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The Ombudsman as an advocate for good administration

Introduction

Good administration as a concept made its first legislative appearance in conjunction with the fundamental rights reform of 1995, when a provision concerning the right to a fair trial and good administration was added to the list of fundamental rights in Section 16 of the Constitution. At present, a comparable provision is included in Section 21.

> According to the first clause of Section 21 of the Constitution everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. The second clause of the provision states that provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good administration shall be laid down by an Act.

The concept of good administration receives its substance from the whole of the provision. It refers to both the requirements of service without undue delay and access to appropriate service, as well as the facets of good administration listed in the second clause. As the wording of the provision shows, the substance of good administration is not revealed by the provision in an exhaustive manner. Already during the preliminary work for the fundamental rights reform, it was considered prudent to attach the requirement for impartiality in acts of authority and the service principle exemplified by the then applicable Administrative Procedure Act to the right to have one's case dealt with without undue delay given in the provision (HE 309/1993 vp). Section 21 of the Constitution is supplemented by provisions dealing with justice in other areas of legislation.

In addition to Section 21 of the Constitution, the fundamental principles of good administration are dealt with in chapter 2 of the Administrative Procedure Act that entered into force in

the beginning of 2004. The provisions of the chapter concern the legal principles of administration, service principles and appropriateness of service, advice, proper language and inter-authority cooperation. According to the Government proposal concerning the act, the purpose of the proposal was to issue provisions for the kind of quality criteria for good administration that were seen as belonging in the legislative mandate of the 2nd clause of Section 21 of the Constitution. In the Government proposal, the guarantees for good administration can be mainly understood as requirements for performing official duties efficiently and in a manner commensurate with the service principles. Good administration also includes striving for flexible and interactive administrative procedures. Among other things, this means that the customer's needs have to be sufficiently considered when organizing public services. (HE 72/2002 vp.)

When the Administrative Procedure Act is not applicable – the act is not applied to, for example, administration of law, preliminary investigation, police investigation or recovery proceedings – the procedure's compatibility with good administration is often evaluated based directly on Section 21 of the Constitution. Procedural provisions, in administrative legislation and other legislative areas, guarantee a customer's right to good administration. Examples include provisions concerning the right to a fair hearing, the obligation to present reasons and disqualification.

Good administration and the Ombudsman's oversight of legality

For a long time, monitoring the implementation of good administration has been one of the key areas of legality control through which the Ombudsman protects fundamental rights. The contentions adopted in legality control have a significant bearing when defining the substance of good administration, since the subject matter of the Ombudsman's oversight is often of the sort that it is not open to court review. As far as the right to processing without undue delay goes, the state of affair will, however, change in the said respect provided that the pending proposal by the Ministry of Justice goes through. I will take a closer look at this later in the article.

In addition to opinions concerning commensurability with good administration, the Ombudsman's decisions have frequently recommended procedures that better implement good administration or the attention of a higher authority has been drawn to a lack of resources that prevented the matter from being processed without undue delay. Occasional proposals for paying restitution have been presented in decisions. This area is dealt with in more detail elsewhere in this book.

A search in September 2009 of the Ombudsman's digital text archive, which includes all complaint decisions entered into register since 1992, using the parameters "hyv# hallin#" ("good admin#", more or less) yielded 2,668 results. The earliest was entered into register in 1992. The period during which the Administrative Procedure Act has been in force yielded 1 412 results. Change the parameters to "hyv# hallin# + hallintola#" ("good admin# + admin# proc# act") and the results number 1,029 and 816. Based on this search we can tell how many cases the terms "good administration" and, in the latter search, "administrative procedure act" appear in some form. The searches do not necessarily reveal to us all the cases that in reality dealt with procedures concerned with good administration. I assume, for example, that not all cases concerned with processing a matter without undue delay can be uncovered using these search parameters. In any case, the searches provide us with a general picture of the frequency with which good administration comes up in the Ombudsman's decisions.

Due to the amount of decisions concerning good administration, an article as limited in length as this one cannot provide a complete picture of all the various situations in which the commensurability of administrative acts with good administration has been evaluated as a part of the Ombudsman's legality control work. For this reason, I will concentrate on a few areas of good administration and on a fraction of the decisions that concern those areas. Time-wise, I will mostly deal with matters decided on in 2008 and 2009. The register numbers are given in parentheses in conjunction with the decision descriptions. A more comprehensive collection of the Ombudsman's observations on good administration is available in the annual reports of the Parliamentary Ombudsman, especially in the chapter concerning fundamental and human rights Section 21, Legal safeguards. The decisions of the Ombudsman are dealt with extensively in the second report of the follow-up study on the Administrative Procedure Act from 2006 (Ministry of Justice publication 2006:10).

I will take a closer look at advice, processing without undue delay, protection of legitimate expectations and, as a separate area, the challenges posed to good administration by digital processing of matters. Advice and processing without undue delay are looked at because of their centrality to the matter at hand. Complaints concerning good administration frequently deal with these two areas. Advice has on a couple of years been a theme of the Ombudsman's inspections and thus received special attention. The pending legislative effort to reform those parts of the Administrative Procedure Act that concern service without undue delay and the topicality engendered by the effort have, in part, influenced my choice of this area. Protection of legitimate expectations is a fairly recent legislative arrival, as principles of justice go. It was included in the Administrative Procedure Act that came into force in the beginning of 2004. Situations related to digital processing of matters can naturally touch

upon numerous areas of good administration. The digital processing of matters also involves a rapidly changing and increasingly versatile operational environment, which will provide our idea of procedures commensurate with good administration new kinds of substance. As digital processing becomes more widespread, questions related to it become topical in the area of legality control, too.

Advice

The right to appropriate advice is a part of the fundamental right to good administration.

> According to Section 8 of the Administrative Procedure Act an authority shall provide to its customers the necessary advice, within its competence, for taking care of administrative matters; as well as respond to the questions and queries on its service. Advice shall be provided free of charge. If the matter does not fall within the competence of an authority, it should direct the customer to the competent authority.

The advice referred to as a part of good administration is not legal counseling, but rather the customer being informed of his or her rights and responsibilities and how they need to proceed for their matter to become pending and for their claims to be investigated.

Questions related to advice emerge in many of the complaints directed to the Ombudsman. The question may concern replying to a letter, the substance of the advice, its cost or how the authority in question has arranged for the advice to be provided. In addition to complaints, advice has come up with great frequency on the Ombudsman's inspection visits. Advice comes up in the Ombudsman's actions of own initiative, too, as when considering how to obey the demand for free-of-charge advice provided on the telephone. Note that advice and its substance may on occasion come under evaluation in court procedures, in addition to within the context of legality control, as in when evaluating the restitution and compensation liabilities of general government (KKO:1999:32).

Fairly often a complaint is filed when an authority does not respond to a letter, either at all or the complainant feels the reply took too long. A part of good administration is the right to receive, without undue delay, a reply to all appropriate letters, inquiries and requests, if the sender can be construed as requiring or expecting a reply. The Ombudsman's decisions have indicated that a facet of good administration is that letters are responded to with letters. When the letters contain commentary on the prevailing situation or can be interpreted as mainly being an expression of an opinion or an appeal, the authority has not been found to have acted against the principles of good administration when it has not replied to such

letters. The decisions have, however, always emphasised that the threshold for responding should not be too high, because often a person will, in any case, expect a reply, even if the authority feels the letter does not clearly demand one. What is of central importance is that the person transacting with the authority is not left in the dark about what happened to his or her letter after it was delivered. In the end, whether a reply is required is a question of evaluating the situation on a case-by-case basis (e.g. 1268/06).

As another area concerning advice, I will deal with its free-of-charge nature. Advice at no cost is a part of the protected fundamental right to good administration. As national enterprise and special service numbers are implemented on an increasing basis in public administration, the authorities have had to be reminded of the right to advice at no cost in the Ombudsman's decisions. Apparently, the authorities were not aware that the right to complementary advice stipulated in the Administrative Procedure Act applied to telephone advice, too.

In matters concerning the cost of telephone advice, the situation has often been one where an authority has entered into an agreement where a teleoperator provides a service number for an extra charge. In these cases, the customer has had to pay a service charge, as stipulated in the contract, in addition to a local network charge or mobile telephone charge. Since the law decrees that the advice should be free-of-charge, any costs incurred should be paid by the authority, not the customer. The decisions have stated that telephone advice is not commensurate with the requirement of free-of-charge advice if the customer has to pay anything in excess of the normal call charge. The normal call charge refers to the charge the customer would pay, based on his contract with the teleoperator, when calling any regular number.

On occasion, the authorities have arranged for a free-of-charge advice number, but the customer service numbers, direct numbers for officials and sometimes even telephone exchange numbers remain toll numbers. The Ombudsman's legality control interpretation of the matter is that contact numbers for officials, customer service numbers and the numbers of public officials who may occasionally need to be contacted by the administration's customers, can not be toll numbers.

The first comments on the matter are from 2005, when the requirement of telephone advice at no cost was brought to the attention of the Tax Administration (2069/04) and the Finnish Vehicle Administration (382/04). In 2006 decisions were made concerning toll telephone advice numbers used by the Social Insurance Institution of Finland (1776/05), the Employment and Economic Development Office (3155/04), National Land Survey of Finland (1918/05) and the City of Tampere (1933/05). The decision concerning the telephone advice numbers of the City of Tampere was the first time the Ombudsman commented on

the responsibility of the regional authorities to make sure their telephone advice was free-of-charge and commensurate with the principles of good administration. During the years 2007 and 2008, decisions were handed down concerning complaints lodged against the use of toll numbers by the Ministry of Justice (483/07 and 510/07), Ministry of the Interior (2000/07) and Ministry of the Environment (1766/07).

When shortcomings in the availability of free-of-charge advice numbers persisted, based on complaints, as well as observations made as a part of legality control, the decision regarding the obligation to provide free-of-charge telephone advice numbers was brought to the attention of all the ministries so that the shortcoming could be addressed. The Ombudsman requested that the ministries bring the letter to the attention of all officials who independently enter into telephone service agreements with teleoperators. The same letter was also delivered to the Association of Finnish Local and Regional Authorities (1311/08).

As a result of these decisions, many authorities have made their advice numbers free-of-charge, so the caller only pays a local network charge or a mobile telephone charge.

Prompt consideration of the matter

Section 21 of the Constitution states that people have the right to have their matters considered "without undue delay". A similar obligation is enshrined in the first subsection of Section 23 of the Administrative Procedures Act.

Questions concerning the prompt consideration of matters come up in legality control all the time. In addition to prompt consideration, the matter may often deal with other areas of good administration. Good administration requires that, as a part of the obligation to provide advice, questions and inquiries be answered without undue delay. The implementation of prompt processing of matters is important, not only from a good administration point of view, but also as a part of implementing other fundamental rights.

The subject is topical. As this is being written in September 2009, a legislative effort is pending at the Ministry of Justice, Finland, which, if implemented, would result in e.g. new legal protection methods against passivity by the authorities. I will return to the report by the passivity work group in the last part of this article.

In matters concerning the prompt consideration of matters, the question is often not restricted to whether or not the length of proceedings can be regarded as reasonable but includes also

the reasons for the delay. The delay may be caused by reasons, which preclude it from being considered undue. This was the case, for example, in the matter concerning the Helsinki Metropolitan Area Council (YTV), where it was seen that YTV had not caused an undue delay in its processing of a fine rectification claim, even though the matter had been under consideration for eight months at the time the complaint was decided on. The legal and organisational changes that YTV was undergoing at the time had increased its workload in a way that was impossible to sufficiently prepare for in advance. Since YTV had monitored developments in the processing times and already taken steps to increase manpower resources in that area, the matter did not give cause for action, even though the processing time was rather lengthy (3790/07).

What is considered a reasonable amount of time to examine a matter depends on the matter in question. The more important the matter is, from the point of view of the person whose matter is being considered, the speedier the process ought to be. The need for a prompt consideration is especially accentuated in the processing of income support matters and, as of the beginning of 2008, deadlines for the consideration of income support applications have been in use. Legislation rarely includes statutes concerning precise processing times. In the absence of such provisions, what constitutes a reasonable processing time has been estimated based on the nature of matter in question and the personal circumstances of the petitioner. The implementation of prompt consideration is seen as being especially meaningful when the petitioner is in a weak position, as far as his or her personal circumstances are concerned. Evaluation is guided by the Ombudsman's previous legal praxis concerning the length of proceeding in a given sector as well as defined processing time goals used by regional authorities and authorities in certain administration sectors. When evaluating the urgency of a matter, the amount of time it has spent in the previous processing phase should always be taken into consideration. A delay in producing a decision by an official should be taken into consideration when processing a rectification claim made about said decision.

In a decision the Ombudsman took the view that consideration without undue delay was not implemented in a case, where a complainant's request to verify his personal information had been under consideration for over four months at a social services center (161/07). In another case a restitution claim the complainant had filed against a city had taken four years and eight months before the city council handed down a decision (707/06). The processing period was also considered too long in a case where social services took ten weeks to consider the transportation service application filed by a seriously disabled person (452/08) and the processing of a family care support application took approximately four months at a social services center (2677/07). Also 204 days for processing a wage security application at an Employment and Economic Development Center is too long (976/06). An

undue delay was in question when the Finnish Immigration Service (formerly known as Directorate of Immigration) took two years to process an application for asylum (1724/07) and an Environmental Permit Authority took six years and two months to process an application for an environmental permit. In this case the party, who had delivered a reminder concerning the application and also filed for restitution, also faced a delay of the opportunity to have the matter heard by a court of law (1940/07). In the case of a car tax appeal concerning an imported used car, it was found that the Customs Agency should have started creating an openly reasoned evaluation system for use in determining car taxation much earlier and it should have been implemented much faster than actually took place. Appeals related to car taxation had been at a standstill for over a year in thousands of cases after the Supreme Administrative Court had handed down precedent KHO:2006:95 (1645/07).

Decisions have considered the processing times of complaints in administrative boards and the National Authority for Medicolegal Affairs (TEO). The processing times, over 1.5 years and 14 months, respectively, did not meet the demands of promptness and appropriateness (513/08 and 2369/07). It took TEO close to 23 months to process a complaint, which exceeds the 18 to 20 month processing time goal set in the performance agreement (3813/06).

Processing delays have often been caused by lack of sufficient resources. A reference to the "overall workload" has not been an acceptable reason to overlook processing times in excess of what is considered appropriate. "Overall workload" was not accepted as a sufficient explanation for the fact that the processing of a complainant's four different, unrelated patent applications had taken between five and eight years at the National Board of Patents and Registration of Finland. Even though the Board's workload had been heavy and resources meager and even though the patents had been labor-intensive from the processor's point of view, the processing times were not acceptable. Since a separate annual maintenance fee had to be paid for every year the patent application was pending, the excessive processing time resulted in a financial burden for the applicant (4241/06). It's worth noting that in conjunction with this case, the Ombudsman investigated the annual maintenance fees for patent applications. They were considered problematic in that the Patents Act excludes the possibility of eliminating the fee or lowering it in cases where an undue processing delay, i.e. one clearly attributable to the authority, has taken place, impossible (853/09).

Conduct in different phases of processing the matter naturally has an impact on how long the entire process takes. A delay can thus be caused by an otherwise inadequate or flawed process. In a decision involving the Helsinki Employment Agency it was found that the agency should have requested the complainant to deliver a work reference to the agency during the initial interview. The failure to do so had delayed the processing of the complain-

ant's case by approximately two weeks (862/06). In another case, the Consumer Disputes Board had failed to set an expert with a deadline for delivering a statement and had not really expended any effort in procuring the statement in a timely manner. The Board had failed to provide a reasonable explanation for why it took over a year to get the statement (3858/06). In a case concerning the University of Helsinki Chancellor's Office it was seen that the complaint had not been processed appropriately after reception. The complaint was misplaced soon after, never to be found, so the complainant could not be given an answer without undue delay (955/08).

In situations involving delays, an authority's attention might be drawn to ensuring the legality of the processing party's actions, as in a case where the registration of an automobile was delayed due to the actions of an insurance company working under contract to register cars for the Finnish Vehicle Administration. In the decision the Ombudsman emphasised that it is the responsibility of the Vehicle Administration to make sure that conduct of all the parties working under contract fulfill the demands on administrative tasks as prescribed by law (2404/06).

Protection of legitimate expectations

The principle of protecting legitimate expectations became a part of legislation when the Administrative Procedure Act entered into force in the beginning of 2004. Before this the principle was fast solidifying its position as a general principle of justice, even without any legal statutes. The highest guardians of the law had in isolated cases emphasized the significance of the principle as a part of the general administrative procedure principles that limit the discretionary powers of the authorities. Nowadays, the protection of legitimate expectations is a part of the Administrative Procedures Act in Section 6 that concerns legal principles of administration. According to the statute, the authority's actions must protect legal expectations as based on the legal system.

The central substance of the protecting legitimate expectations is the fact that private individuals must be able to trust that the authority's actions are competent and correct, and that the administrative decisions they hand down are permanent. The question in applying the principle is: on what basis can a legal person trust that a decision made using public authority is permanent and what kind of protection this person has against unexpected changes in the authority's actions. The protection of legitimate expectations limits the ability to repeal beneficial decisions through ex post facto effects or generally changing decisions in a direction harmful to the individual without legal jurisdiction to do so. The expectations

being protected must have a basis in the legal system, mainly legislation, general principles of justice or international treaties. Evaluating the protection of legitimate expectations is, in the end, performed on a case-by-case basis, where the expectations of the individual have to be weighed against the public interest. (HE 72/2002 vp.)

Even though the protection of legitimate expectations is fairly new in legislation, the Ombudsman archives yield many decisions where official conduct has been evaluated using this legal principle. In September 2009, a search of "luottamuksensuoj#" (protection of legitimate expect#) in the Ombudsman digital text archive yielded 110 decisions. The earliest of these was entered into the register in 1996. According to the search results, 82 of the decisions were handed down in the period after the Administrative Procedure Act entered into force. All of these decisions are not necessarily from the period the act has been in force, as some may concern procedures dating prior to the act. On the other hand, the protection of legitimate expectations did not play a major role in all the decisions. It may have been mentioned on a general level as one administrative legal principle. At times, a procedure has been evaluated specifically from the perspective of the implementation of the protection of legitimate expectations.

A procedure that went against the protection of legitimate expectations was in question when a regional authority decreed that an elderly person had to pay retroactively a new increased charge for living in a care home (3991/06). Another decision stated that a permission to defend one's thesis by a university could not be repealed based on a factual error when one of the opponents declined to attend the public defense of the thesis. Such a procedure went against the rights of the person defending the thesis and his or her legitimate expectations (3435/06). According to the principle of protecting legitimate expectations, a person who has procured a firearm should be able to trust that his or her suitability to carry the firearm had been verified when he or she was granted a license to carry it and that the suitability would not be questioned at a later date without specific reason (2294/06). Another decision stated that a complainant should be able to trust that by acting in a legal manner expected by the authority, i.e. by turning in the required course application, he or she automatically gains access to the appropriate labour policy rights as defined by law (751/04).

Deviating from a previously followed practice was the question in a case involving the Finnish Flight Safety Authority (LTH). Even though LTH had earlier emphasised that there were to be no compromises as far as the conditions they had set, it had given a complainant's rival company a provisional permit to fly helicopters, as well as additional exceptions from the conditions in question. In the decision the LTH's granting of the provisional permit to operate a rescue helicopter business was in conflict with several central administrative principles, foremost among them the right to be treated on an equal basis and the right to have one's

legitimate expectations protected (170/05). An authority deviating from an earlier position was in question in a case concerning the magistrate's office. The magistrate had earlier accepted an annual account without rebukes. During the accounts audit, it changed its position regarding the acceptability of certain expenses incurred by the trustee. The decision stated that the trustee had a legitimate right to expect the magistrate's position to remain the same, insofar as the circumstances did not change. The decision also emphasised the fact that an authority has to explain the rationale behind any changes in interpretation in an appropriate manner and that this was applicable to the account audit reminders that guided the actions of the trustee and allowed the magistrate to fulfill its duty to provide advice. The given rebuke was inexact, since it did not clarify why the magistrate's position on claiming certain expenses from the client had changed (3992/05).

Often legality control opinions related to the protection of legitimate expectations concern the different types of guidelines issued by authorities. In this area, the following four cases are worth mentioning.

`In the first, a complainant was treated differently from other candidate-level applicants when he or she was given erroneous information regarding eligibility, due to a human error by the teachers. Even though the complainant had not been denied any rights in this matter, the decision was of the opinion that the entrance examination arrangements for both candidate and masters level could be more precise. The decision also stated that the entrance examination and its guidelines should be further developed in the interest of good administration and protection of the students' legitimate expectations (2876/07).

The second decision dealt with the conduct of the National Product Control Agency for Welfare and Health STTV (now known as Valvira, National Supervisory Authority for Welfare and Health) when it provided guidelines for the sales of alcohol from abroad to Finland using a tax representative. In the decision, the Ombudsman maintained that the consistency of the interpretation indicated by STTV in its press releases should be evaluated based on the protection of legitimate expectations decreed in the Administrative Procedures Act. According to the decision, the principle of protecting legitimate expectations did not prevent an authority from changing its interpretation for justifiable reasons. In this case, as there had been no changes in the relevant legislation, case law by a national court or the European Court of Justice would be of reference. The opinions of the European Court of Justice did not, however, have enough of a bearing on the matter to justify a change in interpretation. Furthermore, in the decision it was found that even if the interpretation of the authority had not changed, it had failed to present its consistent interpretation in its press releases. From a protection of legitimate expectations perspective, this was problematic (1462/07).

In the third guidance-related case, shortcomings in the guidelines provided by Customs was considered problematic in protecting legitimate expectations when they seemed to be open to interpretation in a manner indicating that by paying the product tax, buyers had the right to take possession of the items in question. As the interpretation of Customs was that buyers were not able to take possession of the alcoholic beverages even after paying the tax, this should have been mentioned in the guidelines (3525/04).

In the last example case in this set, a decision concerning the content of an announcement by a regional board found that the announcement in question, published by the regional government in its capacity as a state aid authority, was not successful from the point of view of providing advice and protecting legitimate expectations, since it failed to consistently list all the beneficiaries for the grants it publicized or, alternately, clearly indicate that the list in question merely included some potential examples. The decision stated that based on the protection of legitimate expectations principle, a citizen should be able to trust that announcements convey an accurate picture of the procedure in question (834/07).

The digital processing of matters

The increasing usage of digital tools, such as e-mail, for governmental matters brings to legality control, too, the question of how to implement good administration in a digital operating environment. The question can deal with how good administration is implemented in individual cases or a broader question concerning, say, the information systems used by an authority. In legality control, a standard approach has been that the reasons related to information systems cannot be used to justify deviation from the demands of good administration. Thus, it has been found that an authority should consider whether the systems enable procedures that protect good administration when developing or acquiring information systems.

Situations where digital processing and good administration meet can be very simple. Should an inquiry delivered via e-mail receive a response? The answer is clear. Good administration requires that inquiries be answered. But how to react to a message that has obviously been delivered to a number of authorities and officials at the same time? The Ombudsman has yet to deliver an opinion on this question. In my view, the starting point has to be that each authority and official on the recipient list independently decides whether the inquiry requires a response from them. Significance can be attached to whom the message was primarily sent to and whether the authority or official was designated as a recipient of the message or a copy of it, in which case they may be receiving the message in an FYI-capacity. Is an official obligated to follow messages received at his personal office e-mail address? How to deal with messages during vacations or other absences?

I will take a closer look at three decisions concerning digital services, two of which are related to the use of e-mail. The third example concerns an information system used to apply for financial assistance from a ministry.

The first case involves automatic e-mail replies during absences and language used in them (2575/06 and 63/07). The decision also dealt with the obligation to send receipt notifications. The decision stated that there is no legal obligation to send an automatic reply indicating that the recipient is absent for one reason or another, but that it is a form of voluntary service. The use of such automatic replies is recommended, since it promotes good administration as protected by Section 21 of the Constitution and the implementation of the service principle outlined in Section 7 of the Administrative Procedures Act. When these automatic replies are used, they should be written in Finnish and Swedish in the case of authorities that use both languages.

On receipt notifications, the decision stated that an authority has a legal obligation to notify the sender, using the language used in the original message, of the receipt of an electronic message if it pertains to the commencement, processing or resolution of a matter. If the notification is sent automatically before anyone has the chance to ascertain which of our two official languages was used in the original message, the notification should be written in both official languages. Notifying senders of the receipt of other electronic messages is left up to the discretion of the authorities. Once again, the decision found that an individual official is not under an unequivocal legal obligation to deliver a receipt notification when he or she has received an e-mail at his or her personal work e-mail address. At the very least, an official should, when necessary, forward the message to the authority's official digital service address in order to have a receipt notification delivered. In my view, nothing prevents each individual official from sending a receipt notification. For the sake of clarity, this way of framing the question does not apply to those who use automatic receipt notification. From the customer's point of view what is of central importance is that he or she receives a notification, not how the process to provide the response has been organized internally at a government office. The decision emphasized the fact that from the outside, the customer's perspective, the authority and the official can easily seem like one and the same, making it difficult to clearly judge which actions were taken by which party. This being the case, an individual official should, to a certain degree, consider the demands of good administration when using his or her e-mail.

The second decision handed down an opinion on an official's obligation to follow messages arriving in his or her personal work e-mail address (3718/07). In the case in question, a district court had neglected to investigate an application owing to a failure by the applicant to deliver a requested supplement to the application by the due date. After the decision by

the district court, it came to light that the requested supplement had been delivered as an e-mail attachment directly to the District Court judge's personal work e-mail address. The judge was not aware of the message when adjudicating on the matter, nor of the applicant's second e-mail inquiring as to the status of the matter. The report received by the Ombudsman indicated that the judge had not read the e-mail received at the personal work address at all or had not done so with sufficient care.

The decision stated that at the district court the question of whether an official is obligated to use his or her work e-mail address is, on the one hand a matter pertaining to the administration of law and on the other to the advice and service obligations required for good administration as protected by Section 21 of the Constitution. The former point of view comes up in the case of contact pertaining to matters other than the administration of law.

The opinion presented in the decision is that since the demands for good administration were decreed, it's reasonable in modern society to assume, on a general level, that an official sufficiently actively follows messages received at his or her work e-mail address, as well as reacts and responds to them in an appropriate manner. The decision found that it had been the duty of the District Court judge to monitor his or her work e-mail, so that both the applicant's supplementary material, as well as the later status inquiry would have been noticed. The obligation to provide advice and service in the form of answering appropriate inquiries related to the processing of the matter at hand was found to extend to District Court judges.

The third case concerns the information system used to apply for EU grants from the Ministry of Employment and the Economy (212/08). In the decision it was found problematic that the system that made applying for the assistance quick and flexible was available only in Finnish. Though it was possible to submit an application in Swedish using a traditional form, the applicant did not in this case have access to the advantages offered by filling out and processing the application via the information system. Even though from the perspective of appropriate treatment a situation where the versions of a service offered in the two official languages differ from each other, the decision found that the choice of language should not have an impact on the quality of the offered service.

Concerning the future of legality control

My view of what the substance of procedures that meet the demands of good administration is receives new input from when new situations arise. This naturally has an impact on legality control tasks. As far as challenges posed to legality control by e-government, I refer to the

article dealing specifically with this area elsewhere in this book. In addition to situations that are new from a good administration perspective, also changes in legislation – such as implementing processing deadlines – have an impact on not only the evaluation of a procedure's compatibility with good administration, but also on situations involving good administration that come up in the context of legality control.

The legislation to combat the passivity of the authorities, mentioned earlier in this article, is a significant reform undertaking. The report by the work group assisting the committee for the development of the administration of the Administrative Procedures Act (work group report 2008:5) includes a proposal for the Government to present to the Parliament for legislation concerning promptness in administration and the methods of legal protection against delays in the consideration of matters. Statutes concerning the obligation of the authority to define and publish information regarding reasonable processing times for matters concerning the party's right, privilege or obligation are proposed. If the processing of the matter were delayed, the party could deliver a request for expediting the matter to the authority. The authority would be obligated to answer the party within a defined amount of time. The party could then lodge a delay complaint if he or she was unhappy with the response to the expedition request. The delay complaint would be lodged with the same authority the party would contact to appeal a decision given in the matter. The appeal authority could define a deadline by which a decision would have to be handed down and, if necessary, heighten the effect with a conditional imposition of a fine. For specific reasons, the appeal authority could also take over the procedure and hand down a decision on it.

This proposal may have an impact on the work of the Ombudsman as a processor of delay complaints. The work group report estimated that the new procedure would cut down on the amount of delay complaints, which would produce a significant change in the actions of the complaint authorities. The report postulated that complaint authorities would be left with the task of evaluating the reasonableness of the processing times defined and publicised by the authorities. In a statement to the Ministry of Justice (3719/08) the Ombudsman took the view that the procedure would actually increase, in many ways, the number of matters concerning promptness that the Ombudsman would be obligated to investigate in the context of performing his or her legality control duties. Among the factors that might influence the situation in this way are the new fixed terms that authorities would have to work with (one- and two- week deadlines for responding to requests of expedition), neglect of which could end up as a complaint submitted for investigation to the Ombudsman. Naturally, the court processing the delay complaint could itself become an object of complaint, at least from a perspective of determining whether the delay complaint was processed in an expedited manner, as required by a statute in the proposal. The proposed appeal prohibitions would leave room for legality control.

The appropriateness of a deadline set by an authority and a failure to impose a conditional fine could come under evaluation. The Ombudsman also found that in situations where the delay complaint expired, the same as in proven delay situations, the appropriateness of the procedure from a malfeasance by official or authority point of view would be left without evaluation. Room for complaint procedures would remain here, too. The Ombudsman expressed the opinion that the number of complaints lodged with parties tasked with legality control would probably not decrease as a result of this reform. It remains to be seen what sort of effect the reform has on the amount and objects of delay complaints.

In addition to national justice, European justice and its attendant legal usage can bring new dimensions to the substance of good administration. Of the significant sources of "European good administration" I would like to mention article 41 in the European Union Charter of Fundamental Rights concerning the right to good administration and decisions by the Court of Justice of the European Union, as well as the Code of Good Administration in the Council of Europe.

According to Article 41 of the Charter of Fundamental Rights every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. This right includes the right of every person to be heard, the right to have access to his or her file and the obligation of the administration to give reasons for its decision, all of which are defined in more detail in the Article. The right to have the community make good any damage caused by its administrative actions and the right to conduct affairs in one of the languages of the Treaties are also facets of good administration protected by the Article. The Code of Good Administration in the Council of Europe, a recommendation given in 2007, concerns the principles of good administration, basic demands of administrative decision-making, as well as grounds for appeals and restitution. The principles of good administration in the basic rules include lawfulness, non-discrimination and equal treatment, proportionality, impartiality, fairness, promptness of procedures, principle of participation, confidentiality protection and openness.

These statutes may have an impact on national administrative procedures, not only through the Charter and Fundamental Rights and decisions by the Court of Justice of the European Union, but also due to their significant relevance in defining the minimum requirements of good administration. It remains to be seen what effect the ratification of the Lisbon Treaty has on good administration on a national level.