Helsinki Public Works Department
- City of Turku finance and debt advice
- City of Turku financial services centre
- Diocesan Chapter, Tampere
- Emergency Response Centre in Oulu
- Helsinki Legal Aid Office, legal aid
- Helsinki Legal Aid Office, public guardianship services
- Itella Oyj (postal service)
- Legal office Ari Orvas, public guardianship services
- Ministry of the Interior justice unit
- Municipality of Inari and its social welfare and health department, Ivalo
- Municipality of Utsjoki
- National Ecclesiastical Board
- Office of the Ombudsman for Children, Jyväskylä
- Pharmaceuticals Pricing Board
- Sámi Parliament, main office, Inari
- Sámi Parliament, Utsjoki office
- Skolt agent, Sevettijärvi
- Skolt village assembly, Sevettijärvi
- South Finland Regional State Administrative Agency, data management, Helsinki
- The Finnish Film Foundation, Helsinki
- Tornio Customs, Utsjoki customs service point
- Yle Saame (Yle Sámi), Finnish Broadcasting Company's Sámi-language services, Inari

Staff of the Office of the Parliamentary Ombudsman

Secretary General

Romanov Päivi, LL.M. with court training

Principal Legal Advisers

Kuopus Jorma, LL.D., LL.M. with court training
Kallio Eero, LL.M. with court training (part-time since 1.4.)
Marttunen Raino, LL.M. with court training
Haapkylä Lea, LL.M. with court training
Länsisyrjä Riitta, LL.M. with court training
Ojala Harri, LL.M. with court training
Tanttinen-Laakkonen Kaija, LL.M.
Haapamäki Juha, LL.M. with court training
Räty Tapio, LL.M.
Pölönen Pasi, LL.D., LL.M. with court training

Senior Legal Advisers

Hännikäinen Erkki, LL.M.
Tamminen Mirja, LL.M. with court training
Aantaa Tuula, LL.M. with court training
Kurki-Suonio Kirsti, LL.D.
Stoor Håkan, LL.Lic., LL.M. with court training
Lindström Ulla-Maija, LL.M.
Pirjola Jari, LL.Lic., M.A.
Sarja Mikko, LL.Lic., LL.M. with court training

Legal Advisers

Muukkonen Kari, LL.M. with court training
Toivola Jouni, LL.M.
Verronen Minna, LL.M. with court training
Rita Anu, LL.M. with court training
Niemelä Juha, LL.M. with court training
Eteläpää Mikko, LL.M. with court training
Suhonen Iisa, LL.M. with court training
Arjola-Sarja Terhi, LL.M. with court training
Äijälä-Roudasmaa Pirkko, LL.M. with court training (on leave till 30.6)
Holman Kristian, LL.M., M.Sc. (Admin.)
Kumpula Anne, LL.Lic., LL.M. with court training (16.1–30.11)
Skottman-Kivelä Piatta, LL.M. with court training (since 1.3)

Referendary

Skottman-Kivelä Piatta, LL.M. with court training (1.1–29.2)

On-duty lawyers

Wirta Pia, LL.M. with court training
Romakkaniemi Jaana, LL.M. with court training

Information Officer

Tuomisto Kaija, M.Soc.Sc.

Investigating Officers

Huttunen Kari
Laakso Reima

Notaries

Kerrman Raili, LL.B.
Rahko Helena, LL.B.
Koskiniemi Taru, LL.B.
Tuominen Eeva-Maria, M.Sc.(Admin.), LL.B.
Suutarinen Pirkko, LL.B.

Records Clerk

Pärssinen Marja-Liisa, LL.B.

Filing Clerk

Kataja Helena

Assistant Filing Clerk

Karhu Päivi

Departmental Secretaries

Ahola Päivi
Stern Mervi
Forsell Anu

Office Secretaries

Raahenmaa Arja (part-time)
Salminen Virpi
Keinänen Krissu
Salminen Sirpa (on leave since 27.1)
Kaukolinna Mikko
Hellgren Johanna
Hokkanen Pirjo (part-time)
Einola Eija
Karhunen Sanna
Raatikainen Taina (since 27.1)

Staff of the Human Rights Centre

Director

Rautio Sirpa, LL.M. with court training

Experts

Kouros Kristiina, LL.M. (since 3.5)
Leikas Leena, LL.M. with court training (since 14.5)

PARLIAMENTARY OMBUDSMAN OF FINLAND

FI - 00102 Parliament of Finland
TELEPHONE +358 9 4321
TELEFAX +358 9 432 2268
ombudsman@parliament.fi
www.ombudsman.fi/english