

Compensation for violations of fundamental rights – decisions and opinions by the Parliamentary Ombudsman

Introduction to administrative complaints

In Finland, as in many other countries, the administrative complaint has developed informally over time and is a part of the administrative judicial ex post facto legal protection system. In the sphere of administrative monitoring, the administrative complaint is the most important legal protection method available to private citizens.

As a method of legal protection, a complaint is flexible. It usually does not have to be lodged within a term and it does not involve much in the way of formal requirements. The complainant does not have to be an actual party and the object of complaint can be any act of authority, whether it results in a written administrative decision or a de facto action. Inaction or dereliction of official duties are also sufficient causes for lodging a complaint.

An authority tasked with legality oversight cannot interfere with the substance of an authority's decision by changing it or overturning it. His or her power to investigate matters is limited to evaluating the legality of the procedure or other actions. A complaint may, however, result in a decision by the Ombudsman or the Chancellor of Justice to bring a charge of malfeasance against the object of complaint. Upon observing an illegal decision, legality oversight authorities can also rely on an extra appeal method that has resulted in decisions being overturned. Most decisions handed down on administrative complaints result in a reprimand for unlawful conduct or the Ombudsman informing the authority of the appropriate lawful procedure or drawing the authority's attention to the demands of good administrative conduct or perspectives that promote the implementation of fundamental and human rights.

When measured by actual judicial impact, the administrative complaint is not as effective a legal protection method as an appeal or other methods of suing for change, but it has often brought about the desired effect indirectly. In some cases the authority has rectified his or her incorrect procedures upon receiving the request for clarification that the Ombudsman sends as a part of his or her investigation of a complaint. Sometimes the mere initiation of a complaint procedure has resulted in the circumstances being rectified.

In some situations the violation of rights has in the view of the Ombudsman been so severe that a reprimand or recommendation is clearly insufficient to make amends for it. In such cases, the authority has received a specific request to either change the decision or provide the complainant with compensation for the harm he or she suffered. In the following article, I will look into decisions and opinions made during the last decades, where an authority has been advised by the Ombudsman to rectify an error or provide compensation as a result of it.

The Parliamentary Ombudsman and changes in legality oversight duties

A provision regarding the Ombudsman was included in the Constitution of Finland 94/1919. Section 49 of the Constitution prescribes how the Ombudsman is chosen, as well as the term of service, qualifications and duties. According to the Constitution of 1919, a Parliamentary Ombudsman was to be elected during each regular parliamentary session. The person elected should be distinguished for his knowledge of the law and monitor that the actions of courts and other authorities adhere to the law. The election was to be performed according to the procedure provided for the election of the Speaker of Parliament. Each year the Ombudsman should provide the Parliament with an account of his activities, as well as the state of the law and shortcomings he had encountered. Act 277/1933 extended the Ombudsman's term of service to three instead of one year.

The Act for relieving the Chancellor of Justice of the Government of certain duties (275/1933) relieved the Chancellor from monitoring compliance with the law in those matters within the jurisdiction of the Ombudsman that concern, among others, the actions of National Defense, the complaints of persons deprived of their liberty, as well as complaints that concern order in penitentiaries, remand institutions and workhouses, as well as their operation. In a correspondingly applicable act concerning the division of duties between the Ombudsman and the Chancellor of Justice of the Government (1224/1990), the Ombudsman is tasked with monitoring the operation of prisons and other places of detention.

The wording of the first clause of section 49 of the Constitution of Finland was altered by Act 176/57 so that each Parliament shall appoint for a term of four years a Parliamentary Ombudsman, who shall have outstanding knowledge of law. The provision stated that also a substitute for Parliamentary Ombudsman was to be appointed in the same order and for a similar term of service to perform the duties of the Ombudsman in case he or she was prevented from attending to them. Act 19/1971 concerns the Deputy-Ombudsman. He or is chosen in the same order and for the same term of service to assist the Ombudsman.

Act 1221/1990 further refined the duties of the Parliamentary Ombudsman. The amendment of the law stated that it was the duty of the person chosen as the Parliamentary Ombudsman to ensure that the courts of law, the other authorities and civil servants, public employees and other persons performing a public task obey the law and fulfill their obligations. The Ombudsman's jurisdiction was extended to include public tasks that can by specific provision be, in addition to the authorities, performed by private organisations or individuals.

Section 49 of the Constitution was amended in conjunction with the constitutional reform and monitoring the implementation of fundamental and human rights was added to the duties of the Parliamentary Ombudsman. According to the preparatory work for the constitutional reform (HE 309/1993 vp), monitoring fundamental and human rights in acts of authority is a natural part of the Ombudsman's legality oversight duties. A significant part of the complaints lodged with the Ombudsman have fundamental or human rights dimensions. These rights also have a special significance in the context of operating prisons and other places of detention, because these are the places where fundamental rights often come under pressure. Since the monitoring of these institutions in our country is the duty of the Parliamentary Ombudsman, emphasising the role of the Ombudsman in monitoring fundamental and human rights is justified.

The new Constitution 731/1999 repealed the previous Constitution from 1919. Chapter 10 of the Constitution concerns legality oversight and section 109 prescribes the duties of the Parliamentary Ombudsman. The first clause of the section states that the Ombudsman shall ensure that the courts of law, the other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfill their obligations. In the performance of his or her duties, the Ombudsman monitors the implementation of fundamental rights and liberties and human rights. The second clause prescribes that the Ombudsman submits an annual report to the Parliament on his or her work, including observations on the state of the administration of justice and on any shortcomings in legislation. Section 110 of the Constitution prescribes the right of the Chancellor of Justice and the Ombudsman to bring charges and the division of responsibilities between

them. Section 111 of the Constitution prescribes the Parliamentary Ombudsman's right to receive information.

The Parliamentary Ombudsman's reports

The Parliamentary Ombudsman has always been obligated to submit an annual report to the Parliament on his or her work, including observations on the state of the administration of justice and on any shortcomings in legislation. From 1980 to 1985 the annual report included a chapter titled "Revoking judgements and other matters concerning the expunging or rectification of official decisions or related matters", later annual reports included a section named "Initiatives and presentations concerning extraordinary appeals or other official decisions" and from 1993 to 1996 the annual report included a section called "Reversing a decision by an authority".

Since 1995 the Ombudsman's annual report has included a chapter dealing with oversight of implementation of fundamental and human rights. In a report (PeVM 24/1994) given on a Government proposal concerning constitutional reform, the Constitutional Law Committee recommended that the reports by the supreme overseers of legality include a section on the implementation of fundamental and human rights. Over the last few years the chapter dealing with the supervision of the implementation of fundamental and human rights in the Ombudsman's annual report has grown to become a brief look at the year's activities that also includes observations concerning Finland's human rights policies and the commentary of organs that monitor human rights, along with observations on the implementation of fundamental and human rights made in the context of legality oversight.

Past recommendations to reverse public officials' decisions

The older annual reports submitted to the Parliament by the Ombudsman include numerous fairly briefly reasoned recommendations for reversing decisions considered erroneous or for taking matters under reconsideration. The Ombudsman often recommended that a negative decision be reconsidered. In some decisions the Ombudsman found it unreasonable that the consequences of an erroneous decision by an authority be carried by the complainant alone. The reasoning behind several of the recommendations tended to lean towards an emphasis on fundamental rights.

In decision 1463/81, Deputy-Ombudsman Klas G. Ivars recommended to the Ministry of the Interior that it consider the common good and pay a reasonable amount in compensation to an innocent bystander. The Deputy-Ombudsman stated that in reading the complaint, he observed that a bystander had attempted to apprehend some individuals engaged in acts of vandalism in daycare center yard. By the time the police patrol arrived, the perpetrators had fled. The police were not aware of the bystander's presence in the yard and a police dog managed to bite him.

The Deputy-Ombudsman found that the bystander had shown initiative and voluntarily attempted to assist the police in preventing and solving a crime. Considering all this, it would be unreasonable to expect the individual to sue the State for damages. The Deputy-Ombudsman's interpretation indicated that the State was not necessarily legally liable to pay damages in this case. Still, the expenses caused by the legal action alone would be far greater than the sum in question.

On the 23.2.1982 the Ministry of the Interior informed the Deputy-Ombudsman that it had decided to pay the individual in question a compensation of Fmk 2,000, which is the sum the individual had claimed.

In decision 606/87, Ombudsman Olavi Heinonen recommended that the Finnish Railway Board reconsider a complainant's matter. In the case in question, a passenger had disembarked a train at the Retretti stop, which is long enough for only three cars. The passenger in question had not heard the conductor's suggestion that people disembark through the doors of the central cars. The passenger in question had left the train via the doors of the last car and ended up outside the passenger platform. The passenger then had to jump to the side of the tracks and received an injury in the process. It had been the passenger's intention to continue traveling the next day, but after a visit to the hospital due to pain caused by the injury, it was decided that travel was out of the question. The injury did not heal and the passenger required major surgery at the age of 80.

The Ombudsman found that according to the Act on Liabilities in Rail Transport, liability for damages suffered by a passenger are the responsibility of the Finnish State Railways, independent of negligence. Negligence on the part of the passenger may eliminate the responsibility to provide compensation. The passenger must be able to trust that he or she can safely disembark a train. If the disembarkation must take place through another car than the passenger's own, the railway staff must notify passengers of this fact with sufficient clarity. In the Ombudsman's opinion, the fact that the passenger in question was elderly underlined the responsibility of the railway staff. In the Ombudsman's opinion it could not be conclusively

proven that the passenger had heard the announcement regarding the correct disembarkation route. This meant that the application for compensation could not be rejected using the reasons referred to in the decision by the Railway Authority.

The Railway Authority informed the Ombudsman on 11.6.1987 that it had paid the complainant Fmk 540 for extra expenses incurred from the visit to the doctor and the interruption of travel, as well as an additional Fmk 1,000 for pain and suffering. The claim concerning the continuing inconvenience caused by the injury was rejected as unsubstantiated.

In decision 1904/90, Deputy-Ombudsman Pirkko K. Koskinen made a recommendation to the Finnish Government that an employee receive compensation for injuries caused by an explosion. The employee received the injuries from an accidental explosion while working for the Roads and Waterways Administration at an airport. A compensation claim based on the Employment Accident Insurance Act had been rejected, because the employee was not employed by the state, but working as an independent contractor. The matter of the compensation claim was never resolved, even though the Road and Waterways Administration found that the explosion was inadequately supervised and that it was liable for the accident. The employee turned to the Ombudsman.

The Deputy-Ombudsman's opinion was that public officials had not provided adequate guidance to the employee. Since the matter had been under consideration by an authority, the employee had reason to trust that the matter would be processed appropriately. It's in the public interest that an employee be compensated for damages resulting from the inadequate supervision of a construction project by a central governmental office. Even though the right to compensation had in this case expired, the Ombudsman found that letting the employee alone suffer the consequences of the accident was unfair.

On 18.11.1992 the Ministry of Transport and Communications informed the Deputy-Ombudsman that at the urging of the Ministry, the Finnish Road Administration had decided to compensate the employee for the damages. The Road Administration ordered the State Treasury to immediately pay the employee a non-recurring total of Fmk 255,162.33, as well as a monthly annuity.

In decision 2272/94 Ombudsman Jacob Söderman found that the principle of equality was not implemented when compensation in accordance the Act on Compensation for Crime Damage was paid. In 1986, a former police sergeant was seriously wounded in the line of duty. In accordance with the Act on Compensation for Crime Damages, the State Treasury had compensated another police sergeant wounded in the same explosion for pain and

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suffering. The claim for compensation due to pain and suffering submitted by the complainant was rejected.

In accordance with the implementing provision of the amendment to the Act on Compensation for Crime Damages compensation for pain and suffering for crimes committed before 1.1.1991 was paid only if the State Treasury had not resolved the matter before the mentioned date. The complainant's matter was resolved in 1989 and the claim for damages submitted by the other sergeant wounded in the same explosion was not resolved until 1992. The Ombudsman stated that only one person seriously wounded in conjunction with the same crime had been compensated for pain and suffering. For reasons partially beyond the control of the claimants, the claim of only one has been resolved before the amendment to the act that prescribed the compensation be paid. In the Ombudsman's opinion the situation was unfair. It had led to a result where the two claimants were in the complainant's justified view treated in an unequal manner.

The Ombudsman stated that according to Section 5 of the Constitution of Finland, all Finnish citizens are equal before the law. This means that consistent decision practices must be maintained in similar matters. In the case of the police sergeant deprived of compensation, the equality principle was not implemented. For this reason, the Ombudsman recommended that the Ministry of the Interior take steps to provide the complainant with compensation, too.

On 7.12.1994 the Ministry of the Interior decided, prompted by the Ombudsman's recommendation, that the other police sergeant be paid the sum of Fmk 50,000 by the State for the pain and suffering caused by serious wounds suffered in an explosion while performing his duties as a member of the police force.

The recommendation of an overseer of legality does not always result in the desired outcome. Ombudsman Jacob Söderman recommended in his decision 556/90 that the President of the Republic of Finland pardon a Canadian citizen from a confiscation sentence handed down by the Circuit Court.

The private car of the pensioner was ordered to be confiscated by the State and the pensioner was ordered to pay a fine for tax fraud. The pensioner's stay in Finland had been prolonged, due to illness, so it was lengthier than originally declared to Customs upon entry into the country. The pensioner was of poor health, elderly and had spent a long time abroad. The complainant was for these reasons not familiar with Finland's legislation concerning customs taxation.

On 21.12.1990 the President of the Republic rejected the application for clemency, because it concerned a pardon from the confiscation of a car that had already been sold at a Customs auction. According to the Supreme Court a benefit like this could not be granted by pardon.

Fundamental rights reform and the Ombudsman's recommendations for compensation

In conjunction with the reform of fundamental rights, Chapter 2 of the Constitution of Finland was amended with clause 1 of Section 16a that obliges the public authorities to guarantee the observance of fundamental and human rights. A corresponding statute can be found in Section 22 of Chapter 2 of the Constitution.

According to the preliminary work for the reform of fundamental rights (HE 309/1993 vp) the public authorities abstaining from interfering with fundamental rights is not sufficient for their practical implementation. Often the practical implementation of fundamental rights requires active measures by the public authorities, as in protecting an individual's fundamental rights from violations or creating prerequisites conducive to the use of fundamental rights. For this reason the proposed fundamental rights institution contains a specific provision that obliges the public authorities to protect the implementation of fundamental and human rights. The statute emphasises the effort to substantively protect fundamental rights in addition to the formal basic rights protection linked to procedural requirements.

The public authorities' obligation to protect fundamental rights set forth in the Constitution and the fundamental and human rights perspective emphasised in the Ombudsman's legality oversight have been the reasons given by the Ombudsman for many decisions where he or she recommends that an authority compensate an individual for inconvenience caused by an error on its part. In most cases the compensation has been financial. Sometimes the recommended compensation may be something immaterial, like an apology, as in decision 1347/99 by Ombudsman Lehtimaja concerning a delay in the payment of a witness fee.

According to decision 838/96 by Ombudsman Lauri Lehtimaja, the complainants had suffered financial damages due to a building permit erroneously granted by a supervisory board, since they had to pay their legal expenses related to the annulment. The Parliamentary Ombudsman's duties do not include deciding on compensation liability. This was a case for the appropriate court. Since the regional government had a faulty conception of the judicial basis of the claim and the preconditions for paying the compensation when considering the

matter, the Ombudsman recommended that the regional government take the application under reconsideration.

The Ombudsman recommended that the regional government pay attention to the following considerations, which in his opinion speak for accepting the claim for compensation.

In its explanation, the local authority pointed out that the matter involving the building permit was open to interpretation and that the building inspector who presented the building permit decision was not a lawyer. The Supreme Administrative Court, however, thought the supervisory board's decision was based on the application of the wrong act. In the view of the Supreme Administrative Court, the case was not open to judicial interpretation. In accordance with clause 1 of Section 92 of the 1919 Constitution, under threat of sanction there shall be strict compliance with the law in all official functions. This applies to the functions of all holders of municipal officials, regardless of whether they have trained as lawyers or not.

Clause 1 of Section 16 states that everyone shall have the right to have his affairs considered appropriately and without undue delay by a lawfully competent court of justice. It is a known fact that legal expenses for settling a matter in court are high. It has been said that in practice this complicates the implementation of the fundamental right in question, especially when the legal expenses threaten to surpass the worth of the financial interest being settled in court.

Clause 1 of Section 16a of the 1919 Constitution states that public authorities shall guarantee the observance of fundamental rights and of international human rights. This obliges the public authorities to take active steps and not just abstain from interfering in fundamental rights. Since the damages claimed by the complainant amounted to a mere Fmk 8,599.10 and the complainant had presented the local authority with reasonable grounds to support the claim, it would be desirable in the Ombudsman's opinion that the regional government on its part try to arrive at a conciliatory solution in the matter.

The Ombudsman drew the regional government's attention to the fact that if the local authority still ended up rejecting the claim, the decision should be reasoned appropriately. He asked that the regional government inform him whether the matter had been taken under reconsideration and what decision had been arrived at.

On 18.6.1999 the regional government informed the Ombudsman that it had reconsidered the matter and decided to compensate the complainants the full sum of Fmk 8,599.10 they had originally claimed.

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In decision 1475/98 Ombudsman Lauri Lehtimaja criticized a decision to temporarily revoke a passport. The complainant was leaving on a holiday to Estonia from Länsisatama-harbour in Helsinki. The Coast Guard Lieutenant working as a shift manager in passport control had temporarily taken possession of the complainant's passport, because the contact information for the complainant's next of kin had been written down in pencil on the last page in Finnish and German. The lieutenant had been in contact with the on-duty inspector at the Helsinki Police Department, who had made the decision of temporarily revoking the passport. The complainant's holiday trip was cancelled.

The Ombudsman stated that it's important to remember how Section 22 of the Constitution of Finland reads: The public authorities shall guarantee the observance of fundamental and human rights. This obligates the authorities to interpret the law in a manner beneficial to the fundamental and human rights. Of all the interpretations allowed by the wording of the act, the one that best guarantees the citizen's fundamental and human rights protection must be chosen. In this case, the question was protecting the citizen's freedom of movement and specifically the right to leave the country. This is a matter in which Finland has been criticised in the past, by the United Nations Committee on Human Rights, among others.

Even if the complainant's passport could be considered "ruined", the Ombudsman thought that other avenues of action could have and should have been pursued. The complainant should have been informed of the inappropriateness of the pencil markings. Then the complainant could have been directed to remove the markings or renew the passport after the trip. In any case, revoking the passport temporarily could have been postponed until after the trip. The passport official could have crossed out or erased the pencil marking, if he or she thought it had an adverse effect on the credibility of the passport. Whatever the chosen procedure, the fact that the fundamental right of a citizen to leave the country cannot be curtailed on the basis of minor questions of form should have been kept in mind. The Ombudsman also attached significance to the protection of the complainant's legitimate expectations.

In the view of the Ombudsman the lieutenant and the inspector had acted unlawfully when they decided to take possession of the complainant's passport and thus prevent the complainant from leaving the country. Additionally, the Ombudsman directed the Ministry of the Interior to consider how they might appropriately compensate the complainant for the inconvenience suffered in the matter.

On 13.3.2001 the Ministry of the Interior informed the Ombudsman that the Headquarters of the Coast Guard had decided to pay the complainant Fmk 1,265 for the extra expenses resulting from the cancellation of the holiday trip. The report by the Coast Guard Headquar-

ters also mentioned that the case had been included in the training procedures for passport control staff. New guidelines for removing a passport from its bearer had been issued.

In decision 2658/00 Ombudsman Riitta-Leena Paunio recommended that the Social Insurance Institution of Finland (Kela) take responsibility for the consequences of its error. After performing a pension audit and discovering an error, Kela paid the complainant pension benefits for the years 1995 to 1999 retroactively. The complainant paid Fmk 3,500 in taxes on the sum received. According to the complainant the tax would not have been due had Kela paid the right amount of pension to begin with.

According to the Ombudsman both Kela and the Tax Authority had acted in accordance with retroactively applicable provisions when auditing and paying the pension benefits. The Ombudsman considered the current interpretations of the increase for delay provision and its implementation provision for retroactive pensions unfair, because those persons who had suffered from the error of the authority were also excluded from receiving the interest on arrears. This circumstance should be taken into consideration when looking at losses to parties caused errors by authorities as a whole.

In the decision, the Ombudsman referred to the principle of protecting legitimate expectations: the party must be able to trust the legally valid decision by an authority that he or she has adapted his or her life to. The foremost question in this case was about how authorities bear responsibility for their errors. The Ombudsman emphasized that taking the financial consequences caused by retroactive payment of benefits due to an official error into consideration must be possible. An official error should not result in financially detrimental consequences for the beneficiary. The authority should, together with the beneficiary, investigate the impact of the error and guide the beneficiary in using, for example, methods allowed by tax legislation to minimize the detrimental consequences of the error. The authority should to the best of its ability work towards making the circumstances correspond with what they would have been had the error never taken place. The Ombudsman brought her opinion to the attention of Kela and recommended that the complainant's matter be reconsidered once more.

On 4.4.2003 Kela announced it was prepared to reimburse the complainant the amount that the complainant had paid in taxes on the retroactive pension benefits. Kela was, however, unable to pay the complainant interest on the retroactive pension benefits as its interpretation of the increase for delay provision had been established by legal usage.

In decision 1197/06 Deputy-Ombudsman Petri Jääskeläinen reprimanded the Finnish Tax Administration for an unlawful procedure in imposing tax liability. As a result of the procedure

employer payments were regularly and several times a year collected using debt recovery proceedings from parties that were not liable for the payments in question. The Deputy-Ombudsman also reprimanded the Tax Administration for undue delays in correcting the unlawful procedure. He recommended that the Tax Administration consider how it could compensate for the harm and inconvenience caused to the complainants.

The complainants were engaged in establishing “desk drawer corporations” to sell at a later date. During the establishment of the corporations, one of the complainants was recorded as a member of the corporate board. After the corporations were entered into the business register, they were sold as inactive. The corporations did not always keep up with their tax liabilities under the new ownership. The enforcement authority sent requests for payment of withholding taxes and employer payments owed by the corporations to the complainants. The complainants had applied for and received decisions from the Tax Administration that relieved them of the tax liabilities in the payment requests.

Despite the decisions by the Tax Administration to relieve the complainants of the tax liabilities in question, the same debts were collected via recovery proceedings several times a year. The procedure would be repeated with the next year’s annual return. Once the information about the erroneous tax liability and the Tax Administration’s decision concerning relief from the tax liability in question did not reach the enforcement authority and the complainant’s bank accounts, as well as book-entry accounts were seized and the shares sold. The proceeds were paid to the Tax Administration, at whose request the enforcement agency later returned the proceeds, minus any expenses incurred from the recovery proceedings, to the complainants.

According to evidences by the National Board of Taxation and the Tax Administration, annual returns of employer payments takes place automatically using a payment control application. When employer payments are debited, the information recorded in the Tax Administration’s register concerning the taxpayer, as well as others liable for the tax, is used. The debiting process is fully automated. The parties recorded as responsible for the liability in the debiting decision are not heard in conjunction with the procedure to verify that the information in question is accurate. The party recorded as being responsible for the tax is not separately notified of the debiting decision, which includes the information concerning the tax liability. The party recorded as responsible for the tax liability is notified only if the tax is not paid and recovery proceedings are initiated. The report found that some groundless liabilities were recorded every year.

The Deputy-Ombudsman emphasized that the Tax Administration’s procedure was unlawful when a person who had been a shareholder or member of the board when the corporation

was established was named as being liable for taxes generated after the corporation was registered. The procedure was in violation of a central principle of corporation legislation, according to which the corporation as a judicial entity created upon registration is separate from the shareholder. By law, shareholders are not personally responsible for the liabilities of the corporation. The founder and board member of a corporation has the right to trust in the existing law and in this central principle specifically prescribed by corporation law.

According to the Deputy-Ombudsman, grounds for the Tax Administration's procedure could not be found in tax legislation, corporation law or the Administrative Procedure Act. When the Tax Administration failed as a part of their payment control to verify the accuracy of the assigned tax liability or interview the members of the board, it had placed the legal protection, protected as a fundamental right in the Constitution, of the parties in question at significant risk.

The procedure was in clear violation of the duty of clarification assigned to the authority by the Administrative Procedure Act, as well as the right of a party to be heard. In practice, as a result of the procedure, the party recorded as liable for the tax was informed of the unlawful assignation of liability for the post-registration actions of the corporation in the payment order sent by the enforcement agency. Additionally, this procedure had been repeated when attempts were made to enforce payment of the charges several times every year. In an extreme case the party assigned with the tax liability could not bring the recovery proceeding to a halt, which resulted in the realization of assets and other unfair consequences.

On 28.10.2008 the National Board of Taxation notified the Deputy-Ombudsman that it would attempt to come to an agreement concerning compensation to the complainants in cases where the state is, in accordance with the Tort Liability Act, liable for the payment of damages and an itemized and individualized claim of the damages, as well as a claim for damages and a report on the amount of damages suffered, is submitted to the Tax Administration. The Tax Administration had delivered the results of its notification to the complainants, too.

Based on information received from the Tax Administration on 11.8.2009 it had come to an agreement with the injured party and would pay €2,000 in compensation. When determining the amount of compensation, the extent and duration of the erroneous procedure, as well as the estimated detrimental effect on the financial affairs of the injured party and the unique nature of the business activities in question were all taken into account.

In decision 2272/07 Deputy-Ombudsman Jukka Lindstedt stated that a coastguard had issued the complainant an erroneous inspection order. The complainant was departing Helsinki for Tallinn from Eteläsatama-harbour. A senior coast guard of the Gulf of Finland Coast

Guard, which is part of the Finnish Border Guard, had entered a marking in the registration book of the vehicle that it had to be inspected by 10.7.2007. The complainant lived in Tallinn and would have stayed home for a longer period of time. As a result of the coast guard's misconduct, the complainant had to make an unnecessary visit to an inspection station on 10.7.2007, which was a major inconvenience due to the advanced age of the complainant.

In its statement to the Ombudsman, the Finnish Border Guard, too, found that the coast guard had made a procedural error. According to the decision the erroneous inspection order can be corrected with an official note to that effect, after the fact, if the complainant delivers the vehicle's registration book to the Coast Guard. The complainant could also retrieve a new registration book from an inspection station and deliver the resulting invoice of €10.20 for payment by the Gulf of Finland Coast Guard. In its decision the headquarters of the Finnish Border Guard apologized for any inconvenience caused to the complainant.

The Deputy-Ombudsman stated that the demand for good administration expressed in the Constitution of Finland and the Administrative Procedure Act requires that the authority shall see to it that a matter is adequately and appropriately clarified. The duty to consider matters appropriately includes a general obligation of due diligence. An authority must clarify matters under its consideration with sufficient thoroughness. Other tasks must not be allowed to prevent the diligent performance of official duties. The report stated that the coastguard in question was an experienced vehicle traffic border inspector. The fact that the vehicle was registered for use in 2003 was readily apparent in the registration book.

In the case in question all parties had readily admitted that an error was made. There were no legal grounds for issuing the inspection order. According to the Section 3 of the statute given by the Government concerning the roadworthiness of vehicles (1245/2002), a private car is due for its first regular inspection three years after the registration date and the second inspection after five years. 2007 was a so-called off-year for a vehicle the complainant registered in 2003.

According to the Finnish Border Guard headquarters the error could be rectified after the fact. At the time the complaint was drawn up, the accident had already taken place, since the complainant had to travel to Finland as a result of the unlawful inspection order. This was a major inconvenience for the complainant and possibly resulted in extra expenses. A correction to the marking in the registration book was, at this point, irrelevant.

For future reference, the Deputy-Ombudsman reprimanded the senior coast guard for the unlawful procedure. At the same time he suggested the Finnish Border Guard headquarters

consider whether the complainant should be compensated for the inconvenience suffered as a result of the coast guard's conduct.

According to a notification by the Finnish Border Guard headquarters dated 28.9.2009, it had contacted the complainant and inquired whether the complainant wished to claim any compensation in the matter. The complainant requested that he be paid €200 in compensation. The Finnish Border Guard agreed to pay this sum as soon as the complainant returned to Finland.

Other opinions and visions of the future

In her editorial in the Ombudsman's 2005 annual report, Ombudsman Riitta-Leena Paunio stated that only legal protection methods of sufficient strength will yield results against violations of fundamental rights. Monetary compensation is one such method. In the Ombudsman's opinion, the duty to protect fundamental and human rights prescribed in Section 22 of the Constitution of Finland is fully compatible with the duty to provide compensation for violations of fundamental rights.

Since the emphasis on monitoring the implementation of fundamental and human rights has increased after the fundamental rights reform, the Ombudsman considered it reasonable that within the context of this duty, the Ombudsman could make recommendations or proposals concerning the compensation of fundamental rights violations. A reprimand or other criticism by the Ombudsman or an apology by the authority are not always sufficient. In the opinion of the Ombudsman, an authority should be prepared to provide monetary compensation for violations of fundamental rights.

In the editorial for the 2006 annual report, the Ombudsman proposed a national strategy for protecting human rights. In the Ombudsman's opinion it was important that preventing violations of fundamental and human rights be adopted as an objective by the Government and a strategy covering all administrative branches be drawn up to accomplish this objective. The different branches of administration are very aware of the central and significant structural problems that prevent the implementation of fundamental and human rights in our country. Undue delays in the administration of justice and general administration are one such example. Emphasis should be placed on preventing human rights violations, instead of after-the-fact monitoring, supervision and compensation. A national strategy for protecting human rights should use the prevention of fundamental and human rights violations as a starting point. Evaluation of the national human rights structures is a natural part of this.

In opinion 3719/08 on the report by the passivity work group (OM 12/41/2007, OM004:00/2008) the Ombudsman stated that the possibility of monetary compensation had not been evaluated in the report. According to the Ombudsman only legal protection methods of sufficient strength will yield results against violations of fundamental rights. Monetary compensation is one such method. In the Ombudsman's opinion the duty to protect fundamental and human rights prescribed in Section 22 of the Constitution of Finland is fully compatible with the duty to provide compensation for violations of fundamental rights. The possibility of claiming compensation on a national level is also reasonable in that claimants would not have to appeal to international organs for compensation.

According to the statement within the context of currently applicable regulations, the Ombudsman has not been seen as having the possibility of stating a liability for damages and the Ombudsman cannot order that damages be paid. Over the last decades, some proposals for paying compensation have been made and the end results have been positive for the complainants. In the Ombudsman's opinion, the possibility of monetary compensation deserves to be considered during further preparation of the matter.

On 26.6.2009 the Ministry of Justice, Finland appointed a committee to draft the necessary amendments to the Parliamentary Ombudsman Act (197/2002) and the Act on the Chancellor of Justice. Among other matters, it is the duty of the work group to investigate the possibility of establishing an institution, as well as all attendant advisory committees, devoted to protecting and promoting fundamental and human rights in Finland in a manner that complies with the so-called Paris Principles. The institution would be attached to the Ombudsman's office.

When the work group ponders the institution's operations and the promotion of human rights as extensively as possible, it could consider granting the Ombudsman the power to order that monetary compensation for violations of fundamental rights be paid as one contributing method. Lodging a complaint with the supreme legality supervisor is a flexible and established, easily accessible method of legal protection available to all. If the Ombudsman's right to propose that monetary compensation be paid for a violation of fundamental rights had a basis in law, it would support the extensive promotion of fundamental and human rights. The possibility of having to monetarily compensate the fundamental rights violations suffered by individual complainants would have an impact on the conduct of the authorities on a general and preventive level. At the same time the efficacy of national legal protection methods would be increased. □□□