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Prisoners' appeals, oversight of legality and legal remedies

General description of oversight of prisons

One of the key tasks of the parliamentary Ombudsman is to monitor the treatment of persons confined in prisons and other closed institutions. The Parliamentary Ombudsman Act requires that in this task of oversight he or she must especially conduct on-site inspections in these places. Indeed, monitoring the treatment of persons confined in them has traditionally belonged to the hard core of the Ombudsman's oversight of legality. Its importance is especially accentuated by the fact that persons in prisons and other closed institutions are especially vulnerable and in a subordinated position relative to those who are responsible for their treatment.

For someone in prison the Ombudsman has been in practice the only outside instance in addition to the Prison Service's own oversight to whom prisoners have been able to turn if they feel that they have been treated badly in prison or that a decision that violates their rights and obligations has been made there. Under the legislation setting out the division of tasks between the Chancellor of Justice and the Parliamentary Ombudsman, the former has been freed of responsibility for dealing with matters that concern prisons and other institutions where persons have been confined against their will. The Chancellor of Justice has likewise been freed of responsibility for dealing with matters that come under the scope of the Ombudsman's powers and have been initiated by persons whose liberty has been restricted through detention, arrest or otherwise. In practice, the Chancellor of Justice regularly transfers complaints by such persons to the Ombudsman.

The principal concentration in oversight of prisons has been on investigating complaints by prisoners. The numbers of these complaints and of decisions reached in relation to them have varied from year to year. However, prisoner complaints have generally been one of the biggest categories resolved by the Ombudsman. As is the situation with other categories of

cases, the numbers of decisions on prisoner complaints have been growing steadily in recent years. In 2008, for example, the Deputy-Ombudsman issued decisions on 442 prisoner complaints (out of a grand total of 3,767 decisions). Thus decisions on prisoner complaints represented 12% of all decisions. What is, however, noteworthy is that one-third of decisions issued by the Deputy-Ombudsman on complaints concerning the actions of the prison authorities contained criticism of these authorities.

Complaints generally concern relatively established matters, such as treatment of prisoners, temporary release passes, transfers from one prison to another, unsupervised visits and other contacts with persons outside the prison as well as possession of personal belongings. The exercise of disciplinary power as well as the use of security and coercive measures likewise frequently come up. The large number of complaints has had a limiting effect on inspection activities.

Inspection visits to prisons have given the Ombudsman the opportunity to familiarise herself in concrete terms with the treatment of prisoners. Especially informative in this respect have been the confidential conversations in which prisoners have been able to bring up the matters that they regard as shortcomings in their prison and otherwise on the part of authorities. The matters raised in the conversations have been examined in the discussions with prison managements that take place in conjunction with visits. In these discussions, the prisoner's name is not mentioned unless he or she wants it to be. In these cases, matters are taken up on a more general level. In general, the aim has been to deal with them in the course of the visit. During visits, prisoners often submit written complaints to the Ombudsman and these are examined separately.

Development of the right of prisoners in Finland to appeal

One important reason why oversight by the Ombudsman has been accentuated in treatment of prisoners is that a decision by the prison authorities concerning a prisoner's rights and obligations has mainly been subject to a refusal of leave to appeal. The question of the right of appeal has come up in several different contexts. I shall deal with the main features of the development of prisoners' appeals that has taken place since the system of custodial sentences was restructured.

Appeals were statutorily regulated in the RTA (a Finnish acronym meaning "execution of sentences") Decree, which entered into force in conjunction with a comprehensive restructuring

of the custodial sentences system in 1975. It was possible to appeal against a decision by a prison management requiring a prisoner to pay compensation for damage caused to the institution's property either deliberately or through gross negligence. Compensation was ordered payable out of the prisoner's work earnings, prisoner's allowance or other funds transferred to his or her account (RTA Decree, Chapter 3, Section 13). The appeal authority was the Prison Service Department of the Ministry of Justice. The right of a prison management to order a prisoner to compensate for damage directly and without a court decision was abolished in the early 1990s when Finland acceded to the Council of Europe's Convention on Human Rights (ECHR). The power of the administrative authority in question was considered to be in conflict with the ECHR.

The question of the right of appeal came up also when the RTA regulations concerning postponement of enforcement of custodial sentences were revised in the early 1990s. A broadening of the right was still rejected at that point. The way in which the question of legal remedies was resolved was that a decision to refuse a postponement, a decision to cancel a postponement or an application for a decision on a shorter postponement had to be referred to the Prison Service Department of the Ministry of Justice.

Appeals in other matters were regulated in conjunction with the RTA reform in the Prison Service Decree (431/1975). The relevant regulation was based on a report that a committee appointed to study prison regulations had submitted the same year (KM 7:1975). The committee noted in the report that prison authorities made important decisions that impacted on the rights of prisoners and recommended a reconsideration of the total prohibition on appeals. In the view of the committee, the right of appeal should be extended to decisions in which the prisoner's need for legal remedies was great. These were decisions concerning refusal of permission for the prisoner's own work, civilian work and study, loss of time served as well as loss of time earlier ordered to be served as suspended.

According to Section 73 of the Prison Service Decree, which is narrower in scope than the committee's proposal, a prisoner could appeal against (in addition to a decision ordering compensation) a decision by the prison management ordering, as an unconditional disciplinary penalty, loss of time served for longer than ten days or, calculated together with comparable sanctions imposed earlier during the same period of punishment, for a period longer than thirty days, or against a decision ordering that a penalty earlier imposed conditionally be executed unconditionally. The second paragraph of the Section imposed a general prohibition on appealing, which applied to other disciplinary penalties imposed in the prison and a decision concerning a prisoner's treatment. The regulation remained in force with a similar content until 2001; from 1995 onwards the provision concerning appeals was in Section 75.

Studies of expansion of the right of appeal and international effect

In its report on implementation of the RTA reform (6:1989), the Advisory Committee on the Prison Service drew attention to the limited nature of the right of appeal. It noted that a prisoner's right of appeal was limited to only a few matters. The Advisory Committee considered it desirable to broaden the right of appeal to include also other decisions with an important impact on a prisoner's life and that this be done in the manner that the Prison Rules Committee had recommended. The Advisory Committee also proposed the establishment of a board-type appeals body independent of the Prison Service Department. The Advisory Committee did not deliberate the principle-related dimension of the right of appeal in greater detail.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) paid its first inspection visit to Finland in 1992. In its report it drew attention to, among other things, shortcomings in the complaints and appeals procedure for prisoners. One of the things that the Committee pointed out with respect to appeals was that disciplinary penalties could be appealed against to only a limited extent; for example, there could be no appeal against being placed in solitary confinement. The Committee recommended that the right of appeal be broadened to include all disciplinary penalties.

From the present-day perspective of the Office of the Parliamentary Ombudsman, however, what was interesting was the Committee's proposal concerning the appointment also in Finland of an independent inspection body, such as a Board of Visitors or a Supervisory Judge. According to the Committee, a body of this kind would be tasked with conducting regular inspections in prisons. The Committee recommended that the Finnish authorities examine possibilities of creating a system of a kind in which an independent body would inspect every prison at specific intervals. The inspection body should have the power to examine the prison facilities and listen to prisoners' complaints about matters relating to their treatment there. In the view of the Committee, the Ombudsman could not, in spite of impressive inspection activities, constantly check and monitor all penal institutions in Finland, because such a broad range of other sectors of public administration also had to be overseen. An inspection board of the kind recommended by the Committee has not been instituted in Finland.

It should be noted in this context that Finland has signed the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which entered internationally into force in 2006. According to the Optional Protocol, the countries that are party to the Convention have undertaken to create an independent

national oversight body to monitor the treatment of persons who have been deprived of liberty, including those in prisons. In Finland, the preparatory work for ratification of the Optional Protocol and with it the creation of the oversight body is ongoing at time of writing. The situation at the moment is that the tasks of this body will probably be entrusted to the Parliamentary Ombudsman.

Where the comments regarding appeals in disciplinary matters that the CPT presented were concerned, Finland still opposed a broadening of the right of appeal to include all disciplinary decisions. In its reply to the Committee, the Finnish Government underscored the possibility that a prisoner has of complaining to the Ombudsman and the Ministry of Justice. Reservations about the establishment of a separate complaints body were also expressed in the reply. The Government considered the complaint procedure effective, even though the oversight authority could not alter a decision by the prison governor or management. In practice, a decision is corrected by the governor or management if on examination of a complaint it is found to be in error. A further point called into question in the reply was that a reasonable level of protection under the law would require that there be a right of appeal against all disciplinary penalties. Expanding the right of appeal was seen as a reform of such importance in principle that it would not be sensible to study it as a separate reform.

Similar points of view opposed to appeals had also been put forward in conjunction with the amendment, already mentioned in chapter 2 above, of the provisions on postponement in the RTA (Execution of Sentences) Decree. It was stated in the proposal by the working group that had done the preparatory work and in the Government Bill that there were several drawbacks associated with the possibility of appealing. For example, there was a perception that it would slow enforcement of punishments, because enforcement could not begin before notification of the decision had been made. If, on the other hand, enforcement could begin despite an appeal, the appeal would have no practical meaning. Reasons associated with legal remedies were not regarded as necessarily requiring the possibility of appealing (report of a Ministry of Justice working group that studied appeals by prisoners and persons sentenced to community service 3/1995). These counter-arguments notwithstanding, the current Imprisonment Act contains a provision to the effect that making a request for rectification or an appeal will not interrupt enforcement of a decision (of the kind against which a request for rectification or an appeal can be made) unless the governor of the regional prison or the administrative court dealing with the request for rectification decides otherwise.

The UN Covenant on Civil and Political Rights and the Council of Europe Convention on Human Rights as well as the UN Standard Minimum Rules for the Treatment of Prisoners and

the Council of Europe's European Prison Rules (most recently revised in 2006) should be mentioned here in relation to the possibility of appealing. On the subject of appeals, the following is stated in the European Prison Rules:

"Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority (70.1). If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority" (70.3).

It is also stated that "A prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority" (61).

A Council of Europe expert committee that examined the development of human rights also did the preparatory drafting of an additional protocol to the Convention on Human Rights concerning the rights of persons who have been deprived of their liberty. The draft additional protocol, which was not subsequently implemented, contained regulations providing for the right of a prisoner to have a disciplinary decision "reviewed by an independent and impartial authority without undue delay". According to the draft, this appeal procedure need not have a delaying effect. A certain demand for severity was associated with a disciplinary sanction. It was recommended that the right to have a matter reviewed in the manner outlined in the foregoing be limited to disciplinary penalties of more than seven days' solitary confinement.

Extensions of interval periods to prisoners' right of appeal

The procedure for prisoners' appeals was revised in the provisions of Chapter 7, which was added to the Act on Execution of Sentences that entered into force on 1.8.2001 ("Act" had replaced "Decree" in the title of this statute in 1995). Under Section 1 of the new Chapter 7, a decision imposing a disciplinary penalty or postponing release on parole could be appealed to a district court. In this reform, the scope of appealability was broadened to include all disciplinary matters involving a sanction more severe than a reprimand. The Government Bill introducing the legislation proposed that the prohibition on leave to appeal be preserved for other decisions concerning the rights and obligations of a prisoner. The limitation was intended to be temporary, because regulations on expansion of the appeals procedure were then being drafted by the Custodial Sentences Committee.

When the Bill was being deliberated by the Eduskunta, the Constitutional Law Committee found the reasoning presented in support of the proposal understandable to some extent, but pointed out that a prohibition that was general in nature and non-itemised on the level of grounds was contrary to Section 21.1 of the Constitution. In the view of the Committee, merely deleting Section 1.2 from Chapter 7 of the Act on Execution of Sentences would lead to a prisoner's right "to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice" being based directly on the Constitution. In the absence of a separate provision, the appeal procedure would be in accordance with application of the administrative law line. The proposed ban on appeals was omitted from the final text of the Act that the Eduskunta passed.

The appeals arrangement (a general court) did not prove to be particularly usable, and prisoners hardly availed themselves of the opportunity to appeal disciplinary decisions to a district court at all. According to the Government Bill introducing the Imprisonment Act, in 2003 for example, 986 disciplinary penalties which could be appealed against were imposed on prisoners. Appeals were made to district courts in 27 cases. A report for 2002 revealed that district courts had not usually changed disciplinary decisions. Decisions concerning postponement of conditional release that had been made without the prisoner's consent were apparently not made at all in the period 2001–06.

The Imprisonment Act and the Remand Detention Act

In conjunction with a comprehensive revision of the legislation on prisons, at the same time as the right of appeal was broadened to include, in addition to disciplinary decisions, also a whole range of other decisions that are made in prisons concerning a prisoner's rights and obligations, the administrative court line was chosen as the principal channel for appeals. The district court remained the appeal authority in cases where a prisoner's conditional release was postponed under the provisions of Chapter 2c, Section 9 of the Penal Code.

The Custodial Sentences Committee likewise recommended in its report (KM 6:2001) that appeals be steered to the administrative law side. However, the Government Bill deviated markedly from the Committee's proposal in that a precondition set for being allowed to exercise the right to appeal was that the prisoner request rectification of a decision made in the prison from the governor of the regional prison. The prisoner can appeal to a district court only against the decision of the governor of the regional prison. There can be no further ap-

peal against the administrative court's decision. The Committee had proposed that an appeal against disciplinary measures could still be referred to a district court.

In any event, a prisoner's opportunity to appeal against a decision made in the prison and affecting his or her rights and obligations was substantially broadened in the new Imprisonment Act. Appeals are regulated in Chapter 20 of this Act (Chapter 15 of the Remand Detention Act). The scope of appeals included decisions under the Imprisonment Act to postpone enforcement and to cancel postponements, decisions concerning the granting of time to pay in association with sentences converted from a fine to imprisonment, decisions concerning permission for a prisoner's child to be admitted to a prison, decisions to place prisoners in the special category prisoners section and in single-occupant cells at their own request as well as, to a limited extent, decisions concerning the transfer of a prisoner from an open prison to a closed institution. In addition to these, an appeal is possible against decisions under the Imprisonment Act that concern a prisoner's possession of property and use of money as well as disciplinary decisions in which the sanctions are a warning, solitary confinement or loss of rights. A rectification of a decision to keep a prisoner in solitary confinement can still be sought. A prisoner can likewise appeal against a decision to cancel release on a trial basis. In all of these cases the line of appeal is through administrative law. A prisoner can additionally appeal to a general court against a decision in which his or her conditional release is postponed. A prisoner can appeal directly to the Helsinki Administrative Court against a decision made by the Criminal Sanctions Agency or the governor of a regional prison.

The Government Bill further included the possibility of appealing against loss of time served, but this was omitted from the proposed legislation after the Constitutional Law Committee drew attention to the fact that the provision would create the possibility of an administrative court ordering a loss of liberty equivalent to a custodial prison sentence. Therefore the regulation had to be evaluated in the light of the provision in Section 7.3 of the Constitution to the effect that only a court can impose a penalty involving loss of liberty. The Committee did not consider it possible to legislate for the matter following the normal procedure for enacting laws. Indeed, the Legal Affairs Committee proposed, referring to the Constitutional Law Committee's report, that the disciplinary penalty of loss of time served be omitted, at least at this stage, from the Act.

When the Imprisonment Act was being deliberated in the Eduskunta, the proposed right of a prisoner to appeal was considered to be still defective. Indeed, the Eduskunta required that the appeal question be studied separately. The Constitutional Law Committee drew attention to the mode of regulation concerning an appeal. In its view, in a mode of regulation based on a list, it remains unclear whether an interested party has a right to refer a decision made

on the basis of other provisions of the Act to a court even when the decision concerns one of his or her rights or obligations in the meaning of Section 21.1 of the Constitution. The Committee believed that lists concerning the right to appeal can not have an effect as a kind of indirect prohibition on appeal; instead, it follows from the Administrative Judicial Procedure Act and especially its Section 5, and ultimately from Section 21.1 of the Constitution, whether what is involved is an appealable decision. The Committee referred to its earlier stances and to Supreme Court Decision KKO:2004:110. Thus, in its evaluation, the proposed list was factually unnecessary from this perspective. The Committee made the same comment on the equivalent list proposed in the Remand Detention Act. It believed that the most appropriate way to regulate the right of appeal would be to include in the Act the usual mention of the applicability of administrative law. It would be possible to enshrine limitations of the right of appeal that are acceptable from the perspective of the Constitution in the Act by means of itemised prohibitions on appealing (PeVL 20/2005 vp).

The Legal Affairs Committee referred in its report to the Constitutional Law Committee's comments outlined in the foregoing (LaVM 10/2005 vp). In addition, the Committee pointed out that it is often open to interpretation what decisions contain a stance on the rights and obligations of an individual of such a kind that the decision must be deemed an appealable administrative one. Then a demarcation must be made with respect to above all the factual administrative action against which there is no right of appeal. A demarcation of this kind is awkward, especially in an environment like a prison, where numerous decisions that affect a prisoner's status must be made every day. For this reason, a change in accordance with the stance of the Constitutional Law Committee was not implementable in this connection. In the opinion of the Legal Affairs Committee, the Ministry of Justice should, however, examine possibilities of drafting a list, along the lines proposed by the Constitutional Law Committee, of decisions made in prisons that can not be appealed against. At the same time, how a procedure of this relates to the procedure for requesting rectification should be evaluated.

The Ministry of Justice did in fact, on 1.10.2005, appoint a working group, the tasks of which included exploring possibilities of drafting a list of the kinds of decisions made in prisons that can not be appealed against. The working group (Prisoner Appeals) submitted its report on the matter on 11.10.2006, i.e. at around the same time that the Imprisonment Act entered into force (Ministry of Justice statements and reports 2006:25). It recommends some additions to the right of appeal. One of its proposals is that a right of appeal should be allowed against, for example, decisions imposing restrictions on prisoners wearing their own clothes or preventing deviation from the basic diet for religious reasons or on another reasoned ground of conviction. The working group proposes a prohibition on appeals is matters where what is involved is not an actual administrative decision that affects the prisoner's

legal status, but rather a practical administrative action by the authority or supervision for the purpose of ensuring the safety of the prison and society. Thus a prisoner would not be able to appeal against, for example, a decision to deny outdoor exercise. There would be no appeal against certain inspection and monitoring measures, either. Decisions of this kind would include, for example, putting a prisoner under observation or in solitary confinement and under observation. A prisoner would likewise have no right to appeal against a decision not to allow him or her to do civilian work or study outside the prison. By contrast, a prisoner could appeal if these permissions were withdrawn, because that would be an interference with a benefit already granted. It can be noted here with respect to the latter matters that the "significant decisions affecting a prisoner's rights" that the Prison Rules Committee presented as long ago as the 1970s may be in part on their way to inclusion in those that can be appealed against.

The working group notes that, despite a prohibition on appealing, in the final analysis prisoners have a guaranteed legal remedy insofar as they retain the right to make a complaint as well as, in a suspected case of misconduct in office, the right to demand compensation for damages.

The category of appealable decisions would remain fairly limited, which means that in spite of the fact that it has been broadened, oversight of legality will continue to have the central task of monitoring the protection of prisoners under the law. It is not permitted to appeal against a decision made under administrative law. That being the case, it would still not be possible in appeal questions that are important and involve points of principle to obtain a precedent-type decision of the Supreme Administrative Court. An extraordinary appeal can not be considered an adequate possibility in at least all cases, although the present arrangement suffices in most cases.

Initiatives by the Ombudsman concerning appeals

In the near future, the right of prisoners to appeal will, as outlined in the foregoing, undergo changes, but as matters now look, only to a limited extent in a more liberal direction. What the final outcome will be is still fairly open. I shall not deal with it any further here. Of the matters that are appealable, two categories of cases have featured prominently in oversight of legality. They are decisions concerning possession of property and disciplinary decisions.

Practice regarding possession of property

The question of prisoner's possession of property was long problematic before the Imprisonment Act with its appeal possibilities entered into force. As early as the 1990s, the Ombudsman drew attention to the fact that prisoners must be treated equitably. It had emerged that practices in different prisons varied with respect to, for instance, what belongings prisoners were allowed to keep in their cells, such as a television set of their own. In addition, rules varied from prison to prison with respect to the size of the television set. When a prisoner was transferred to another prison, he or she was not always allowed to keep the same set, because the screen size allowed in the new prison was smaller than in the old one. Indeed, the Ombudsman proposed (1880/94) to the then Prison Department at the Ministry of Justice that a study be conducted to find out whether practices in prisons could be put on a uniform basis by, for example, the Prison Department issuing a set of guidelines on possession of technical devices.

The Ombudsman's proposal led to an order on possession of belongings that to some degree added clarity to the practices followed in prisons, but did not completely eliminate the problems arising from different practices. The development of technical equipment intended for leisure use and the restraint adopted by the Prison Service, mainly argued for on the ground of the safety in institutions, long sustained the need for prisoners to complain to the Ombudsman. The Ombudsman has also since then had to make critical evaluations of prisons' practices with regard to the possession of belongings. Unexpectedly great differences have been found between the guidelines adopted in different prisons. The reasons that prison governors give for the differences most often have to do with how circumstances vary from one institution to another. What could be involved was, for example, the durability of electrical devices in cells or differences in the space needed to store equipment or varying opportunities to monitor cells. The Deputy-Ombudsman found inconsistency of this kind problematic. It had an undue impact on prisoners' circumstances when they were transferred to another prison, for example by making it necessary for a prisoner to obtain a new acceptable device. At their worst, the guidelines created an impression of arbitrariness (2817/03).

Since matters concerning possessions became, with the entry into force of the Imprisonment Act, questions that are ultimately resolved by administrative courts, the Ombudsman has still had to intervene in decisions by the relevant prison officials mainly with respect to guidance in relation to appeals. Initially, shortcomings were identified in especially guidance in relation to appeals and in that decisions were not always given in writing. A request for rectification presupposes a written decision. For a prisoner's right to be implemented, he or she must be aware of how to proceed in order to get an appealable decision. This means in practice that

prisoners who have not been granted possession of property that they have orally requested must be advised that they can, if they so wish, make a written request to have the items, whereupon they must receive a written decision, which also states the instance to which an appeal can be made, in the matter.

The wearing by prisoners of a variety of garments that jeopardise order in the institution (matters relating to so-called gang insignia) has also been examined as a question of personal possessions. Banning gang insignia has as such been found acceptable in the Deputy-Ombudsman's decisions. However, such garments as the well-known Finnish design product a Marimekko shirt, had not been regarded as belonging to insignia of this kind. Prisoners had been forbidden to wear the shirt, because its colours were the hallmark of a certain biker gang (1522/04).

Under the Imprisonment Act, prison inmates are allowed to wear their own clothes. A prison governor can restrict this right on the ground of order or monitoring or occupational safety in the institution. In the view of the Deputy-Ombudsman, a limitation had to be evaluated as an intervention in the protection of personal liberty that the Constitution safeguards, and the regulation had to be interpreted narrowly. In his assessment, the Act did not provide the possibility of imposing categorical bans on inmates wearing their own clothing in prison if this negates the right to wear one's own clothes that is safeguarded as the main rule in the Act (1455 and 1633/07 and 2246/08).

Disciplinary practices in prisons

The question of the uniformity of the disciplinary penalties system has come up also in the course of the Ombudsman's inspection visits to penal institutions and in complaints from prisoners. The question of equitable treatment of prisoners is central from the perspective of oversight of legality. A report obtained by the Ombudsman revealed also that the practice followed in applying disciplinary penalties varied from one institution to another. Variations between the practices followed with regard to sanctions are problematic also from the perspective of equitable treatment of prisoners. Because at the time prisoners had only a limited possibility of appealing against disciplinary penalties imposed on them, varying practises were conducive to undermining trust in the fairness of decision making. An exploration conducted at the Ombudsman's behest and a report obtained arising from it demonstrated indisputably that there was a need to re-evaluate the sanctions system (272/99). At that stage, in fact, the matter was being deliberated by the Custodial Sentences Committee.

Since then, disciplinary matters have come up in several different contexts from the perspective of the legal remedies associated with them. The Deputy-Ombudsman has drawn attention to a prison's duty to allow prisoners to be heard both in conjunction with investigation of a breach of regulations and separately also when the governor is making the disciplinary decision. The Deputy-Ombudsman has also applied to the Supreme Court to quash a disciplinary penalty, which a district court had confirmed, because a disciplinary penalty had been imposed on a prisoner for a matter in the case of which the Act did not provide for the imposition of one. The prisoner had refused to give a urine sample and was given a disciplinary penalty for it. Under the act, refusal to furnish a sample could not bring a disciplinary penalty (3871/05 and 4033/06). The Deputy-Ombudsman has also in one case considered it possible to deal with a disciplinary matter again as a correction, in accordance with the Administrative Procedure Act, of a factual error when two different sanctions have been imposed on a prisoner for a breach of the order regulations (3638/07). He has also considered it problematic that a prisoner can not appeal against a reprimand milder than a formal warning (3638/07),

The importance of the Administrative Procedure Act for the treatment of prison inmates

The right to good administration that is safeguarded in Section 21 of the Constitution applies also to prisoners. It was underscored in the revision of the fundamental rights provisions that treatment based on so-called institutional power can not be regarded as acceptable. Persons in closed institutions are a priori entitled to the same protection of fundamental rights as everyone else.

The fundamental right to good administration includes several part-rights, such as the entitlement to have a case dealt with appropriately and without undue delay by a legally competent authority, the right to a hearing when an administrative matter is being dealt with and the right to receive a reasoned decision in an administrative matter as well as the right to appeal against a decision issued in an administrative matter. Guarantees of good administration are not exhaustively regulated in the Constitution. Indeed, Section 21 stipulates that guarantees of good administration shall be laid down in an Act. The Administrative Procedure Act, as general legislation, regulates good administration. With respect to the running of prisons, the procedures that belong to good administration are regulated in detail in the Imprisonment Act and the Remand Detention Act. The relative applicability of the Administrative Procedure Act and the separate Acts mentioned is defined in Section 5 of the former in a provision stating that if another Act contains provisions that deviate from those of the Administrative

Procedure Act, these are applied instead of the latter. Application of the provisions of the Administrative Procedure Act in a prison in conjunction with administrative decisions and also actual administrative actions has often come up. One of the occasions on which it arose was when the Deputy-Ombudsman, acting on his own initiative, was investigating a matter that concerned the grounds on which prisoners' correspondence was inspected (opened and read) by the authorities without informing the prisoners of this without having to be asked to do so (1828/08). Section 40 of the Imprisonment Decree requires that a prisoner be informed of a letter having been opened. Under the provisions of the Imprisonment Act in force at the time of the decision, discretion in each individual case was a prerequisite for opening a letter. In the light of the preconditions that then had to be met before opening a letter, it was difficult in the Deputy-Ombudsman's assessment to take the view that what was involved in opening, as in reading, was not an administrative decision. The regulation in the Decree according to which the prisoner must be notified of the opening of a letter or other postal package did not, in the Deputy-Ombudsman's view, in itself exclude the fact that the prisoner should at the same time, and without having to ask, also be informed (in accordance with the Administrative Procedure Act) of the reasons for opening the item. With respect to application of the Administrative Procedure Act, the Deputy-Ombudsman drew attention to, inter alia, the following aspects:

In the Deputy-Ombudsman's opinion, giving attention to application of the Administrative Procedure Act was also of broader significance in the execution of prison sentences. What is at issue is how the Act must be applied to actions like opening a postal package, and ultimately also Section 21 of the Constitution. Something that was also irrelevant from the perspective of notification was whether the action was in fact an administrative measure or an administrative decision. When the Government Bill (HE 72/2002) introducing the Administrative Procedure Act was being deliberated by the Eduskunta, the Administration Committee pointed out that the Act was intended in its entirety to be applied to administrative activities (HaVM 29/2002). In the view of the Administration Committee, what was of key importance in order to implement a client's rights and protection under the law is not to recognise an administrative matter, but rather to be able to ensure that the authority or other instance performing the administrative measure fulfils its obligations in an appropriate manner. The Deputy-Ombudsman noted that a broader interpretation of the provisions concerning the scope of application of the Administrative Procedure Act had gained support in the legal literature, as had the view that, in order to ensure the implementation of a client's rights and protection under the law in factual administrative functions, also provisions other than those of Chapter 2 of the Administrative Procedure Act would have to be applied, where relevant, depending on the nature of the activity.

Thus, in the opinion of the Deputy-Ombudsman, when resolving the question of whether a prisoner being notified that a letter has been opened should also be told the reasons for the measure without having to request them, what should a priori have been taken into consideration was the Administrative Procedure Act in its entirety, although the view taken was that an actual administrative measure was involved.

The Deputy-Ombudsman believes that, looking at the matter from the perspective of good administration, it would have been appropriate for the reasons behind the decision to be stated without this having had to be requested. The decision was one that infringed on the prisoner's fundamental rights and violated the secrecy of a confidential communication. Another factor that supported notification was that the grounds for exercising also other powers that violate personal integrity – and which are to be regarded as administrative functions in actuality - are normally statutorily required to be notified to the person affected by the measure.

The service principle that the Administrative Procedure Act stipulates as a feature of good administration has come up in some of the positions adopted by the Deputy-Ombudsman. He drew attention to the fact that the service principle is binding also in prison procedures in a decision concerning the arrangement of so-called internal post for prisoners (1621/05). Some prisons required that a prisoner could send letters to another inmate of the same institution only through the public postal service. The Criminal Sanctions Agency also adopted the view in its statement that a prison is not obliged to relay letters between prisoners through the institution's internal post system. The Deputy-Ombudsman did not consider the factors associated with supervisory powers and safety that the Criminal Sanctions Agency presented as acceptable grounds for refusing the use of internal post. The Administrative Procedure Act requires that efforts must be made to ensure that conducting transactions and dealing with a matter in an authority are arranged in such a way that a client of administration receives appropriate administrative services, and the authority can perform its task successfully. Considering the speed at which letters are relayed and costs, the use of the internal post system is a better alternative from a prisoner's point of view than sending them through the public postal service. In the Deputy-Ombudsman's assessment, it was difficult to see that the arrangements the prison would have to make to relay internal post would cause additional work, at least significantly, especially since the prison has to arrange postal traffic for prisoners in any case. Thus also the service principle required that the possibility of using the internal post system be arranged.

The future for oversight of treatment of prisoners

The Ombudsman does not generally examine a matter in which an appeal can be made or one is pending. Expansion of the right of appeal could therefore justifiably have been expected to have the effect of reducing the number of complaints in the Office of the Ombudsman or at least lessening investigation of complaints within the scope of appealability. However, that has hardly happened at all in practice; mainly only complaints relating to possession of property have been left un-investigated, because of the possibility of an appeal. The aim in cases concerning these matters has been to ensure that the prisoner has been given appropriate guidance regarding an appeal and if necessary advised on how to refer the matter to a procedure in accordance with the legislation on possessions. Thus investigation of these matters concentrates clearly more on evaluation of procedural aspects. It can also be anticipated that in these respects criticism will focus on handling of the matter in the same way as in oversight of legality of the actions of courts. Expansion of the right of appeal has not meant a reduction in the work load of the Office of the Parliamentary ombudsman. That is in spite of the fact that prisoners have clearly been in numerical terms more active in requesting rectifications and have also complained to administrative courts more frequently than they did to district courts during the interval stage. Administrative courts issued decisions in about 450 prisoner-related complaints in the period 2006–08. The number of prisoner complaints has increased rather than declined. In 2008, for example, the Deputy-Ombudsman dealt with 454 cases concerning the prison service. Of these, 33.2% (151 cases) led to measures by the Deputy-Ombudsman. This can be seen as cause for concern, although the percentage of complaints that have led to measures has traditionally been fairly high in the prison category. It was above twenty per cent in the period 2003–07 (although it dipped to 18% in 2005). A marked number of measures related to relatively minor breaches of good administrative procedure.

From the perspective of the future, the tasks of the national oversight body (OPCAT) that are planned to be entrusted to the Ombudsman will substantially affect activities. These tasks will include, on the one hand, more visits to prisons, which will demand more personnel resources than at present. On the other hand, the nature of inspections will become more future-oriented. This means that the present methods of work will have to be developed in the direction of the demands set in the Optional Protocol in the inspections that are associated with this task. There will also be a need for an assessment of whether the Ombudsman's present inspections are compatible in their perspective with the new tasks. In any event, the constructive dialogue with the staff of the facility inspected will, in my perception, contribute to some extent to reducing the number of cases in which prisoners need to turn to the Ombudsman though a complaint.