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Observations on police custody facilities

Introduction

Numerous persons who have been taken into custody under either the Coercive Measures Act or the Police Act are confined in police cells every day. According to the Police Result Information System, 41,466 people were taken into custody under the Coercive Measures Act in 2008 and 95.163 under the Police Act.

The preconditions subject to which a person can be apprehended, arrested or held in custody on the ground of suspicion of a crime are set out in the Coercive Measures Act. The Police Act, in turn, stipulates the preconditions subject to which a person can be apprehended to protect him or her from an immediate serious danger, to protect domestic and public premises as well as to prevent an offence or disturbance. Persons who have been deprived of their liberty are usually held in police cells. Crime suspects are in police custody for at least the early part of their period of deprivation of liberty, and those taken into custody under the Police Act are in practice kept almost exclusively in police facilities. Also persons who have been deprived of liberty under the Aliens Act may at some stage be held in police facilities.

Everyone has the right to life as well as to personal liberty, integrity and security. The personal integrity of the individual shall not be violated nor shall anyone be deprived of liberty, arbitrarily or without a reason prescribed by an Act.

In the performance of her duties, the Ombudsman monitors the implementation of fundamental rights and liberties and human rights. She or he has a special duty to conduct inspections in inter alia prisons and other closed institutions to oversee the treatment of persons placed in them.

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For these reasons – oversight of implementation of fundamental and human rights and especially the duty to monitor the treatment of persons housed in closed institutions – the treatment of persons kept in custody in police facilities is an important subject of the Ombudsman's oversight.

Next I shall go through some things that are important from the perspective of oversight of legality and have come to light in the course of oversight and inspections of police detention facilities.

Intoxication, state of health and frequency of monitoring

To the cells or to hospital?

Under the Police Act, a police officer has the right to apprehend a person to protect him or her from an immediate threat to life, personal integrity, safety or health, if the person is unable to take care of him- or herself and the danger cannot otherwise be eliminated or the person taken care of by other means. The Intoxicated Persons Act requires that a person taken into custody while under the influence, and whose behaviour does not cause a threat to the safety of other persons, is to be taken to a detoxification centre or other care facility, unless he or she can be sobered up by other means. A person who is behaving violently or is known to be violent as well as any other intoxicated person who for another reason cannot be taken to a detoxification centre or care facility must be detained in police cells. If the state of health of the intoxicated person makes this necessary, he or she must without delay be taken for hospital treatment or the other measures that his or her condition calls for taken.

Under the Act, the main rule since as far back as 1973 has been that a person taken into custody for intoxication should be taken to a detoxification centre run by the social welfare and health authorities. Intoxicated persons would be taken to police cells only if their violent or threatening behaviour precluded their being taken to a detoxification centre.

The intention of the law is not being realised in practice. So few detoxification centres have been set up that usually the alternatives are police cells or a hospital or equivalent institution. Thus in most localities the police have no alternative other than to take intoxicated persons who are incapable of looking after themselves to police cells unless they are in such a state that they would have to be taken to a hospital or other health care unit. It is generally

down to the police to assess whether the state of health or an intoxicated person calls for hospital treatment or at least to summon a health care professional so as to be able to appraise the possible need to take the person to hospital for treatment.

How well equipped, then, is a police officer who lacks professional training in health care to assess an intoxicated person's state of health? On the basis of practical experiences, it seems that in cases where the police suspect that, in addition to being intoxicated, a person is suffering an attack of illness or has some other problem affecting the state of health, the threshold to turning to health care professionals is not high, which is a good thing. Because what is involved in the final analysis is the life and health of the person in custody, a "better to be on the safe side" approach must guide actions in situations and in those where there is even the slightest uncertainty, the help of professional health care personnel must be sought. Situations that a person lacking professional training in the sector is unable to notice are problematic.

"Some cell deaths could, in my view, be avoided if the police officer who decides to arrest a person and especially one who decides to place the person in a police cell had a better ability to distinguish between intoxication and an attack of illness. I believe that the only way this can be achieved is by devoting more attention to the matter in police training. Especially in the largest cities, where many people are taken into custody, supplementary training should be arranged for those police officers whose duties include deciding whether to keep persons in custody. Training should include teaching those who decide on custody matters to observe such symptoms or signs." (Annual Report of the Parliamentary Ombudsman 1986)

A complaint concerning an arrest (2641/00) related to a situation in which police officers had taken a diabetic person suffering an insulin reaction into custody, believing him to be intoxicated. The report obtained on the incident revealed how difficult it can be in some situations for someone other than a person who has received training in health care or medical treatment to tell an attack of illness from a state of intoxication. The decision included the following passage:

"According to the report received, the male person who had raised the alarm, and who is apparently a bus driver, assumed you were intoxicated. The bus driver has also suggested to the police patrol that arrived on the scene that you were so highly inebriated that you were unable to get off the bus and remained seated in it for the entire round. (...) reports that he tried to engage in conversation with you, but could not make out anything of what you said and that in your general demeanour you had appeared to be a severely intoxicated person. The police patrol tried to breathalyse you to determine whether you were intoxicated, but failed in this, because you pressed your lips tightly

together. Senior Constable (...) reports, in addition, that your eyes were open the whole time. The patrol drove you to the police station to be better able to assess the degree of intoxication.

(...), Who was then working as a guard in the detention cells for intoxicated persons, reports that your appearance greatly resembled that of a person under the influence of a medicine or other intoxicating substance and that therefore your real situation could not be directly determined on visual examination. According to (...), a person's clothing or other outward appearance does not always give a picture of whether a person is an abuser of medicines or intoxicating substances.

The first impression formed by the bus driver, the police officer and the guard was that intoxication was involved. According to a statement by the police service, the police personnel are experienced officers, and the guard (...) reported that he has dealings with several diabetics in his work each year.

As emerges from the reports and statements, the absence of a smell of alcohol does not necessarily mean that intoxication cannot be involved, because abuse of substances other than alcohol, such as medicines, is nowadays quite common.

According to a report by specialist nurse (...), a first-aid instructor at the Police College, ascertaining the reason for a person's reduced state of consciousness is in no situation easy without any technical equipment. The view taken in a report by the Ministry of the Interior's Police Department is that diabetes is a difficult condition of a layperson to assess. According to the report, determining hypoglycaemia can be just as difficult as ascertaining a high level of blood glucose.

The report, which was appended to the complaint, on your ambulance trip bears the remark "sugar low". According to a bulletin on the Finnish Diabetes Association's web site (28.11.2002), general symptoms of a low blood glucose level are faintness, perspiration, shivering, paleness, unusual behaviour: irritation, restlessness, slurred speech, a dimming of vision and double vision as well as unsteady movement. It says in the bulletin that symptoms vary from one individual to another.

In the light of the report received, the Senior Constables (...) were unable in the bus to recognise your situation as being caused by diabetes. On the basis of the statements and also information published by the Finnish Diabetes Association, it appears that it can be difficult to recognise the symptoms of a lowered blood glucose level. Although a police officer's basic training includes instruction in such matters as recognising illnesses that resemble intoxication, as emerges in greater detail from the police reports, a police officer can not be expected to possess such a level of medical expertise that (...) could be deemed to have acted incorrectly when they did not immediately recognise that what was involved was an attack of illness."

Although it was not established that the police officers had acted incorrectly, the case shows how difficult it is for someone insufficiently familiar with the health care sector to notice a possible case of diabetes and distinguish between a person suffering an insulin reaction from one who is under the influence of an intoxicant substance.

Intoxicated persons have not always been admitted for treatment even though the police have indeed tried to arrange for them to be taken care of at a health care unit. Cases in which persons taken into custody under the Police Act have become "objects in a ping-pong game" have come to light in oversight of legality. The police have regarded a person as being in such a state that he or she can not be kept in police custody, whereas the health centre has concluded that the prerequisites for admitting him or her for treatment in a health care unit are not satisfied.

The issue in a case concerning a cell death (1147/04) was that the police had contacted the health centre after becoming aware that a person taken into custody for intoxication and aggressive behaviour had also taken sleeping pills. Because the policeman himself lacked training- or experience-based knowledge of the combined effects of alcohol and sleeping pills, he wanted to obtain the opinion of a professional medical person at the health centre as to how serious the person's condition was. The policeman would have been prepared to take the intoxicated person, who had by this stage calmed down, to the health centre, but it had been decided in a telephone conversation between a health centre doctor and the policeman that the person would remain under supervision in the police cells and the doctor would give the policeman instructions for supervision. The view adopted in the Ombudsman's decision was that the instructions given by the doctor had not been sufficiently detailed, which contributed to the fact that an examination in the police station was not conducted in the way that the intoxicated person's condition would have called for. The Ombudsman found it to be a cause of concern that police officers and guards are given tasks for which they are neither trained nor prepared. When a person taken into custody has consumed both medicine and alcohol, the development of his or her condition must be closely followed. In the view of the Ombudsman, monitoring of this kind is a task for professional personnel.

Another cell death-related case (2573/04) related to an incident in which a strongly intoxicated person who had hit the back of his head when he fell in the police station was taken to the health centre to be examined by a doctor there. The doctor diagnosed concussion. According to his report, the doctor did not give the police instructions for monitoring the person who had fallen and did not personally meet the officer who came to collect the person from the health centre. In this respect, the doctor invoked the local practice with respect to treatment. According to the report from the police, the officers did not get to talk to the doctor at

the health centre, because the nurse did not feel this was necessary. It was stated in a report given to the National Bureau of Investigation by the National Supervisory Authority for Welfare and Health that inter alia the doctor should have arranged monitoring at the health centre or, if the person had been assessed as violent, the officer should have been personally given instructions for monitoring when the person was collected from the health centre to be returned to custody in the station. On the basis of a report received in the matter, the Ombudsman took the view that the health centre should have given its personnel better guidelines on what to do when an intoxicated person who has been taken into police custody is brought in for examination. Based on the report received, the Ombudsman considered it possible that the intoxicated state of the person brought to the health centre had contributed to his monitoring not being continued at the health centre, where he had been placed in a different position from that of other patients. However, individual treatment decisions must be based on the medically founded need for treatment that the patient's state of health requires, and an intoxicated patient must not be placed in a different position vis-à-vis other patients.

It would appear overall that the treatment of an intoxicated person who is also ill may in some cases have been too "single-tracked" in that the action chosen has mainly been guided by an observation of intoxication. A contributory factor in this on the police side was obviously the Ministry of the Interior guidelines on treatment of intoxicated persons that remained in effect until 30.9.2008. It was stated in these that illnesses with symptoms resembling intoxication included diabetes, epilepsy and certain brain-based diseases, and in order to exclude these illnesses it must be established whether the smell of alcohol or another intoxicant can be detected on the person.

On the Ombudsman's initiative, the guidelines were amended. The matter assumed topical relevance in a complaint case concerning the actions of an emergency response centre and the police (529/06), in which the question raised was whether the emergency response centre should have called an ambulance or the police and whether the intoxicated person should have been taken to the police cells or a hospital. The Ombudsman took the view that there was a need to explicate the guidelines, because a person suffering from an illness with symptoms resembling intoxication may be intoxicated, a person smelling of alcohol may be ill, and in addition to being intoxicated, a person may also have a seriously life-endangering illness. It is stated in the guidelines "Treatment of persons in police custody", in force since November 2008, that "in conjunction with an arrest, the police must assess on the basis of the person's behaviour and other observations whether he or she is intoxicated, for example in a confused state caused by combining medicine with alcohol, or his or her aberrant behaviour is attributable to an illness with symptoms resembling intoxication". Although the quidelines contain five pages or so of instructions for determining illnesses and injuries, the

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police do not have an easy task. The current Act empowers the police to breathalyse persons who have been taken into custody, which helps to ascertain whether a person has consumed alcohol, but even this does not help identification of a possible attack of illness.

Monitoring state of health

"A reprimand to the head of department at the Security Police for having failed to take the person in custody, who was in need of hospital treatment, to a hospital without delay. - - - Major S reported that on the 13th day of July 1945 he had been arrested on suspicion of concealing arms. While in custody in the Turku police prison, Major S, who suffers from severe diabetes, had not received the treatment and diet that his illness requires nor the opportunity to exercise. Although his illness had worsened as a result, he was not, despite having requested on the 6th day of the following August that he be allowed to have a doctor examine him, able to see a doctor until the 10th day of the same month. It was then determined that he needed hospital treatment, but the head of the Turku department of the Security Police, under whose supervision S was while in custody, had not transferred him to a hospital, but rather to the infirmary in the provincial prison, from where he had been moved to the Turku Central Hospital only on the 16th day of the same month. In addition, conditions in the Turku city police prison were, due to untidiness and lice, unfit for even healthy persons to be kept in custody there . . . " (Annual Report of the Parliamentary Ombudsman 1946).

Under the current Act, a person in police custody is entitled to health and medical care commensurate with his or her medical needs. The Act states that a person who has been deprived of liberty and the custody area are to be supervised in the way that the purpose of a measure directed at liberty, order in the custody facility, keeping the person confined there, preventing escape or unauthorised exit from the detention facility, ensuring the safety of the person who has been deprived of liberty and others parties as well as preventing crimes, presuppose. With respect to intoxicated persons, there is also a special provision, which requires that inspections be carried out to determine the intoxicated person's state while he or she is in custody. At the same time, to the extent that it is possible, the care and other treatment that the degree of intoxication and state of health call for must be provided.

It is clear that the obligation that every authority has under the Constitution to ensure adequate health services for all applies also to persons in policy custody. Irrespective of the grounds on which they have been deprived of liberty, the responsibility for the safety of someone in custody resides with the police personnel. Often, especially with intoxicated persons who are quite incapable of taking care of them or of summoning help if is needed, the importance of the authorities responding and acting on their own initiative is accentuated.

A question that arises when the matter is looked at from the perspective of the health and life of a person in custody is whether police personnel have adequate preparedness and opportunities to monitor a person in custody in a manner that ensures the safety of someone who has been deprived of liberty is not jeopardised in the event of illness or an attack of illness.

In the case already mentioned (1147/04), the National Supervisory Authority for Welfare and Health adopted the position in its statement that monitoring of a person in police custody is in practice just as good as in health care units, but that guards in custody facilities must be given guidelines setting out in sufficient detail how this monitoring is to be conducted. This rather surprising conclusion may be correct in some cases, but on the general level there are grounds for forming a different opinion on the matter. Also in this case, the Ombudsman took the view that, taking the condition of the intoxicated, and subsequently deceased, person into consideration, that the right place for monitoring him would have been a health centre rather than police cells.

Training is an essential matter in the avoidance of misjudgements concerning persons in custody, which in the worst cases can lead to death.

It is very important that police officers and guards working in custody facilities are able to assess risk situations, distinguish a condition caused by intoxication from an attack of illness and if necessary call an ambulance or otherwise take the person for examination by medical personnel.

It is largely a matter of training, but also resources like premises and the technical monitoring equipment available have importance. In spite of what was said in the above-mentioned statement from the National Supervisory Authority for Welfare and Health, I would make so bold as to judge that health centres in general have a better preparedness where both technical equipment and the professional skill of staff are concerned.

A concern expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in a report on its visit in 2008 was that none of the police personnel working in the facilities inspected had received special training to enable them to care for intoxicated persons or recognise symptoms of illness that could be mistakenly attributable to intoxication or which could exacerbate intoxication.

The CPT (further) recommended that measures be taken, if necessarily by amending legislation on the treatment of persons in police custody, so as to ensure that persons in deten-

tion or who have been taken into police custody have a real right to, if they so wish, have an examination by a doctor of their choice and at their own expense in addition to the examination conducted by the doctor whom the police have summoned. Regarding remand prisoners, the CPT noticed with concern that, in spite of its recommendations, there was no systematic medical examination for new prisoners in the police prisons that it inspected. For this reason, it recommended that measures be taken to ensure that new prisoners receive, within 24 hours of their arrival, a medical examination by a doctor or a competent nurse reporting to a doctor.

Intensity of monitoring

The intensity of monitoring is described in the regulations in terms that leave a lot of room for interpretation, like "as – require" and "to the extent possible". In a statement on the Government bill introducing the current legislation (3051/05), one of the Deputy-Ombudsmen pointed out that in his view the proposed legislation did not bring clarity about what should be regarded as adequate monitoring. He stated that especially where intoxicated persons or others incapable of taking care of themselves are concerned, it would be desirable for the legislator to adopt a position – taking the obligations that the Constitution imposes with respect to safeguarding life and personal safety into consideration – on what level of monitoring there must be. Further, in the Deputy-Ombudsman's view, regulation that is open to interpretation does not accord with the legal security of monitoring personnel, either. Unfortunately, a more precise provision, which would have obliged monitoring personnel to check the condition of a person in custody at certain, sufficiently frequent intervals.

"Guard functions in the detention unit belonging to the Muonio police district were not on a round-the-clock basis; instead, persons were in custody alone for half of the day. Round-the-clock guarding had been arranged only on holidays." (Annual Report of the Parliamentary Ombudsman 1985)

It is no longer accepted for persons in police cells to be left without the personal presence of a guard. This was expressed not later than in a statement by the Constitutional Law Committee (21/2006), which recommended so-called remote monitoring with respect to the treatment of all persons in custody. The Committee pointed out that:

"Confining a person in a space that is monitored only with the aid of technical equipment is, in the view of the Committee, fairly problematic from the perspective of the personal safety of a person who has been deprived of liberty. Changes in the person's state of health or capability, accidents and other danger situations that may occur in

or close to the detention facility as well as, for example, uncertainty factors relating to the monitoring equipment can in an extreme situation endanger also the right to life of a person in a locked space. By alarming an authority at a distance from the detention facility, it is not possible in all situations to ensure the personal safety of persons in a locked space.

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"Due to the importance of safety risks, a person who has been deprived of liberty must not, in the opinion of the Committee, be confined in a space that is monitored only by means of technical equipment in the manner proposed. Thus a prerequisite for using the ordinary procedure for enacting legislation is that the provisions on remote monitoring be removed from Chapter 12 of the 1st legislative proposal."

In one consideration-of-charges decision concerning guards in a police station (120/02), the Deputy-Ombudsman noted inter alia the following:

"The expression `as possibilities permit" used leaves much room for interpretation as a formulation. In purely linguistic terms, it would be possible to interpret the expression as meaning that if a guard whose duties include monitoring persons being kept in custody had other important tasks at the same time, he would have no possibility at all of monitoring and no monitoring at all would have to be done. On the other hand, if a guard had nothing else to do at the time, he would have to check the person in custody almost uninterruptedly. Neither of the two interpretation alternatives – representing in a way both extremes – can as such be regarded as acceptable.

"I regard it as clear that the legislator's intention when enacting Section 5 of the Act regulating the treatment of intoxicated persons was to 'tie' to at least some extent the amount and quality of monitoring to the need of which the guard is aware and which can be evaluated with respect to each person in custody. Factors that influence the need for checking include the state of health of persons being monitored and conditions in the facility. In my view, also some minimum level, which exists with respect to each person in custody, must be set for this need.

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"Even if, contrary to my perception, I were to take the view that the guidelines did not as such bindingly steer work in this case, it is clear that the guard's official duty requires monitoring of the person in custody to the extent possible with the intensity that the need for monitoring demands. Only reasoned prioritisation of other tasks justifies compromising on the monitoring that is regarded as necessary in an ordinary situation. The threshold to something like this must be set high. Since what is at base involved in monitoring is safeguarding the life and health of the person in custody, its importance can be compromised only for a reason equatable with these. What is involved in the final analysis is the above-mentioned duty of authorities proactively to safeguard the implementation of fundamental and human rights. Inspection of this kind inescapably

includes, in my opinion, that sufficient attention be paid to whether the person in custody is moving at all; this includes, among other things, whether the chest is rising as an indication of breathing."

In this decision the Deputy-Ombudsman ordered that charges be laid against two guards, because they had not inspected the person in custody to the extent possible in the meaning of the Act. The guards did not notice for several hours the complete lack of movement that resulted from the death of the person in custody (the first guard's negligence lasted for six hours, the second's nearly four, i.e. in total at least ten hours), although they had hardly anything else to do during their shift. A prosecution for involuntary manslaughter was not ordered, because the person had died fairly soon after being placed in detention, and on the basis of the information available, it could not be established with the certainty that a prosecution presupposes that death would not have occurred in any event irrespective of what actions the guards took.

A district court dismissed the charges against both guards. The court took the view that it had been established that several other persons had been taken into the detention facility during the latter guard's shift, which lessened his opportunity to make more exact observations of the deceased. With respect to the first guard – during whose shift the deceased had been the only person taken into custody – the court took the view that his neglect of official duty is to be regarded as minor and that "in any case, all that the guard's action has caused is that M (- - -) was not removed from the cell as soon as it was possible".

The case was appealed with respect to the first guard to a Court of Appeal, which found that no evidence had been presented to show that the action, assessed on the whole, was not minor. In the Court's assessment, the monitoring had been active negligence only with respect to the fact that the guard had not been able to make the right kinds of observations and conclusions, and making even incorrect observations could be considered human as such when these observations depend on human senses.

The rules of procedure followed in one police station require monitoring of intoxicated persons and others taken into custody under the Police Act to be supervised by inspecting the detention cells at two-hour intervals, and if necessary it must be done more often. On the basis of observations made in the course of inspections, that two-hour interval, at which visual and aural checks are conducted at the door of the room in which the person is detained, are a fairly established procedure in many police stations, in addition to which there is camera surveillance of intoxicated persons. The quality of the visual and possibly sound images that the camera relays varies greatly.

In a decision concerning cell deaths and monitoring of persons who have been deprived of liberty (2865/00), the Deputy-Ombudsman pointed out that in Sweden persons in police custody are inspected at 15-minute intervals, whilst in Norway the interval is half an hour and the inspection visits are logged. A written question tabled by representative Pehr Löv (KK 562/2006 vp) reveals the following:

"In Sweden, responsibility for the custody of persons who are intoxicated or under the influence of narcotic substances resides under the relevant legislation with the police. A person who has been taken into custody is put in a "drunk tank" to sober up. Monitoring is conducted by either the police or personnel rented from a security company every quarter hour. A round of telephone calls to Swedish authorities (National Police Authority, National Council for Crime Prevention, Prison Service) reveals that cell deaths in so-called drunk tanks are very rare, and there are no national statistics on the phenomenon. The explanation for the rarity of cell deaths seems to be good monitoring."

Solely on the basis of what has been outlined in the foregoing, it is naturally impossible to reach conclusions on how the amount and quality of monitoring influences cell deaths and in general evaluating the state of health of the detained person at intervals. In any event, it would appear that in our western neighbour the importance of monitoring accorded more weight than here in Finland. Is it a matter of resources, and if so, is any dearth of resources influenced by the attitude of society, which Professor Jyrki Virolainen described in the following words in a blog comment on 6.4.2009: "In Finland, getting 'thrown in the stir' is regarded as being, as it were, a sort of popular entertainment, and those who are taken to the cells and pass out there are left to their own devices."

On average, a score or so of people die in police custody in Finland each year. It can justifiably be asked whether inspection visits at two-hour intervals, supported by more or less intensive camera surveillance, is adequate. A lot can happen in two hours, and the condition of a person in custody can change dramatically.

It has been noteworthy on several inspection visits that the personnel of detention facilities have themselves been fairly concerned about the adequacy of personnel to conduct sufficiently good monitoring. For example, the only guard on duty during the night shift may, in addition to his monitoring-related tasks, also have other things to do, such as logging events and other tasks associated with assisting police officers. Guards have justifiably called into question their opportunity to conduct adequate monitoring in situations of this kind.

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Right to exercise

"A reprimand to the Chief of Police and the Inspector from the Ministry of the Interior's investigation body for not having arranged for the person in custody, whose detention could not have been regarded as temporary, to get daily exercise. - - - L had been allowed to walk in the open air only once, for about 12 minutes, in all of the time that he was in custody, although he had been held for nearly two months." (Annual report of the Parliamentary Ombudsman 1946)

The current Act requires that persons who have been deprived of their liberty be given an opportunity to exercise outdoors for at least one hour per day, unless an especially compelling reason associated with the person's state of health or order and safety in the custody facility prevent this.

Complete deprival of the right to get outdoor exercise for a period of several days as in the 1946 case are unlikely to come to light any longer. However, it has happened in some cases, for example when a remand prisoner has been transferred from a prison to a police detention facility, that timetable-related reasons have prevented the arrangement of outdoor exercise on the day that the transfer is made. In cases like this, the despatching and receiving institutions should be in touch with each other and ensure that the right of the person in custody to outdoor exercise is arranged. For example, in his decision 1378/04, the Deputy-Ombudsman took the view that transporting prisoners to and from prisons and their appearance in court can not be regarded as daily outdoor sojourns and suitable exercise, although the police seemed to adopt initial assumption that "being outdoors or other exercise" included also the transfer of a prisoner from Turku to Pori, a court hearing and the subsequent transport of the prisoner back to Turku.

What, then, is the nature of the outdoor exercise arranged in police custody facilities? Observations of the areas used for exercise are depressing. In many police prisons it is arranged in concrete rooms twenty or so square metres in size, one end of which perhaps has an opening in its top part big enough for a little of the sky to be visible. If a person allowed out to exercise has been smoking, the poor air circulation means that the smell of tobacco can linger there for a long time.

It was observed on an inspection visit to one police station that persons in custody could get daily outdoor exercise only in the open and unfenced back yard of the police station, which served also as the personnel's parking lot. The yard was located beside a busy road and in immediate proximity to a college and within view of it. In another police station in northern Finland, it was attention-catching that the exercise area was unfenced and could be unim-

pededly viewed from outside. In the view of the Deputy-Ombudsman, exercise for a person in custody should not be arranged in a place into which outsiders can see. In another prison, outdoor exercise was arranged in a fenced area that could be seen directly from the upper storeys of nearby apartment blocks.

The basic dictionary of the Finnish language defines the verb "ulkoilla" as meaning "to exercise outdoors for recreation or invigoration". On the basis of observations, it appears that in Finnish police prisons there is generally hardly any opportunity at all to be outdoors to recreate or invigorate oneself. How many people would call it recreation when what it means is spending an hour in a cold and damp concrete-walled room five metres square, with a narrow open slot in the top of one wall to enable the air to circulate a little and a strip of sky to be visible?

Problems relating to outdoor exercise have hardly any effect on persons taken into custody under the Police Act. After all, they are generally held only from evening to morning and it would seem that not all of them want or are capable of exercise. By contrast, the plight of remand prisoners held for weeks in police prisons is unreasonable. It can be asked whether the factual situation has improved very much compared with the observation made in 1946, and in which there was not even an attempt to arrange outdoor exercise.

The CPT took the view in its report that the spaces used for outdoor exercise are without exception depressing in appearance and often too small to be able to have a real physical work-out. The Committee hit the nail on the head. As it is arranged in the present circumstances, not many would seem to be getting recreations from "ulkoilu".

Custody circumstances

"The situation with regard to custody areas in the Helsinki police prison is very difficult and in fact the city has taken measures to redress the shortcoming since the inspection visit. The detention cubicles were in poor condition and completely unfurnished. Considering the status and importance of the capital, it is regrettable that persons in custody, including also foreigners, are detained in conditions of such a primitive standard.

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The Tornio police prison was in an old wooden building and contained four cubicles, the condition of which was passable. It does not satisfactorily satisfy its purpose in a border area, where many foreigners have to be held in custody." (Annual Report of the Parliamentary Ombudsman 1946)

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"The Inari police district had nowhere to accommodate persons who had been taken into custody. Police officers have had to keep persons taken into custody on suspicion of crimes and remand prisoners in their homes. In summer, the procedure with regard to drunken persons who had caused a disturbance was that they were transferred from a public place to deeper in the forest and thereby troublemakers could be kept away from the inhabited area. A situation of this kind had to be regarded as very regrettable, especially since many people who had come from southern Finland in search of work, especially at the Jäniskoski power station, and for whom arrest warrants were often in force, were staying in the locality. Building a police prison for areas where large numbers of people come and go must be deemed urgent." (Annual Report of the Parliamentary Ombudsman 1947)

"In the Kalajoki police district, the cells, three in all, where persons in custody are accommodated, and which a sergeant whose work is transferring prisoners, had built at his own expense, were still unfinished, but looked like they would become very suitable for their purpose." (Annual Report of the Parliamentary Ombudsman 1951)

The standard of police custody facilities has undoubtedly developed since the examples described above, but it is quite common that on inspection visits it has to be noted that the condition of and furnishings in these facilities are modest and that they are cramped and unsuitable for accommodating people long-term.

A feature that attracted attention on an inspection visit in 2007 was the fact that a police station where a considerable large number of persons who have been taken into custody are held each year contained only three rooms to keep intoxicated persons in. During the weekend preceding the inspection, for example, the senior guard reported, twelve persons at the same time had been kept in one room. A question that arose on the basis of the inspection is whether custody facilities can prevent implementation of the rights that intoxicated persons are guaranteed under the law and threaten inter alia protection of their privacy and safety. Questions about the guard personnel's occupational safety and the legal remedies available to them were also prompted.

The custody facilities in a police station build in the present century were found to be tidy and in good condition, but the Deputy-Ombudsman wondered at the small outdoor exercise area and the fact that a room intended for use as a space where remand prisoners could exercise was not being so used, but was instead being used for fitness-testing police personnel.

The Deputy-Ombudsman recently drew the attention of the Ministry of the Interior's Police Department to the fact that it was possible with the surveillance cameras in the rooms used

to hold intoxicated persons to observe someone in a cell using the toilet, which can be problematic from the perspective of protection of privacy. Also the CPT has drawn attention to unshielded toilet bowls.

In many police prisons, meetings between remand prisoners and their lawyers or legal representatives have as a general rule been arranged in spaces where the visitor and the person in custody have been separated by a plexiglass partition extending from the floor to the ceiling and conversed via an intercom. In the view of the Deputy-Ombudsman (1197/07), this procedure is unlawful, because a meeting arranged in this way falls into the category of so-called supervised meetings. The law sets special preconditions, which must be separately assessed in each individual case, for a meeting of this kind. In one police station, by contrast, meetings between persons who had been deprived of liberty and their lawyers as well as other meetings had generally been arranged in a common area off the corridor leading to the custody facilities, which was acceptable from the perspective of inter alia protection of privacy and the confidentiality of communications between legal representative and client.

The picture mediated on inspection visits that problems relating to the condition of and fittings in custody facilities depend largely on resources and the funds available for the upkeep of police station premises. In some cases it has additionally been observed that the structural solutions in the present custody facilities are not compatible with the requirements of the law in force. Conditions in custody facilities have an effect on monitoring of the persons accommodated in them and opportunities to safeguard their health and life as well as implement their fundamental rights.

In one decision concerning circumstances in and the condition of a police prison (2769/04), the Deputy-Ombudsman pointed out that in oversight of legality it is not acceptable as justification for unlawful spaces that the authorities can not afford to bring them into compliance with the law. They authorities are obliged to seek a solution to the problems that have led to the situation assuming an unlawful nature. In another decision (1378/04), the Deputy-Ombudsman noted that, based on his observations in the course of his inspection visits, police prisons are usually of such a character, not only as regards outdoor exercise areas, but also where furnishings and fittings are concerned, that they are not suitable to accommodate people for a longer time, although the Ministry of Justice has approved them for detaining remand prisoners.

Use of private guards

In some police stations, guards supplied by private security companies have been employed in custody facilities alongside colleagues with the status of officials. This procedure became problematic at the latest when Section 124 of the new Constitution entered into force on 1.3.2000. This Section states that a public administrative task may be delegated to others than public authorities only by an Act or by virtue of an Act, if this is necessary for the appropriate performance of the task and if fundamental rights and liberties, legal remedies and other requirements of good governance are not endangered. However, a task involving significant exercise of public powers can only be delegated to public authorities.

Attention was drawn to the matter in a decision concerning investigation of cell deaths and monitoring of persons who have been deprived of their liberty (2865/00). The Deputy-Ombudsman found it open to interpretation as to whether or not an arrangement based on an agreement between a local police service and a private security company accords with the Constitution. In the view of the Deputy-Ombudsman, this question should have been clarified not later than in conjunction with deliberation of the Police Cells Act. Unfortunately, that was not done. The matter was not directly addressed in either the precursor documents of the Act or when it was in the committee stage in the Eduskunta.

The Deputy-Ombudsman has subsequently had to resolve a complaint in which criticism was expressed of, among other things, the use of private guards in police custody facilities (1640/08). It emerged in the course of examining the matter that an agreement between a police service and a security company covered the time between 7 p.m and 7 a.m, with the exception of the night from Friday to Sunday, when guard duties were taken care of by a police officer assigned to the station. At other times, the personnel of the police station did the guarding. Under the agreement, a guard had the opportunity to leave the station twice for up to an hour, for which time a police patrol was present under the guidelines. If the police patrol has to respond to an emergency call or if a so-called cooperation night is involved, it is possible for there to be no personnel in the police station for hours, although someone is in custody there. In such situations, the client's safety has been ensured by having an alarm button close to the door of the cell section; pressing this calls the police field commander to the phone and he arranges for a guard or police patrol to check the situation. In addition, each custody room has an automatic fire alarm system that summons the field commander to the phone. It is possible also in other situations that no member of the personnel is present in a police station. If a task lasts more than an hour, a guard is called to the station.

In his decision on the complaint, the Deputy-Ombudsman stated inter alia that he considered it possible that in some respects what can be involved in the treatment of people in police custody is exercise of such significant public power that, under the provisions of Section 124 of the Constitution, the task can not be entrusted to a party other than an official. As one example of a task of this kind, he referred to the personnel performing guard functions in a reception centre, who are required by law to have the official status of public servants. It was emphasised in a Government proposal introducing legislation on the treatment of foreigners taken into custody and the detention unit and a bill to amend the Aliens Act (HE 192/2001 vp) that the treatment of people in custody and keeping them in a custody unit can be regarded as including significant exercise of public power, as a consequence of which persons performing direction and monitoring tasks should, because of accountability questions, have the official status of public servants.

Using private guards especially in rarely used custody facilities is undoubtedly purposeful from the costs perspective, because a guard is summoned only when there are people to keep in custody. A guard with the official status of a public servant, in contrast, does a work shift whether or not the cells are occupied. However, it cannot be solely a question of money. The reason for enacting Section 124 of the Constitution was the so-called constitutional law principle of administration by public servants, which is founded on considerations relating to the requirement that administration be subject to the law and accountability for actions in office and according to which public power can be exercised in Finland only by authorities and in the name of authorities only by officials duly appointed to their offices. In the view of the Constitutional Law Committee, the principle of administration by public servants is not an absolute bar to delegating public power and public tasks, on a limited basis, to parties other than authorities, such as state-owned commercial enterprises and bodies constituted under private law. Here, however, the Committee has required that sufficiently detailed regulations on the discharge of the tasks and the procedure to be used in doing so are issued, that aspects relating to legal remedies are taken into consideration, and that persons performing public tasks are accountable under criminal law for their official actions. In the opinion of the Deputy-Ombudsman, using private guards to look after persons in police custody would, for these reasons, require the legislator to adopt a stance. The Deputy-Ombudsman likewise did not find it acceptable for a police station to be empty of personnel even though a person who has been deprived of liberty is in custody there.

The decision included a request to the Ministry of the Interior to report what measures had been taken on foot of the decision. The matter is still under deliberation at time of writing.

Inspection of police custody facilities

As required by legislation, the Ombudsman conducts, when necessary, on site inspections of state offices and institutions to familiarise herself with entities that are subject to oversight of legality. She or he is especially required to inspect prisons and other closed institutions to monitor the treatment of persons confined to them. In conjunction with inspections, the Ombudsman or her representative has the right of access to all areas and all information systems in the office or institution as well as the right to have discussions with the personnel of the office or institution as well as with all persons serving or confined there.

"Since inspection visits by the Ombudsman are generally not announced in advance, and I have not done it, the drawback of this is that the relevant officials are not there, especially in summer. Therefore I did not get in contact with, for example, all of the district court judges that I intended to come and visit." (Annual report of the Parliamentary Ombudsman 1931)

Checking custody facilities is an established part of an inspection of a police station. The inspection practice has changed since 1931 in that visits are generally announced in advance and the documents that will be scrutinised before the visit are requested from the police station. So called KIP forms (from an acronym for the Finnish words meaning "registration of arrest/placement in custody") relating to persons in custody are likewise obtained in advance so as to check the legality of the grounds on which these persons have been deprived of freedom, compliance with deadlines, and so on. When cause for reproach has been found, it has generally related to inadequately recorded reasons. Often, the reason stated for loss of liberty has been a section of law, without explanation of the factors that, in the view of the official who decided to make the arrest, have met the relevant legal criteria in the individual case. This has not been deemed satisfactory. An inspection visit includes checking randomly selected cells, familiarisation with the camera surveillance system, and so on. Unlike the practice on inspection visits to prisons, discussions with persons in custody have been fairly rare in recent years. A practical problem on visits of which the entire police station is the focus is that generally a tour of the custody cells has usually taken place towards the end of the visit and for timetable-related reasons the time available for checking the cells has been limited, especially if the earlier parts of the inspection programme have taken longer than planned.

If the Ombudsman becomes the national monitoring authority envisaged in the Optional Protocol to the UN Convention against Torture (OPCAT), the way of conduction inspection of police custody facilities will have to be changed. In addition to traditional visits, there will

also be unannounced ones and the number of visits will probably increase. The way in which visits are implemented is also likely to change in that there will be more visits focusing only on police custody facilities.

With a view to unannounced inspections, a request was made in autumn 2008 to the Ministry of the Interior's Police Department that police stations be informed that personnel from the Office of the Parliamentary Ombudsman can, either led or assigned by the Ombudsman or a Deputy-Ombudsman, conduct inspections that are not announced in advance.

On inspection visits of this kind, in addition to checking the conditions in which persons in custody are kept, the legality of the reasons for depriving them of liberty and implementation of the rights to which persons in custody are entitled, there will also be private one-on-one conversations with persons who have been deprived of their liberty.

The trend towards inspection visits being unannounced and especially the focus of visits being on police custody facilities – something that can as such be realised irrespective of the progress of the OPCAT project – is in the right direction. It underscores the Ombudsman's special statutory duty to inspect especially closed institutions and oversee implementation of the fundamental rights of persons confined in them.

To conclude

Thus the problems relating to the way intoxicated persons are held in custody that have been observed in the course of oversight of legality – for example, the poor conditions of custody facilities and the fewness of official posts for guards – are attributable to a dearth of resources.

It would appear that resources and political will or a lack of it explain also the slow rate at which the number of sobering-up stations has grown. A Ministry of the Interior working group estimated in 2004 that there should be 20–25 sobering-up stations in the whole country. At its smallest, according to the working group, a station would operate with a staff of five nurses and five guards. Their input would be supplemented by that of a part-time doctor and possibly a social worker. A station of this kind would be able to provide a service round the clock.

It can be assumed that monitoring of an intoxicated person's state of health would be done more successfully in a station of this kind than in a police custody facility. Of course, it is impossible to say how many cell deaths would be avoided if a comprehensive network of sobering-up stations were in place, but the number can be estimated to be significant.

Since not all police services have the opportunity to take intoxicated persons to a sobering-up station, it is mainly police personnel who end up bearing responsibility for assessing the state of health of those to be kept in custody. From the perspective of the safety of persons to be kept in police facilities, it is of first-rate importance that police officers and others responsible for persons to be held in custody are able to assess risk situations — especially the difference between intoxication and an attack of illness — and the necessity to take someone to a doctor. Training is of essential importance in achieving this objective.

It is partly a matter of resources also when remand prisoners are held for long times in police prisons. In its reply to a CPT request for an additional report in 2008, the Government explained that at the moment a rapid transfer of remand prisoners from police facilities to prisons is not possible due to prison overcrowding and the obligations that the State Productivity Programme sets with respect to staffing levels in prisons.

All in all, it seems that in many cases a failure fully to implement the fundamental rights of persons in police custody is not due to individual police officers, guards or police stations, but to a lack of political will to allocate the resources that are needed to cope with this task. Safeguarding fundamental rights does not come free, but can the price of a human life be quantified? Perhaps Professor Virolainen got it right when he formed his perception of the attitude of Finnish society to these matters.