Parliamentary

Ombudsman

of Finland

Summary

of the

Annual

Report

2002

TO THE READER

The Constitution requires the Parliamentary Ombudsman to submit an annual report to the Eduskunta, Parliament of Finland. This must include observations on the state of administration of justice and any shortcomings in legislation. It is published in both of Finland's official languages, Finnish and Swedish.

This brief summary in English has been prepared for the benefit of foreign readers. It consists of an introduction of the office-holders, a review of activities, some observations and individual decisions with a bearing on central sectors of oversight of legality, statistical data as well as an outline of the main relevant provisions of the Constitution and of the Parliamentary Ombudsman Act.

Despite the brevity of the summary, I hope it will provide the reader with a reasonable overview of the Parliamentary Ombudsman's work and the most important issues that arose in 2002.

Helsinki, 10 May 2003

Riitta-Leena Paunio
Parliamentary Ombudsman of Finland

THE PRESENT OFFICE-HOLDERS

PARLIAMENTARY OMBUDSMAN

(until 31 December 2005)

RIITTA-LEENA PAUNIO

Licentiate of Laws

attends to cases dealing with highest State organs, those of particular importance, and to cases dealing with social welfare, social security, health care, and children's rights.

DEPUTY PARLIAMENTARY OMBUDSMAN

(until 30 September 2005)

ILKKA RAUTIO

Master of Laws

attends, i. a., to cases dealing with police, public prosecutors, prisons, immigration, and language legislation.

DEPUTY PARLIAMENTARY OMBUDSMAN

(until 31 March 2006)

PETRI JÄÄSKELÄINEN

Doctor of Laws

attends, i. a., to cases dealing with courts of law, Defence Forces, distraint, transport, municipal and environmental authorities, and taxation.

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Review of activities in 2002

OVERSIGHT OF LEGALITY

General

The Ombudsman has the task of exercising oversight to ensure that all who perform public duties do so in accordance with the law and the obligations of their office. The implementation of fundamental and human rights is given special attention in the Ombudsman's work.

Oversight of legality is practised mainly by investigating the complaints that citizens make to the Ombudsman and by conducting on-site inspections of public offices and institutions. The Ombudsman may also, on her own initiative, examine the actions of officials. She is required to conduct inspections in units of the Defence Forces and in closed institutions. The latter are mainly prisons and places where persons detained by the police are confined. Inspections are also carried out in other institutions, such as residential schools, psychiatric hospitals, institutions for the mentally retarded, and so on. The purpose of these inspections is to examine the conditions under which conscripts and inmates of institutions live and how they are treated.

The Ombudsman's oversight of legality in 2002 mainly followed a pattern similar to that in earlier years. However, the special tasks entrusted to the Ombudsman in recent years in relation to overseeing surveillance of telecommunications and undercover police work as well as oversight of respect for children's rights were more to the fore than they had earlier been.

The tasks of the Ombudsman are regulated in the Constitution and in the Parliamentary Ombudsman Act, which entered into force on 1.4.2002. Both documents are appended to this report (Annex 2).

In addition to the Ombudsman, the two Deputy-Ombudsmen are overseers of legality who have been chosen by the Eduskunta. The Ombudsman decides on the division of labour between all three.

Complaints and other oversight-of-legality matters

The category "oversight of legality" includes complaints, matters investigated on our own initiative, requests for submissions and formal consultations (for example at hearings arranged by various Eduskunta committees) as well as other written communications. The latter mainly comprises enquiries or letters from citizens, the contents of which are not specific and which relate to matters clearly beyond the Ombudsman's remit, or which are manifestly unfounded. Since the beginning of 2001 these have no longer been recorded as complaints; instead, the lawyers on our staff whose duty it is to deal with them have replied to them immediately and provided guidance and advice in relation to the issues raised.

A total of 2,957 new oversight-of-legality matters were referred to the Ombudsman in 2002. This was about 4% less than in the previous year. However, there was a further slight increase in the number of actual complaints. These totalled 2,588, or about 5% more than in 2001. 35 matters were investigated on our own initiative and there were 43 invitations to formal hearings. All in all, the number of oversight-of-legality matters to be dealt with in 2002 was 4,724. That was because 1,767 matters held over from earlier years had to be dealt with in addition to the incoming new ones.

Oversight-of-legality matters	2002	2001
Complaints	2 588	2 473
Taken up on own initiative	35	38
Submissions and hearings	43	58
Other written communications	291	497
Total	2 957	3 066

There does not appear to have been any significant change in the quality of complaints. In particular, the number of complaints relating to the adequacy and availability of social welfare and health services and the quality of care showed a further increase. The same applies to complaints from prisoners, which at times during the year arrived in considerably larger numbers than usual.

Decisions

A total of 2,984 decisions on oversight-of-legality matters were made in 2002. Of these, 2,610 related to actual complaints. That was about 13% more than in the previous year. 35 decisions related to matters investigated on our own initiative, and there were 42 submissions and attendances at formal hearings. 297 replies to other written communications were sent.

Oversight-of-legality matters	2002	2001
Complaints	2,610	2,319
Taken up on own initiative	35	34
Submissions and hearings	42	53
Other written communications	297	489
Total	2,984	2,895

Some of the decisions were of such a nature that the Ombudsman could not investigate the matter. Naturally, matters which do not fall within the scope of the Ombudsman's powers are not investigated, nor are those still being dealt with by the competent authorities or which are over five years old. There were 627 matters belonging to this category in 2002, or around 21% of all decisions.

Some solutions are of such a nature that we must conclude there are no grounds to support the allegation of an illegal procedure having been followed in the matter or a duty having been neglected. This conclusion may be drawn from the written complaint and from the information and reports obtained as a result of it. If the final result is obvious, the complainant is informed of this as soon as possible. Decisions belonging to this category are issued also in cases which require extensive studies and reasoned stances with many legal ramifications. Thus this category of decisions is quite heterogeneous. In 2002 there were 1,261 of them, or about 42% of all decisions.

Investigation of a complaint can lead to the conclusion that the alleged illegality or error has not been observed or that there is not enough evidence to substantiate the claim. There were 354 decisions in this category, or about 12% of the total, during the year under review.

Perhaps the most important category comprises decisions which lead to the Ombudsman taking action. Measures of this kind are prosecution, a reprimand, the presentation of an opinion intended to admonish or guide as well as a recommendation to the effect either that legislation be amended or a specific defect corrected.

A prosecution against an official is the most severe means of reaction and is resorted to very rarely. According to the law, the Ombudsman may, in cases where the subjects of oversight have acted illegally or neglected to do their duty, decide not to bring a prosecution if she takes the view that a reprimand will suffice. The Ombudsman can also express an opinion concerning a procedure that has been legal and draw the attention of the subject of oversight to the requirements of good governance or to aspects that promote implementation of fundamental and human rights. An opinion can be admonitory in character or intended to provide guidance. The Ombudsman can also recommend that an error be corrected or a shortcoming redressed as well as draw the attention

of the Council of State (i.e. the Government) or other body responsible for legislative drafting to defects that have been observed in legal provisions or regulations. Sometimes an authority may correct an error on its own initiative already at the stage where the Ombudsman has intervened with a request for a report on a matter.

The number of decisions leading to the measures described in the foregoing totalled 400 in 2002 and represented about 15% of all decisions. No prosecutions against officials were ordered. 16 reprimands were issued and 342 opinions expressed. 169 of the opinions were admonitory and 173 intended to guide. Remedial measures were taken in 42 cases while the matter was still being dealt with. There were two decisions categorisable as recommendations, in addition to which stances on the development of administration were included also in other decisions. It should be noted that these figures relate to the numbers of decisions and that one decision can involve several measures.

At the end of the year, the average time required to deal with an oversight-of-legality matter was 7.8 months. The figure for the previous year was 8.9 months.

Main categories of cases

During the year under review, as in earlier years, most of the cases decided on related to social welfare and social insurance. We call this totality the social-security-related category of cases. The next-biggest category related to the police, courts and health care. Other bigger categories concerned local government, prisons and taxes.

Decisions were made in a total of 623 social-security-related cases. Of these, 296 concerned social welfare and 337 social security. Since decisions were also made in 238 cases relating to health care, the totality concerning social welfare and health care was clearly the largest. Together they represented about 29% of all matters in relation to which decisions were issued.

Decisions were made in 432 cases relating to the police and 264 relating to courts. Other major categories related to local government (130), prisons (114) and taxes (100).

The fundamental and human rights perspective in oversight of legality

Fundamental and human rights are of major importance in the Ombudsman's oversight of legality. This perspective can be distinguished in almost all stances adopted by the Ombudsman. Monitoring of how fundamental and human rights are observed in the discharge of public tasks takes place also in other ways besides investigating complaints. Every effort is made, for example, to include this aspect as a significant consideration when investigating matters on our own initiative and when conducting inspections. The Ombudsman's annual report to the Eduskunta contains a separate section dealing with problems in relation to the implementation of fundamental rights and the Ombudsman's stances.

Inspections

In addition to examining complaints and investigating matters on her own initiative, the Ombudsman conducts on-site inspections of institutions and public offices. These inspections have traditionally been an important part of the Ombudsman's work. The law requires the Ombudsman to carry out inspections in especially prisons and closed institutions and to oversee the way in which persons confined there are treated. There is also a legal obligation to inspect units of the Defence Forces and monitor the treatment of conscripts. Inmates of institutions and conscripts are always afforded the opportunity to have a confidential discussion with the Ombudsman or her representative during these inspections. Shortcomings are often observed in the course of inspections and are subsequently investigated on the Ombudsman's own initiative. Inspections also fulfil a preventive function.

Inspections were carried out at 72 locations during the year under review. These included, i. a., 19 belonging to the Defence Forces, 12 prisons, 8 police units, 6 courts, 6 public prosecutor's offices and 5 psychiatric hospitals.

Coercive measures affecting telecommunications

Monitoring activities involving surveillance of telecommunications is one of the main areas of concentration in oversight of the legality of police activities. For this purpose, the Ministry of the Interior reports annually to the Ombudsman on the use of coercive measures affecting telecommunications. Where these measures are concerned and also due to their special nature, questions of legal security are emphatically important both from the point of view of the persons against whom they are used and from the perspective of the general credibility of the entire system of justice. The secrecy inevitably associated with the use of these coercive measures also exposes this use to suspicions about its legality, whether or not there is any foundation for this suspicion. Also for this reason, an effective system of oversight is important.

In recent years, changes in legislation have on several occasions broadened the areas of application of coercive measures affecting telecommunications. The number of court orders authorising these measures has likewise been constantly growing. This combination of quantitative and qualitative growth poses a tough challenge with respect to oversight.

The Ombudsman has received quite few complaints relating to the use of coercive measures affecting telecommunications. Some of the complaints have had the character of enquiries and there have only been a few complaints each year about coercive measures having actually been used. One reason for this may be the character of these measures; the persons against whom they are used do not always find out that they have been used at all.

The Deputy-Ombudsman responsible for these matters has, on his own initiative, tried through inspections and other means to cast light on problematic situations. Cases have also been taken under investigation on the basis of a Ministry of the Interior report. In addition, the Deputy-Ombudsman was in contact with the Ministry of the Interior's Police Department throughout the year and participated in training events arranged by it. Although opportunities for this kind of activity on our own initiative are fairly limited, it has been regarded as especially warranted where coercive measures affecting telecommunications are concerned. One case in which a decision was made during the year under review is presented below on page 26.

Also in the course of on-site inspections, attention is paid to the use of coercive measures affecting telecommunications and additional information needed for oversight is obtained this way as well. Monitoring of the use of coercive measures affecting telecommunications has been one of the areas of emphasis in inspections focusing on the police in recent years. During the year under review, Deputy-Ombudsman Rautio began examining the decisions of district courts in relation to coercive measures affecting telecommunications and in general the way these matters are dealt with in court. One important observation was that police officers in charge of investigations and district court judges apparently often had unofficial discussions about borderline cases and that if an application looked likely to be rejected, it was not made at all. That partially explains why so few applications are rejected.

Police undercover operations

An amendment of the Police Act that came into force in March 2001 gave the police rights that include operating undercover. The Ministry of the Interior must report annually to the Ombudsman on the exercise of this right. This work is only getting under way, so there are no observations from concrete cases which would be of significance from the perspective of oversight of legality.

Trends and problems in the development of oversight of legality

Thus there was a further increase in the number of complaints received, even though the total number of oversight-of-legality matters no longer grew. Although growth in the total numbers of oversight-of-legality matters would now seem to have peaked, the number of matters requiring the Ombudsman's examination has shown a further increase.

In our processing of complaints, we have made a special effort to bring the number of complaints that have been pending for a long time under control as soon as possible. The number of old complaints has indeed been somewhat reduced, albeit slowly. The average time required to deal with an oversight-of-legality matter shortened during the year.

Oversight of implementation of fundamental and human rights still requires a substantial concentration on the quality of positions adopted and the arguments presented in support of them.

Developing oversight of fundamental and human rights in an active direction is also important. One of the measures taken with this purpose in mind was the commencement during the year under review of discussions with central nongovernmental organisations. The goal with these discussions was to hear the views of the NGOs on how public tasks are being performed as well as about their members' experiences of problems in relation to fundamental and human rights.

OTHER ACTIVITIES

Presentations

A large number of Finnish and foreign guests visited the Office of the Ombudsman during the year to familiarise themselves with our work of overseeing legality. The Finnish guests included many categories from representatives of NGOs to schoolchildren, prosecutors responsible for actions against officials and municipal social ombudsmen. The Ombudsman also made presentations and keynote speeches at training events and seminars arranged by NGOs and official bodies.

Information

Decisions and statements of position deemed to be of interest from the legal or general perspective have been posted, in anonymised form, on the Eduskunta web site since the beginning of 2001. New cases were added during the year and can now be read both on the Eduskunta web site and on the Ombudsman's own web site (www.oikeusasiamies.fi and www.ombudsman.fi).

Work to develop our online provision of information is continuing. Revised versions of a brochure describing the Ombudsman's tasks, a set of guidelines on how to make complaints and a form for making them were revised. The brochures are available on the Internet in Finnish, Swedish and English and also in print versions. Their Sámi and Russian versions were completed in spring 2003. The intention is to further increase the amount of online information about the Ombudsman institution and this will probably be done in summer 2003.

Press bulletins continued to be issued in relation to the most important decisions and positions adopted.

The Ombudsman's annual report to the Eduskunta remains an important channel for the provision of information. It is distributed widely to officials and cooperation partners. The full text of the annual report has been posted on the Internet since 2000.

Advice

Since 2001, the on-duty legal officers at the Office of the Ombudsman have had the task of advising and guiding members of the public who have made enquiries as to whether the Ombudsman can help them. Nearly 2,000 telephone calls from clients were answered and about 200 clients made personal visits. The legal officers also replied to written communications which were not recorded as complaints and which were often enquiries in character or so general and non-specific that they could not be accepted as complaints warranting investigation. Replies of this nature totalled 297 in the year under review.

International cooperation

There was a great deal of cooperation and meetings between the Ombudsman and foreign partners, including ombudsmen and comparable oversight institutions, during the year under review. Cooperation was engaged in on the Nordic, Baltic countries and European levels as well as globally. Traditional cooperation with the Chancellor of Justice in Estonia has remained lively.

Ombudsman Paunio took part in a seminar at which ombudsmen from countries around the Baltic examined environmental questions relating to the sea. The seminar was arranged in St. Petersburg by the Council of the Baltic Sea States' Human Rights Commissioner and the Ombudsman of the Russian Federation. Ombudsman Paunio and Deputy-Ombudsman Rautio visited the office of the Estonian Chancellor of Justice in Tallinn.

Deputy-Ombudsman Rautio took part in the conference "Parliaments and Human Rights" in Guatemala City. A group led by the Speaker of the Eduskunta also took part. The other participants were members of the Central American Parliament and ombudsmen from the region. Deputy-Ombudsman Rautio made a presentation on the Ombudsman as a defender of social rights. Deputy-Ombudsman Jääskeläinen attended a meeting of European ombudsmen in

Cracow, legal officer Kirsti Kurki-Suonio a meeting of European ombudsmen in Vilnius and legal adviser Eero Kallio a meeting of the International Ombudsman Institute in Ljubljana, Slovenia.

The most important international visitors were Council of Europe Secretary General Walter Schwimmer, Council of the Baltic Sea States' Human Rights Commissioner Helle Degn, President Cançado Trindade of the Inter-American Court of Human Rights, Vice-Chairwoman of the Standing Committee of China's National People's Congress He Luli. Deputy-Speaker Jaime A. Crombet Hernández-Baquero of the Cuban Parliament as well as Albanian Foreign Minister Arta Dade.

The Estonian Chancellor of Justice Allar Jõks and his accompanying group paid a three-day visit to Finland. The visit was co-hosted by the Ombudsman and the Chancellor of Justice of the Finnish Government. A group led by Ombudsman Bolat Baikadamov of Kazakhstan spent a week in Finland familiarising themselves with the activities of the Ombudsman and the structures of a state governed under the rule of law. Other visitors to our office included, i. a., the Hungarian chief prosecutor Peter Polt as well as participants at the Raoul Wallenberg Institute's international human rights course, for whom annual visits have become a tradition.

Office

At the end of 2002 the staff of the Office of the Parliamentary Ombudsman comprised the Secretary General, four legal advisers and nineteen legal officers. In addition to them, the staff included two lawyers with advisory functions as well as an information officer, two investigating officers, four notaries, a records clerk and two filing clerks, eight office secretaries and one part-time referendary.

Observations and decisions with a bearing on central sectors of oversight of legality

SOCIAL SECURITY

The Constitution of Finland states that the public authorities must ensure, in accordance with what is stipulated in greater detail in an Act, the provision of adequate social services for all. Everyone also has a right to receive the subsistence and care necessary for a life of dignity. Complaints concerning social services often involve the way in which these rights are implemented in social welfare services and income support provided by local authorities.

Livelihood-related complaints concerned the right to receive subsidies to cover certain costs, the correctness with which income supports were calculated and the amount of support as well as procedural factors associated with decision making. As in earlier years, it could be noted that decisions relating to income support do not always meet the requirements of the Administrative Procedures Act. In fact, the procedures that authorities have followed are commented on in many decisions.

There were several complaints relating to delays in dealing with income support cases and thus expeditious processing of applications had not been ensured everywhere. In was pointed out in decisions relating to these complaints that since income support is the final safeguard of livelihood, applications concerning them must, given the nature of the matter, always be dealt with without delay. It was also stressed that the procedures for granting income support must be designed to ensure that clients in urgent need of assistance receive it sufficiently soon.

A large number of problems that arise in the provision of services for the handicapped likewise featured in the complaints. These services are the special services which are required by law to be made available to the handicapped. The following case relating to transport services under the Services for the Handicapped Act is an example of cases concerning social services.

DECISION CONCERNING SERVICES FOR THE HANDICAPPED

An association representing handicapped persons was concerned that in many municipalities transport services in accordance with the Services for the Handicapped Act had been introduced in the form of group transports, whilst separate transports had been ended. The latter were generally arranged as taxi trips for each individual client.

Ombudsman Paunio pointed out in her decision that receiving transport services in accordance with the Services for the Handicapped Act is a subjective right of every seriously handicapped person who meets the requirements stipulated in the Act. A municipality does not have a statutory obligation to arrange transport services for a handicapped person only in the form of individual transports, provided the municipality is able to arrange transport in another way. When a decision has been made to grant a transport service, what must be taken as the starting point in choosing the mode of implementation is the individual needs and possibilities of the recipient. Recipients also have the right to make the trips to which they are entitled as a transport service either within their municipality of residence or in nearby municipalities, depending on their needs. A municipality can not specify the destination of a trip within its own territory or that of nearby municipalities. The recipient additionally has an a priori right to choose the timing of his or her trips.

In the opinion of the Ombudsman, the purpose of transport services for seriously-handicapped persons is to promote equality as well as to prevent and remove the drawbacks and impediments which being handicapped causes. Transport services for the seriously-handicapped have a central position in supporting independent performance. Although general public transport services are, in the view of

the Ombudsman, an important factor and the service lines and other forms of collective transport arranged by municipalities are a good additional benefit for seriously-handicapped persons, the manner in which transport services are arranged must not obstruct or limit the subjective right of these persons to receive transport services in accordance with the Services for the Handicapped Act. If, due to his or her handicap or for some other valid reason, a person can not use a transport service arranged in a way decided on by a municipality, the municipality must provide transport services meeting the individual needs of the person in question. Thus transport services for the seriously handicapped must be implemented in such a way that they correspond in various ways to the needs of these persons.

The Ombudsman further emphasised that also in administration legal provisions must be interpreted in a way that is positive to fundamental and human rights. Thus, of the various reasonable interpretations of the Services for the Handicapped Act, an administrative authority must choose that which best promotes implementation of the purpose of fundamental rights. Resources must be allocated in a way that ensures that the social services provided under the legislation referred to in the Constitution are implemented also in practice.

Case number 2118/4/00

HEALTH CARE

Overseeing legality in the provision of public health care is part of the Ombudsman's remit in Finland. By contrast, persons in the health sector who practise their professions independently are not subject to the Ombudsman's oversight. One of the duties of the Ombudsman is to oversee the treatment of persons in closed institutions and the conditions under which they are kept there. For this reason, one important area in oversight of legality in the health care sector is psychiatric treatment given to persons irrespective of their consent. What this means in practice is inspecting hospitals which provide care of this kind.

What is primarily involved in oversight of legality with health care as its subject is the implementation of the adequate health services which the Constitution guarantees as a fundamental right. Questions relating to the arrangement of health care and patients' rights often feature centrally in complaints. The issue in complaints concerning the availability of health services and access to treatment is whether patients are provided with the necessary health services sufficiently quickly and to an adequately high standard of quality.

An example of the availability of health services is provided by a complaint concerning the arrangement of specialist and basic health care in the Helsinki and Uusimaa district.

AVAILABILITY OF SPECIAL HEALTH CARE

In her decision on this complaint, Ombudsman Paunio informed the Government of her observations regarding shortcomings in the legislation regulating the provision of special health care. She pointed out that it would be important to ensure that the provisions of the Special Health Care Act with regard to the relationships between and the respective responsibilities of an intermunicipal health care joint authority and the individual participating municipalities in the care of patients are made clearer and more detailed than they are at present.

In the view of the Ombudsman, the present shortcomings in legislation are likely to place difficulties in the way of implementing fundamental rights – guaranteed adequate health services for all on a basis of equality. If the Act contained a more precise definition also of the extent and standards to which basic health services must be implemented for all on a basis of equality throughout the country, this would tend to safeguard these rights.

In an opinion addressed to the joint authority for the health care district and its participating municipalities, the Ombudsman emphasised that they had a duty to provide the residents of the participating municipalities with both urgent and non-urgent special health care, on a basis of regional equality and within a reasonable period of time. A municipality has a duty to arrange special health care for its residents in accordance with the needs of each individual. Thus municipalities bear a responsibility

to implement the obligations which the Constitution imposes in this respect.

The report revealed that it was a fact that the sums budgeted by the municipalities for special health care had proved to be underdimensioned relative to the services provided. The municipalities assured us in their report that when the budget was threatening to be exceeded or actually had been exceeded, the municipalities had generally appropriated additional funds for special health care. Evaluated on the basis of the reports, budgetary constraints do not seem to have been an obstacle to patients receiving at least the urgent care they need. On the other hand, it can be concluded that the lengths of waiting times and thereby also patients' access to care are regulated in each appropriation available.

The Ombudsman stressed that municipalities must, when making their decisions concerning budgets, take their duty to ensure both urgent and non-urgent special health care realistically into account. It is of central importance that the need for services is assessed on sufficiently detailed and appropriate bases. A prerequisite for drafting a realistically dimensioned budget is constant follow-up and assessment by municipalities of how services correspond to needs. "If a budget is deliberately set at a level lower than the known need, holders of elective office and the drafting officials are in breach of the regulations which are set for the public authorities in the Constitution," the Ombudsman pointed out.

The Ombudsman's decision also contained an observation on the length of hospital waiting lists. According to the information supplied by the intermunicipal joint authority, there were numerous differences between the municipalities as to how residents were admitted for treatment. There were differences between municipalities, between health care districts and also between sectors of treatment. In August 2002 there were lengthy queues for especially surgery as well as for treatment of ear, nose, throat and eye diseases and also in particular for cardiology.

Differences in access to care are influenced not only by appropriations, but also by differences between the procedures followed in different health care districts, the criteria for access, the numbers of referrals and the use of emergency duty as well as familiarity with regional care guidelines and treatment chains. In the view of the Ombudsman, eliminating the differences due to these causes is specifically one of the tasks of an intermunicipal joint authority for a health care district.

Case number 488/4/00

CHILDREN'S RIGHTS

Oversight of legality with respect to children's rights has been one of the focal areas in the Parliamentary Ombudsman's work since 1998, when a second post of Deputy-Ombudsman was created. Since then, Ombudsman Paunio has dealt with all cases bearing on children's rights, first in her capacity as a Deputy-Ombudsman and later as the Ombudsman. The importance of oversight of legality with its focus on children's rights is accentuated in Finland because this country does not have a separate children's ombudsman.

In 2000 – 2001 Ombudsman Paunio inspected the State-run residential schools in which 12 – 18-year-olds who have been taken into care and in whose cases placement with families or other institutions is not deemed appropriate are placed. There are six of these schools, with a total of about 150 children in them. In the course of her inspections, the Ombudsman observed that the schools perform their main task, which is to provide the children in them with basic care, well. However, she also observed that children in the schools are more difficult to take care of than they were in the past. For example, abuse of intoxicants and drugs has increased among them. Disruptive behaviour on the part of children in the schools is common and they are also more likely to have mental health problems than their age peers.

IMPLEMENTATION OF THE FUNDAMENTAL RIGHTS OF CHILDREN PLACED IN RESIDENTIAL SCHOOLS

The fundamental rights of children in residential schools are interfered with when, for instance, staff having to deal with awkward everyday situations must resort to coercive force, intensive care periods

of varying lengths, isolation or drug tests. Measures of this kind limit a child's personal freedom, protection of private and family life, such as the right to keep in contact with relatives, as well as its personal inviolability.

The Ombudsman observed defects in the way the fundamental rights of children placed in residential schools were implemented. She emphasised that although it is possible to limit a child's fundamental and human rights because of the care it needs, the limitation must be founded in law. At the moment, that is not the case in all respects. Therefore the Ombudsman called for drafting of a new Protection of Children Act to be expedited. She emphasised that the public authorities have a responsibility to implement the rights of children placed in residential schools.

Outlined in the following are some of the more important examples of the kinds of shortcomings observed in the implementation of children's rights. Among the things that the Ombudsman found problematic were the periods of especially intensive care in residential schools. During these periods, factual restrictions can be imposed on a child's personal liberty or its right to maintain contact with its parents. At the moment, decisions concerning these periods are not made separately. These are agreed on between the child and its guardian, the municipality that has taken the child into care as well as the school. The Ombudsman took the view that a care period of this kind should be chronologically limited and founded on a reasoned decision which an involved party could submit to the evaluation of an administrative court.

Tests to check whether children are using drugs are conducted in all State-run residential schools. The tests have been voluntary and based on the consent of the children and their parents. The Ombudsman took the view that providing a sample for a test meant interfering in the child's personal inviolability. She considered it questionable that a child's personal inviolability could be interfered with on the basis of the child's consent. In her view, drugs tests should be legislated for.

In addition, the Ombudsman observed that there had been problems with getting psychiatric care services for children in the schools. She emphasised that children placed in these schools have a right to receive these services. In her view, a child should quickly receive the necessary care from a health care unit located nearby, unless receiving the care elsewhere is a better alternative from the perspective of the individual child.

The status of children placed in residential schools is regulated by the Protection of Children Act. Drafting of amendments to this piece of legislation is the responsibility of the Ministry of Social Affairs and Health. The Ombudsman formally informed the Ministry of all of the shortcomings that she had observed with respect to implementation of the rights of children placed in these schools.

ALIENS

The aliens category consists mainly of matters pertaining to the Aliens' Act and the Citizenship Act. Complaints most often relate to authorities which grant permits and make submissions, especially the Ministry of the Interior, the Directorate of Immigration, the police or Finnish diplomatic missions abroad as well as the Frontier Guard.

Decisions in a total of 34 aliens-related cases were issued during the year and 9 submissions relating to cases involving aliens were made. As in earlier years, complaints from foreigners pertained mainly to the Directorate of Immigration as well as to the police, the Frontier Guard and diplomatic missions.

Under the division of labour between the Ombudsman and the Deputy-Ombudsmen, aliens-related matters were taken care of by Deputy-Ombudsman Rautio during the year under review.

In most cases, complaints related to the length of time it had taken for a permit application to be processed or to dissatisfaction with the authority's negative decision concerning a residence permit. Another criticism expressed in several complaints received was that the provisions of the current Aliens Act require, as a general rule, the foreign spouse of a Finnish citizen to wait abroad for a residence permit. The Ombudsman drew attention to this matter in, among other writings, her submission concerning a complete revision of the Aliens Act. A rectification

of the matter is on the way, because a proposal has been made that the Act be amended to allow members of a Finnish citizen's family to come to Finland to apply for a residence permit. Foreigners' complaints against the police have most often concerned the way in which decisions to refuse entry to the country are enforced. There have also been complaints about decisions made by diplomatic missions abroad in relation to applications for visas or residence permits.

The following is an example of cases concerning this category.

PROCESSING OF A SPOUSE'S APPLICATION FOR A RESIDENCE PERMIT

The complainant criticised the procedure which the Directorate of Immigration and the Ministry for Foreign Affairs had followed in processing his Thai wife's application for a residence permit. His wife had made two applications, both of which had been refused. At the time the complaint was made, she had submitted a third application to the Finnish Embassy in Bangkok. The complainant also expressed dissatisfaction with the advice he had been given by the Directorate of Immigration as well as with delay on the part of the Directorate of Immigration and the Ministry for Foreign Affairs in forwarding documents he had requested.

Deputy-Ombudsman Rautio's observations with respect to processing of the application included the following:

Under the current Aliens Act, a foreigner must as a general rule submit an application for a residence permit to a Finnish diplomatic mission in his or her country of domicile or residence. If the application is founded on family ties, the application can also be made by a family member in Finland.

An application for a residence permit must be made before arriving in the country. If this has not been done, the foreigner arriving in Finland must in practice often return to his or her home country. Only in the exceptional cases provided for in the Act can a residence permit be granted in Finland to a person who has arrived without one. These exceptional cases were highlighted in the report received from the Directorate of Immigration. An exceptional case of this kind can be involved when, for example, the foreign national has earlier held Finnish citizenship.

It emerged from the report received that the complainant had not yet been married when he first applied for a residence permit. With respect to this, the Directorate of Immigration stated in its report that the established relationship which is required for it to recommend the granting of a residence permit so that the applicant could marry had not yet existed.

The complainant's spouse subsequently arrived in Finland with a visa and they married. The Deputy-Ombudsman pointed out that a residence permit can be granted to a person who has arrived in Finland without one only in specified exceptional cases. Outlined in the Directorate's report were the grounds on which it had concluded that rejecting the residence permit application of the complainant's wife, who had arrived in the country without a visa, was not manifestly unreasonable in the meaning of the Act. The Directorate has a certain discretion in this respect. In the view of the Deputy-Ombudsman, the Directorate had resolved the matter on the basis of its discretionary power. There were no grounds in the case to suspect that the Directorate had exceeded its discretionary power and/or abused it. However, he considered it understandable as such that application of the Aliens Act's rule on residence permits had been perceived as harsh and even unfair.

It emerged from the report received that the complainant's spouse had been granted a residence permit after the third application.

With respect to the forwarding of documents, Deputy-Ombudsman Rautio noted that it had taken over four months for the document requested from the Directorate to be sent. Sections 14 (Decisions concerning release of a document) and 37 (Entry into force) of the Publicity of Official Actions Act stipulate that " a matter specified in this Section must be dealt with without delay and information concerning an official document provided as soon as possible, and not later than two weeks, after the authority has received a request concerning the document." The entry-into-force provision states that a one-month deadline must be observed in this matter.

In the view of the Deputy-Ombudsman, there had been undue delay in providing the document in point in this case. The Directorate itself admitted that there had been a regrettably long delay in providing the document.

The Deputy-Ombudsman concluded that the procedure followed in processing the complainant's spouse's application for a residence permit had not been illegal in a way that the matter would require measures on the part of the Ombudsman. For future reference, he drew the attention of the Directorate of Immigration and of the Ministry for Foreign Affairs to the fact that requests for documents must be dealt with within the time period mentioned in Section 14 of the Publicity of Official Actions Act.

Case number 88/4/01

PRISONS

Complaints by prisoners form one of the biggest categories numerically. A strong increase in the number of complaints was recorded during the year under review, from 140 in 2001 to 240 in 2002. This was an exceptional increase, but no clear reason for it has become apparent. One possible explanation is that the number of prisoners continued to grow during the year.

Among the matters about which the prisoners complained were the procedures followed in the use of coercive and disciplinary measures, the behaviour of prison staff, conditions for prisoners in prisons and prisoners' opportunities to maintain contact outside the prison (temporary release, correspondence, use of the telephone, and so on). Some complaints concerned the procedure for revoking orders assigning prisoners to open institutions or transfers from one prison to another. Some were dissatisfied with health services in prison. The same themes featured in the complaint cases initiated during the year under review. Complaints from prisoners related also to procedures followed by other parties besides the prison authorities. These mainly had to do with the punishment to which the complainant had been sentenced, pertaining to preliminary investigation of the case or the way it had been handled in court.

The Ombudsman is required under regulations to conduct inspections in especially prisons and other closed institutions. Indeed, oversight of the treatment of prisoners has traditionally been one of the areas of emphasis in the Ombudsman's work.

Deputy-Ombudsman Rautio, whose remit includes prison matters, inspected seven closed institutions during the year under review (these additionally included two open sections) as well as two open prisons. In addition, he inspected the Criminal Sanctions Agency. In conjunction with an inspection he visited the new prison in Vantaa where remand prisoners are kept during pre-trial investigations.

Special attention was paid during prison visits to facilities in the prisons and their condition, to the conditions under which prisoners lived as well as to conditions and family meeting rooms in closed and isolation sections, to prisoners' contacts with the outside, to recreational opportunities as well as to disciplinary practices. Discussions with top officials focused on investigation of breaches of regulations which prisoners were suspected of having committed and the practices followed in exercising authorisations to employ coercive measures as well as monitoring of the state of health of prisoners in isolation.

The discussion also included problems relating to substance abusers, mainly the opportunities available to prisoners who have undergone medical detoxification before arriving at a prison to continue this while serving their sentences.

Another problem that emerged was the present partial inadequacy of prisons' own health care services and the transfer of responsibility for prisoners' special health care costs from municipalities to prisons. A general concern highlighted was that the cost of special health care for a single prisoner could all at once consume a prison's total health care budget. The waiting times for prisoners to be seen by doctors were considered long, but the standard of the health services themselves was judged to correspond to that of public health services in general.

A central feature of inspections was that prisoners could have personal discussions with the Deputy-Ombudsman. A total of 103 prisoners availed

themselves of this opportunity, a considerable increase on the previous year's 60. Matters brought up by prisoners could usually be resolved already in conjunction with an inspection visit. Most of them related to the same problems as those that arise in complaints in general.

Below, there are two examples of the cases concerning prisons.

REASONS PRESENTED IN SUPPORT OF A TEMPORARY-RELEASE DECISION

The complainant criticised the grounds specified by the Deputy-Governor of Konnunsuo Prison in support of a decision to refuse a temporary-leave pass. The complainant's application was based on both an important personal reason and the length of his sentence. The Deputy-Governor justified his refusal only on the ground that the reason stated was not sufficiently important.

In its submission, the Criminal Sanctions Agency expressed the opinion that the decision on the application had not been appropriately reasoned. In the decision, a position should have been adopted on the probability of the complainant complying with the terms of a temporary release, and if this probability was not considered high enough, this should have been expressed. Because temporary release had also been applied for on the ground of an important personal reason, the Deputy-Ombudsman took the view that it would have been appropriate for the decision to have included also a position on why this was deemed inadequate as a ground for granting temporary release.

Case number 1284/4/01

CORRESPONDENCE BETWEEN A PRISONER AND A HUMAN RIGHTS OVERSIGHT BODY

The complaint related to the fact that letters sent to the complainant by the European Court of Human Rights had been opened at Sukeva Prison, although according to the law the letters should have been delivered to him unopened.

It emerged on the basis of the report made available to Deputy-Ombudsman Rautio that the letter had been opened mainly due to a human error. Since the Governor of Sukeva Prison had already reminded the officials who checked correspondence of the regulations concerning inspection of letters, in accordance with which correspondence between a prisoner and a human rights oversight body, to which he or she has the right to complain or appeal under international conventions, must be delivered uninspected. The Deputy-Ombudsman, as an overseer of legality, did not deem it necessary to take action in the matter other than, for future reference, to draw the attention of a senior warder to the need for care in handling mail addressed to a prisoner.

Case number 1750/4/02

POLICE

Complaints concerning the police were one of the biggest categories. The number of police-related cases decided on during the year was 427, more than ever before. The number of these complaints has fluctuated in the range 300–400 in recent years. It is difficult on the basis of one year to assess what – besides growth in the number of complaints overall – might explain this increase or whether it is due to random fluctuation.

In the light of statistics, complaints against the police also seem to lead to a decision involving measures slightly more often than with complaints on average. One reason for the number of complaints and the higher percentage leading to measures may be the nature of police functions. The police have to interfere in people's fundamental rights, often forcibly, and in many of these situations there is little time for deliberation. Nor does the opportunity exist to appeal against anything like all police measures.

The overwhelming majority of complaints against the police concern preliminary criminal investigations and the use of coercive measures. Typical complaints against the police expressed the opinion that errors had been made in the conduct of a criminal

investigation or either that an official decision not to conduct a preliminary investigation had been wrong or the length of time taken to complete the investigation had been too long. Most complaints concerning the use of coercive measures related to home searches or various forms of loss of liberty. Nor is it rare for complainants to criticise the police's behaviour or their having followed a procedure perceived as partisan.

It seems that in general claims of serious misconduct against the police, for example downright assault, largely lead directly to a normal preliminary criminal investigation, because cases of this nature appear quite rarely in complaints. It is conceivable that in cases which citizens consider glaring they file an official report of a crime directly, after which the matter is referred to a public prosecutor for a decision as to whether or not to conduct a preliminary criminal investigation. As such, this is justified from the oversight-of-legality perspective.

In addition to complaint cases and matters conducted on own initiative of Deputy-Ombudsman Rautio (in nine of which decisions were made during the year), inspections are a part of oversight of legality. These were conducted in especially district police stations.

The inspections are not of a surprise nature, but instead prepared in advance by obtaining documentary material from the police stations: for example reports on detentions and arrests as well as other decisions relating to preliminary criminal investigations, reports on cases which had been under preliminary investigation for a long time, reports on the use of coercive measures affecting telecommunications, and so on. On the basis of this material, cases are if necessary examined in greater detail during inspection visits. Observations made in the course of inspections can lead, for example, to a case being taken up for examination on own initiative. Inspections and investigation of complaints support each other: inspections can be planned on the basis of complaints and also provide information on police activities which proves useful in deciding on complaints as well as more generally from the perspective of oversight of legality.

The aim in inspecting police activities has been to exercise area-of-emphasis thinking. Special attention has been paid to measures which have been deemed important from the perspective of implementation of fundamental rights or for some other reason. A further aim has been to concentrate on areas in which other oversight and guarantees of legal security are for one reason or another insufficiently comprehensive (for example, the absence of a right of appeal). Naturally, familiarisation with the conditions under which persons who have been deprived of their liberty are being kept, mainly in police prisons, is a part of the inspections programme.

During the year under review, Deputy-Ombudsman Rautio inspected the Ministry of the Interior's Police Department and six small/medium police stations.

In the following, there are some examples of cases of this category.

PRELIMINARY INVESTIGATION OF THE PESÄPALLO GAME-FIXING AFFAIR

The Helsinki district police department conducted a preliminary criminal investigation on the basis of suspicions that the results of five pesäpallo (Finnish baseball) games played in summer 1998 had been dishonestly arranged in order to obtain betting wins. The games were on the list of those from which punters could place accumulator bets with the pools and lottery company Oy Veikkaus Ab. The case was investigated as gross fraud and the preliminary investigation involved interviews with 561 suspects, of whom 49 had been under arrest and 25 remanded.

Three very wide-ranging complaints were made to the Ombudsman about the preliminary investigation. The complainants alleged, i. a., that they had been put under pressure during interrogations and detained for unnecessarily long, in addition to being threatened that they would receive prison sentences. Besides that, they had been interrogated at late hours and opportunities for them to have meals had not always been ensured.

The officer in charge of the investigation and the other investigating officers denied the complainants' claims, in support of most of which no proof was found, either. In the course of investigating the

complaints, however, some aspects that emerged prompted Deputy-Ombudsman Rautio to order a preliminary investigation into the events involved in one interrogation. On the basis of this, the Deputy-Ombudsman deemed it established that a senior detective constable had deliberately violated the Preliminary Investigations Act by untruthfully telling the interrogee that a fellow-suspect had already confessed. The Deputy-Ombudsman took the view that the senior detective constable had through his action committed a breach of his official duty. He issued a reprimand to the officer.

With respect to other aspects, the Deputy-Ombudsman drew attention to, among other things, the fact that the intervals between meals for two other detained persons had been unduly long. One of them had received morning porridge at 8.30 and had then had to wait until after his interrogation, which ended just before 19.00, to be given food. The person in the other case was arrested at 12 noon, after which he was interrogated twice and was present at a search of his house. After this he was transferred to another police station, where he received food, having himself requested it, at 22.00 after the interrogation. According to the report, neither had himself asked the interrogator to arrange food for them and in other respects what was involved was lack of consideration rather than the detained person having been deliberately kept hungry. The Deputy-Ombudsman drew the attention of the police to their obligation to ensure, on their own initiative, that persons in their custody receive regular and adequate nourishment.

The Deputy-Ombudsman also drew the attention of the investigating officers to the fact that with respect to two interrogations they had neglected to record, as the law requires them to do, the reason for conducting an interrogation in the hours between 21 and 06.

Case number 1421, 2258, 2546/4/99, 1235/2/02

REAPPOINTMENT OF A DISMISSED POLICE OFFICER

The complainant had noticed a newspaper report that a person who had been sentenced to imprisonment for several assaults and in the same conjunction dismissed from the police force had been reinstated. The complainant was critical of the decision to make this appointment.

In May 1998 a district court has convicted the senior constable on one count of malicious damage, 41 counts of assault and one count of aggravated assault and given him a suspended sentence of 11 months' imprisonment. The victim had been his then wife. The district court took the view that the accused's behaviour demonstrated his unsuitability to serve as a police officer and ordered that he be dismissed from office. The probationary period for the suspended sentence had been set to run until 31.12.1999. On 31.1.2000 the Vantaa chief of police appointed the senior constable in question for a limited term. He had met the formal requirements stipulated in the Police Administration Decree for the office in question.

The following were among the points made by Deputy-Ombudsman Rautio in his decision:

"Alongside meeting the formal requirements for eligibility, a person intended for appointment as a public servant must also be suitable for his or her office. Suitability as a requirement for eligibility is, both in content and with respect to the legal principles on which it is based, a loose concept. The requirement of suitability is founded on the purpose of filling the post: the appointment should go to a person who meets the requirements sufficiently well to be able to discharge his or her official duties appropriately. Naturally, the content of the requirement of suitability varies depending on what office is involved.

"Not even when a dismissal from office is ordered by a court does it mean that the loss of eligibility for office is absolute or for a certain period. With the passage of time and possibly after other circumstances have changed, even a person who has been dismissed from public office can again become eligible to work as a public servant. The decision depends on the unique circumstances of each case, and conditions like fixed time limits cannot be set. As I see it, points that must be given special consideration in deliberation are the gravity of the crimes that led to dismissal from office and the demands which the office imposes on its holder. In any event, it is not desirable that particularly soon after a person has been found in a court judgement to be manifestly

unsuitable to hold a position in the public service, an administrative authority appoints that person to the same position. When a court orders dismissal from the public service, this is not only a severe punishment, but also a kind of safety measure, and a decision like this cannot be lightly negated.

"It follows from the nature of police work that it is the focus of accentuated demands with respect to impartiality and irreproachability. From the perspective of the appropriate discharge of police duties and the trust that the police must enjoy, I believe it is problematic (in part completely irrespective of how the official in question performs his or her duty) if a person is accepted back into the police force so soon after conviction for numerous assaults and aggravated assault. In this case, such a short time had passed since dismissal from office and the end of the probation period for the sentence that, in my view, there were no tenable grounds which could have been presented in favour of reassessment of the senior constable's suitability, taken into consideration the crimes of which he had been convicted and the fairly severe punishment he had received.

"As such, the police chief seems to have pondered the applicant's suitability more carefully than is normally the case and several of the factors highlighted by him support the decision he made. I take the view, nevertheless, that not even the information received concerning the police officer's earlier faultless performance in his job and his behaviour in conflict situations is sufficient to dispel the doubts which crimes of the kind in question raise about his suitability for police service. In my view, the idea that the prevailing shortage of police officers was an acceptable reason for departing from the requirement of suitability must be clearly rejected. This aspect is in no way associated with the suitability of a person who has been dismissed from office."

The Deputy-Ombudsman took the view that the appointment decision could not be considered justified with respect to consideration of suitability. However, the police chief was not deemed to have used his discretionary powers erroneously to the extent that any other action in the matter would be required besides the Deputy-Ombudsman formally notifying the police chief of his view.

The case prompted extensive discussion in the media. The appointment of the police officer in question was not extended when the fixed term expired.

Case number 1032/4/00

SO-CALLED POLE PERMITS

It came to the knowledge of the Office of the Ombudsman that the Helsinki District Court had granted three so-called pole permits. A pole permit means permission to obtain from a telecom operator information on what telecommunications messages have been sent/received through a specific base station. The intention of the police was in this way to find out what persons had used mobile phones in the vicinity of a crime scene at the time the crime was committed. Since the Coercive Measures Act allowed surveillance of telecommunications to apply only to a suspect's connection and not a base station, Deputy-Ombudsman Rautio took the matter under investigation on his own initiative.

Looking at the matter from the perspective of effective investigation of the homicides in question, the Deputy-Ombudsman found it as such understandable that the police wanted to have these data. However, the use of coercive measures when investigating crimes must be founded on law, even in cases of the gravest crimes. At the time when those provisions were written, the possibility of a pole permit was not included: according to the law, surveillance of telecommunications must focus on a telecoms connection, i.e. a specific phone number. The top command echelon of the police likewise stated in its report that the police should not have made the demands in question. With pole permits, surveillance of telecommunications is focused on an unpredictable number of telecoms connections and their holders irrespective of whether or not they are suspected of a crime. This surveillance is intended to be limited only to the telecoms connections of crime suspects (or parties with an interest in a case). That notwithstanding, the Deputy-Ombudsman took the view that, given the minor nature of the infringements of rights which had been caused, the only action warranted would be to inform the three judges of the Helsinki District Court, which had issued the orders, and the police officers who had been in charge of the investigations of his opinion.

After these events, the Government introduced legislation which included a provision making it possible for pole permits to be granted. The Eduskunta adopted this proposal.

Case number 3191–3193/2/01

COURTS

The tasks of the Ombudsman in Finland include oversight to ensure that also courts and judges observe the law and perform their duties.

Clients of the judicial system who turn to the Ombudsman often have an exaggerated picture of the Ombudsman's power to help them in their cases. The Ombudsman, in her role as an overseer of legality, cannot influence the handling of a matter still before the courts nor alter a court decision after it has been handed down. Nor can the Ombudsman otherwise examine the substantive correctness of a court's decision. Her task is to adopt a position only on whether an exerciser of the law has acted within the limits of the discretionary powers which the law gives him or her. Any changes must be sought through the normal appeals process, usually from a higher court.

The concentration in oversight of legality with courts as its focus has been on procedural guarantees of legal security. The perspective has often been precisely an assessment of whether the right to a fair trial, which the Constitution guarantees, has been implemented. Oversight of legality has been focused on especially those "shadow regions" of legal security which remain beyond the reach of other legal means. Typical examples are delay in dealing with cases, the behaviour of judges and the way in which people are treated in court. Attention has also been paid to appropriate presentation of the reasons for decisions and questions relating to the publicity of trials. Some complaint cases have involved moving in the transition zone between the exercise of law by courts and the administration of courts. Questions relating to guidance and advice for clients have likewise been examined. The Ombudsman's special goal in the positions adopted is to develop so-called good court practices.

Under the division of labour between the Ombudsman and the Deputy-Ombudsmen, matters dealing with courts of law were taken care of by Deputy-Ombudsman Jääskeläinen during the year under review.

In the following, there are two examples of cases of this category.

SECURITY OF A TRIAL AS WELL AS PUBLICITY IN EXCEPTIONAL SESSION CIRCUMSTANCES

An association representing court reporters criticised the procedure followed by the Lahti District Court in a case involving aggravated assault, etc.

The following were among the matters highlighted by the association in its complaint:

1. The members of the public, all journalists, who had come to watch the trial had to prove their identity by showing their press cards. A policeman recorded their names, the media they represented and their time of arrival in a notebook. After that, everyone was subjected to a security check. The Association referred to a ruling of the Parliamentary Ombudsman, number 1568/4/94 dated 31.12.1996, to the effect that a roll call of the public at a session of a district court is illegal. In the view of the Association, a security check would have adequately ensured the safety of the session.

2. Before the media representatives were admitted to the courtroom, the district court had already heard one witness, who had attended an identification lineup at a police prison. In reality, therefore, part of the session has been held without the public having access. Only the court staff had been present.

3. The Association also requested an investigation into whether the police had acted legally in the matter. According to the complaint, the presiding judge had stated that if journalists had not been admitted, the explanation lay in the actions of the police.

Checking the identities of members of the public

Deputy-Ombudsman Jääskeläinen pointed out that an a priori condition for trials meeting the requirement of publicity is that any member of the public can attend in person to follow proceedings in a court. In general, publicity must not be restricted by stipulating the announcement of a person's name as a requirement for admission. Protection of a person's private life included no one being obliged to reveal their personal particulars without a reason founded in law.

In this case, however, the trial had required exceptional security measures. A shooting incident near the court in the course of a lunch break during an earlier session in the case had led to the deaths of three people and the defendant being wounded. The session had had to be interrupted on that occasion. The view taken in the case in point had been that, for security reasons, a precondition for holding the session was that it be held in a room of the police station furnished for that purpose, because it was impossible to make the court building in Lahti secure enough for the trial to take place there.

Everyone is obliged to provide his or her personal particulars when requested to do so by a police officer carrying out a concrete task in an individual case. A police officer independently assesses the need in each unique situation. A person who is the subject of an enquiry has the right to be informed of the reason for the enquiry being made.

In the view of the Deputy-Ombudsman, the police had not in this case exceeded their discretionary powers by demanding that all persons coming to the police station to follow the trial present their identity cards and record their names. The case had been an exceptional one in Finnish circumstances and concern for security at the trial was justified. In those circumstances, measures designed to ensure security were justifiable and properly dimensioned with respect to the possible danger. In the light of the circumstances, the inconvenience caused by the procedure was slight and could be considered necessary.

In the opinion of the Deputy-Ombudsman, checking identity in this case was different from what was done in a case where a roll call was arranged for the public, among other things because now only the police officer responsible became aware of the name of a person. In addition, the exceptional character of the case and the justifiable concern about the security of the trial has to be taken into consideration.

Hearing a witness without the public being present

The Deputy-Ombudsman pointed out that under the law a so-called fearful witness can be heard without an interested party being present. By contrast, the current legislation does not include a provision, at least not a specific one, allowing for a fearful witness to be heard without the public being present.

In the light of the report received, the intention had not been to hear the witness in the absence of the public, but that had happened because the case had not been "called in".

"Calling in" a case means a representative of the court orally informing the interested parties and any members of the public who are present that they can enter the courtroom and the trial may thus begin. Although this is a minor measure, failure to conduct it can constitute a factual impediment to the implementation of publicity of the trial, as happened in this case.

Giving the "call in" or otherwise announcing to members of the public that a trial is about to begin is ultimately the responsibility of the presiding judge. In this particular case, the district court judge should have taken care of it. Taking into consideration the concern about security and the exceptional circumstances, the judge's carelessness can be regarded as understandable as such. On the other hand, the Deputy-Ombudsman did not regard the failure to conduct a "call in" and the resultant non-implementation of publicity as a "peripheral matter", as the district court judge seemed to deem it in his report.

In the light of, for example, the Rieppa case at the European Court of Human Rights (4.11.2000),

exceptional circumstances surrounding a trial require a court to take special measures to ensure that publicity of the trial is ensured. The Court ruled, inter alia, that holding a trial outside a regular courtroom, and especially in a place where the public does not in principle have the right of access, is a substantial impediment to publicity. In such cases the State, or in this instance the lower court, has a duty to undertake special measures to ensure that the public and the media are informed of the venue where the hearing is to take place and guaranteed easy access to it.

The Deputy-Ombudsman informed the district court judge of his opinion that a presiding judge must, when exceptional circumstances surround a session, take special care to ensure that the principle of publicity of trials is implemented, unless a decision has been made to hold the proceedings in camera.

Security and publicity of a trial

The right to personal inviolability is guaranteed, as a fundamental right, in the first paragraph of Section 7 of the Constitution. The special intention in enshrining this right in the Constitution was to emphasise the obligation which the public authorities have to take positive action to protect members of society from crimes and other unlawful acts directed against them.

The public authorities must ensure the physical safety of a trial, not only for the sake of the interested parties and the court staff, but also because it should be safe for members of the public to come and watch a public trial. In this sense, ensuring the safety of a trial is in fact one of the essential prerequisites for implementing the principle of publicity of trials.

In the report requested from it, the Ministry of Justice had stated that in order to ensure security in both the Lahti and other district courts it had begun supplying district courts and other premises where sessions took place with scanners and metal detectors. According to the report, the intention was to supply metal detectors to the Lahti district court in the course of 2001 with the aim of ensuring the safety of people working in or with business there. An obstacle to providing all district courts with these devices soon was their high price and the fact that some premises were unsuited to their use. An effort had been made to take security aspects into consideration in the design of new court premises. However, the Ministry had taken the view that in individual cases there was still a need, for security reasons, to turn to the police authorities.

According to information received from the Lahti District Court on 20.5.2002, the Ministry of Justice had not supplied it with metal detectors or other security-enhancing equipment.

On the basis of what has been outlined in the foregoing, the Deputy-Ombudsman drew the attention of the Ministry of Justice to the fact that seeing to the level of security at the places where court sessions take place is, from the perspectives of both the personal safety of those participating in the trial and publicity of trials, one of the essential prerequisites for the appropriate administration of justice.

Case number 299/4/00

A JUDGE SHOULD DECLARE HIS MEMBERSHIP OF A FREEMASONS' LODGE

The law requires judges to provide a declaration of their economic activities, stakes in companies and other wealth as well as of tasks which do not belong to the office in question, certain side-functions and other commitments which can be of significance in assessing their suitability for the post being filled. The information about their financial status which judges give the authorities must be kept secret.

Deputy-Ombudsman Jääskeläinen took the view that a judge's membership of a Freemason organisation or other similar ideological association is a linkage of a kind that a judge should declare. In the statutory report on a judge's linkages, membership would be public information.

In the view of the Deputy-Ombudsman, declaring linkages is conducive to lessening suspicions in situations where, for example, one of the parties to a trial is known to be a Freemason. If it is then possible to check whether the judge belongs to an organisation of Freemasons, it can be immediately ascertained whether there are grounds to suspect his

impartiality on this basis. If the judge is a member of the Freemasons, the question of recusal can be dealt with immediately at the beginning of the trial. In other respects as well, the obligation to declare membership increases public trust that courts operate impartially and, according to the submission of the Eduskunta's Legal Affairs Committee, guarantees transparency in this respect.

One of the purposes of examining linkages is to highlight those which could in individual cases constitute grounds for recusal. Another is to try to identify linkages that ought to be abandoned for the period that the person concerned holds his or her post. In addition, there are linkages the declaration of which can strengthen the openness of state administration and court operations and public trust in them.

In the view of the Deputy-Ombudsman, membership of an organisation like the Freemasons is not a linkage of a kind that a judge should abandon, unless he himself regards this as necessary. By contrast, membership can justifiably be seen as a linkage due to which a judge can in individual cases be recused.

Deputy-Ombudsman Jääskeläinen notified the Ministry of Justice of his opinion and recommended that the Ministry take it into consideration in the administration of courts and its information to judges. He also notified the Suomen V. ja O.M. Suurloosi (Freemason Grand Lodge) of his opinion.

Case number 2709/2/00

ENVIRONMENT

The responsibility which everyone bears for the environment as well as the duty of the public authorities to guarantee everyone the right to a healthy environment and the opportunity to influence decision making relating to their living environment have been elevated to the status of fundamental rights in the new Constitution of Finland. Statutory regulation with a bearing on people's living environment is constantly increasing. Attitudes to environmental values are changing, and this manifests itself also in case law. The gravity of environmental affairs is growing also in oversight of legality. The emphasis in oversight is shifting increasingly towards safeguarding people's opportunities to participate and wield influence as well as towards openness in the way matters are drafted and deliberated.

Under the division of labour between the Ombudsman and the Deputy-Ombudsmen, environment-related matters were taken care of by Deputy-Ombudsman Jääskeläinen during the year under review.

In the following, there is an example of cases of this category.

UNOFFICIAL SNOWMOBILE TRAILS AS A PROBLEM REDUCING PEOPLE'S OPPORTUNITIES TO INFLUENCE DECISION MAKING

Deputy-Ombudsman Jääskeläinen drew attention to the fact that instead of the official snowmobile trails provided for in the Off-Road Traffic Act, comparable unofficial ones can also be created. This reduces citizens' opportunities to influence decision-making with a bearing on their living environment. However, the Constitution of Finland requires the public authorities to try to safeguard this right for all.

The plan setting forth the routes that official snowmobile trails follow is approved by the municipal environmental protection authority. Citizens have the right to appeal against an official decision defining these routes. Thus they can participate in decision making. Snowmobile trails can be used without charge in the same way as ordinary roads.

All that is required to create an unofficial snowmobile trail is the permission of the owner or custodian of the land. There is no provision for an appeal against a decision to create one. In addition, charges can be made for the use of these trails. For example, on land managed by Metsähallitus (the government agency in charge of the State's forest holdings), a licence to use snowmobile trails can be purchased for a day or a longer period.

According to the report received from Metsähallitus, there are currently about 15,000 kilometres of

snowmobile trails in Finland. Of this total, about 6,500 kilometres are on land managed by Metsähallitus, with approximately 4,300 in the province of Lapland. Official trails represent only a small fraction of the total.

The Deputy-Ombudsman was examining a complaint from the nature conservation association Pirkanmaan luonnonsuojelupiiri ry. The association criticised Metsähallitus for having circumvented the Off-Road Traffic Act and exceeded its authority by creating snowmobile trails which correspond in their dimensions to official trails.

The Deputy-Ombudsman did not deem the procedure which Metsähallitus had followed to be illegal, because planning in accordance with the Off-Road Traffic Act and the creation of official trails have not been made statutory requirements. However, he found the current legislation and its established interpretation to be problematic and informed the Ministry of the Environment and the Ministry of Agriculture and Forestry of his opinion.

Case 1839/4/01

INSPECTIONS BY THE OMBUDSMAN IN UNITS OF THE DEFENCE FORCES

Inspections conducted at garrisons of the Defence Forces have always been an important part of oversight of legality with military matters as its focus. An effort has been made in recent years to conduct inspections more effectively and at shorter intervals. What has been most important has been to offer especially conscripts the opportunity for confidential discussions with the Ombudsman. During the year under review, regular Defence Forces personnel were likewise given the opportunity to meet the Ombudsman. Discussions with conscripts have both a symbolic and a preventive significance.

The Ombudsman has emphasised that these meetings should be arranged in a way that makes it as effortless as possible for conscripts to attend them. Problems have sometimes arisen in this respect, for example when conscripts have had to request permission to leave other duties in order to meet the Ombudsman.

During the year under review, claims were made at one garrison that there had been attempts to make it difficult for conscripts to come for discussions. However, on the basis of a report received, it emerged that this had not been the case, although arrangements for conscripts in one unit to meet the Ombudsman had not been made flexibly enough. In the assessment of Deputy-Ombudsman Jääskeläinen, the steps subsequently taken by the commanding officer of the regiment in question were sufficient.

The matters brought up in the course of conversations with conscripts have often been of the kind that the Ombudsman can discuss with superior officers during the so-called concluding discussion at the end of an inspection visit. Many comparatively minor matters can be resolved already at this point. If a matter involves a point of principle or a serious shortcoming, the Ombudsman launches a separate study or preliminary criminal investigation after the inspection visit. During the year under review, separate reports were requested in three cases and one case led to a preliminary criminal investigation.

A subject continually brought up during inspection visits were the weekend and other leaves so important to conscripts. A matter mentioned at several garrisons was the unduly large number of weekends on which conscripts, especially those working as car drivers, had to be on duty. Conscripts also complained about last-minute cancellation of leave due to their being assigned to a unit assisting the civil authority as well as outstanding tests being arranged at weekends. They also wondered why they were not given toothpaste and shampoo by the State, despite the fact that general regulations require them to keep their hair clean and take care of their general cleanliness, in addition to which they are entitled under the Conscription Act to free health care. Deputy-Ombudsman Jääskeläinen has informed the General Staff of this.

Conscripts at several places inspected expressed doubts concerning mildew problems in the barracks where they were housed. Deputy-Ombudsman Jääskeläinen has drawn attention to this matter also in his decision in a complaint case (case number 2142/4/01).

Something that emerged in the course of inspections is the important role that conscripts' committees

play in the development of the conditions under which conscripts serve. Representatives of these committees have often informed the Ombudsman of shortcomings which other conscripts have, for one reason or another, been unwilling to mention. Deputy-Ombudsman Jääskeläinen attended the annual national seminar for representatives of conscripts' committees and made a presentation there.

Questions relating to the conditions under which conscripts serve and their treatment also featured centrally in discussions with a doctor, a chaplain and a social counsellor during inspection visits.

Before inspection visits, the units' records of disciplinary measures are always examined and the discipline statistics for the units inspected and the command regions in question are studied. A considerable proportion of disciplinary penalties are ordered for breaches of service regulations or negligence. The legality principle in criminal law presupposes a certain precision in a penalty provision. By no means always did the description of the act for which a penalty was imposed clearly specify on the basis of which guideline or regulation the behaviour cited as the reason was forbidden. The guideline or regulation which had been contravened was not always adequately specified. Also the way in which an act had been, for example, inappropriate or given offence had sometimes been inadequately specified. In the cases of acts that must be intentional in order to constitute an offence, the description of the act did not always show that the person concerned had acted intentionally. It was often difficult to distinguish between intentional acts and negligence. The descriptions of acts also sometimes included matters which were superfluous from the perspective of essential elements. Examination of the discipline records during the year under review revealed no cases involving more serious abuses by persons in positions of authority.

Deviating from the practice followed in recent years, the decisions make by units concerning instances of damage and minor damage were examined prior to inspection visits to these units. These examinations revealed that the practice followed was to some degree inconsistent, for example as to whether the negligence involved when equipment was lost or damaged during training exercises was regarded as minor or not. If negligence is minor, there is no liability for compensation and the loss must be borne by the State.

The number of inspection visits to military units during the year under review was a considerable increase compared with the previous two years. The total was 21 (5 in 2001 and 4 in 2000).

Deputy-Ombudsman Jääskeläinen also adopted the new practice of sending a memorandum containing his principal observations to the unit inspected, with a copy for information to the general staff of the Defence Forces or the Frontier Guard. In some cases, the observations in a memorandum have led to the general staff in question taking measures on its own initiative.

Annexes

ANNEX 1

Statistical data on the Ombudsman's work

MATTERS UNDER CONSIDERATION IN 2002

Oversight-of-legality cases under consideration	*4,724*
Cases in initiated in 2002	2,957
* Complaints to the Ombudsman	2,543
* Complaints transferred from the Chancellor of Justice	45
* Taken up on the Ombudsman's own initiative	35
* Submissions and attendances at hearings	43
* Other written communications	291
Cases held over from 2001	1,177
Cases held over from 2000	519
Cases held over from 1999	69
Cases held over from 1998	2
Cases resolved	*2,984*
Complaints	2,610
Taken up on the Ombudsman's own initiative	35
Submissions and attendances at hearings	42
Other written communications	297
Cases held over to the following year	*1,740*
From 2002	1,226
From 2001	485
From 2000	29
Other matters under consideration	*182*
On-site inspections[1]	72
Administrative matters in the Office	110

1 Number of inspection days 40

OVERSIGHT OF PUBLIC AUTHORITIES IN 2002

Complaint cases	*2,610*
* Social welfare authorities	614
- social welfare	284
- social insurance	330
* Police	427
* Courts	256
- civil and criminal	222
- special	4
- administrative	30
* Health authorities	233
* Local-government authorities	129
* Prison authorities	114
* Tax authorities	100
* Distraint authorities	90
* Education authorities	89
* Environment authorities	85
* Agriculture and forestry	54
* Prosecutors	46
* Military authorities	40
* Labour authorities	38
* Transport and communications authorities	30
* Immigration authorities	30
* Customs authorities	20
* Highest organs of state	20
* Church authorities	7
* Other subjects of oversight	188
Taken up on the Ombudsman's own initiative	*35*
* Social welfare authorities	9
- social welfare	2
- social insurance	7
* Courts	8
- civil and criminal	8
* Police	5
* Health authorities	5
* Military	4
* Other authorities	3
* Local-government authorities	1
Total number of decisions	*2,645*

MEASURES TAKEN BY THE OMBUDSMAN IN 2002

Complaints	*2,610*
Decisions leading to measures on the part of the Ombudsman	
* reprimands	14
* opinions	322
* matters redressed in the course of investigation	40
No action taken, because	
* no incorrect procedure found to have been followed	350
* no grounds to suspect incorrect procedure	1,257
Complaint not investigated, because	
* matter not within Ombudsman's remit	101
* still pending before a competent authority or possibility of appeal still open	311
* unspecified	67
* transferred to Chancellor of Justice	16
* transferred to Prosecutor-General	8
* transferred to other authority	2
* older than five years	59
* inadmissable on other grounds	63
Taken up on the ombudsman's own initiative	*35*
* recommendation	2
* reprimand	2
* opinion	20
* matters redressed in the course of investigation	2
* no illegal or incorrect procedure established	4
* no grounds to suspect incorrect procedure	4
* transferred to other authorities	1

ANNEX 2

The Constitutional provisions concerning Parliamentary Ombudsman of Finland

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

Section 38 – Parliamentary Ombudsman

The Parliament appoints for a term of four years a Parliamentary Ombudsman and two Deputy Ombudsmen, who shall have outstanding knowledge of law. The provisions on the Ombudsman apply, in so far as appropriate, to the Deputy Ombudsmen.

The Parliament, after having obtained the opinion of the Constitutional Law Committee, may, for extremely weighty reasons, dismiss the Ombudsman before the end of his or her term by a decision supported by at least two thirds of the votes cast.

Section 48 – Right of attendance of Ministers, the Ombudsman and the Chancellor of Justice

The Parliamentary Ombudsman and the Chancellor of Justice of the Government may attend and participate in debates in plenary sessions of the Parliament when their reports or other matters taken up on their initiative are being considered.

Section 109 – Duties of the Parliamentary Ombudsman

The Ombudsman shall ensure that the courts of law, the other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Ombudsman monitors the implementation of fundamental and human rights.

The Ombudsman submits an annual report to the Parliament on his or her work, including observations on the state of the administration of justice and on any shortcomings in legislation.

Section 110 – The right of the Chancellor of Justice and the Ombudsman to bring charges and the division of responsibilities between them

A decision to bring charges against a judge for unlawful conduct in office is made by the Chancellor of Justice or the Ombudsman. The Chancellor of Justice and the Ombudsman may prosecute or order that charges be brought also in other matters falling within the purview of their supervision of legality.

Provisions on the division of responsibilities between the Chancellor of Justice and the Ombudsman may be laid down by an Act, without, however, restricting the competence of either of them in the supervision of legality.

Section 111 – The right of the Chancellor of Justice and Ombudsman to receive information

The Chancellor of Justice and the Ombudsman have the right to receive from public authorities or others performing public duties the information needed for their supervision of legality.

The Chancellor of Justice shall be present at meetings of the Government and when matters are presented to the President of the Republic in a presidential meeting of the Government. The Ombudsman has the right to attend these meetings and presentations.

Section 112 – Supervision of the lawfulness of the official acts of the Government and the President of the Republic

If the Chancellor of Justice becomes aware that the lawfulness of a decision or measure taken by the Government, a Minister or the President of the Republic gives rise to a comment, the Chancellor shall present the comment, with reasons, on the aforesaid decision or measure. If the comment is ignored, the Chancellor of Justice shall have the comment entered in the minutes of the Government and, where necessary, undertake other measures. The Ombudsman has the corresponding right to make a comment and to undertake measures.

If a decision made by the President is unlawful, the Government shall, after having obtained a statement from the Chancellor of Justice, notify the President that the decision cannot be implemented, and propose to the President that the decision be amended or revoked.

Section 113 – Criminal liability of the President of the Republic

If the Chancellor of Justice, the Ombudsman or the Government deem that the President of the Republic is guilty of treason or high treason, or a crime against humanity, the matter shall be communicated to the Parliament. In this event, if the Parliament, by three fourths of the votes cast, decides that charges are to be brought, the Prosecutor General shall prosecute the President shall abstain from office for the duration of the proceedings. In other cases, no charges shall be brought for the official acts of the President.

Section 114 – Prosecution of Ministers

A charge against a Member of the Government for unlawful conduct in office is heard by the High Court of Impeachment, as provided in more detail by an Act.

The decision to bring a charge is made by the Parliament, after having obtained an opinion from the Constitutional Law Committee concerning the unlawfulness of the actions of the Minister. Before the Parliament decides to bring charges or not it shall allow the Minister an opportunity to give an explanation. When considering a matter of this kind the Committee shall have a quorum when all of its members are present.

A Member of the Government is prosecuted by the Prosecutor General.

Section 117 – Legal responsibility of the Chancellor of Justice and the Ombudsman

The provisions in sections 114 and 115 concerning a member of the Government apply to an inquiry into the lawfulness of the official acts of the Chancellor of Justice and the Ombudsman, the bringing of charges against them for unlawful conduct in office and the procedure for the hearing of such charges.

Parliamentary Ombudsman Act

(197/2002)

CHAPTER 1 – OVERSIGHT OF LEGALITY

Section 1 – Subjects of the Parliamentary Ombudsman's oversight

(1) For the purposes of this Act, subjects of oversight shall, in accordance with Section 109(1) of the Constitution of Finland, be defined as courts of law, other authorities, officials, employees of public bodies and also other parties performing public tasks.

(2) In addition, as provided for in Sections 112 and 113 of the Constitution, the Ombudsman shall oversee the legality of the decisions and actions of the Government, the Ministers and the President of the Republic. The provisions set forth below in relation to subjects apply in so far as appropriate also to the Government, the Ministers and the President of the Republic.

Section 2 – Complaint

(1) A complaint in a matter within the Ombudsman's remit may be filed by anyone who thinks a subject has acted unlawfully or neglected a duty in the performance of their task.

(2) The complaint shall be filed in writing. It shall contain the name and contact particulars of the complainant, as well as the necessary information on the matter to which the complaint relates.

Section 3 – Investigation of a complaint

(1) The Ombudsman shall investigate a complaint if the matter to which it relates falls within his or her remit and if there is reason to suspect that the subject has acted unlawfully

or neglected a duty. Information shall be procured in the matter as deemed necessary by the Ombudsman.

(2) The Ombudsman shall not investigate a complaint relating to a matter more than five years old, unless there is a special reason for the complaint being investigated.

Section 4 – Own initiative

The Ombudsman may also, on his or her own initiative, take up a matter within his or her remit.

Section 5 – Inspections

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

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

Section 6 – Executive assistance

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

Section 7 – Right of the Ombudsman to information

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

Section 8 – Ordering a police inquiry or a preliminary investigation

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

Section 9 – Hearing a subject

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

Section 10 – Reprimand and opinion

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

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

Section 11 – Recommendation

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

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

CHAPTER 2 – REPORT TO THE PARLIAMENT AND DECLARATION OF INTERESTS

Section 12 – Report

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

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

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

Section 13 – Declaration of interests

(1) A person elected to the position of Ombudsman or Deputy-Ombudsman shall without delay submit to the Parliament a declaration of business activities and assets and duties and other interests which may be of relevance in the evaluation of his or her activity as Ombudsman or Deputy-Ombudsman.

(2) During their term in office, the Ombudsman and a Deputy-Ombudsman shall without delay declare any changes to the information referred to in paragraph (1).

CHAPTER 3 – GENERAL PROVISIONS ON THE OMBUDSMAN AND THE DEPUTY-OMBUDSMEN

Section 14 – Competence of the Ombudsman and the Deputy-Ombudsmen

(1) The Ombudsman has sole competence to make decisions in all matters falling within his or her remit under the law. Having heard the opinions of the Deputy-Ombudsmen, the Ombudsman shall also decide on the allocation of duties among the Ombudsman and the Deputy-Ombudsmen.

(2) The Deputy-Ombudsmen have the same competence as the Ombudsman to consider and decide on those oversight-of-legality matters that the Ombudsman has allocated to them or that they have taken up on their own initiative.

(3) If a Deputy-Ombudsman deems that in a matter under his or her consideration there is reason to issue a reprimand for a decision or action of the Government, a Minister or the President of the Republic, or to bring a charge against the President or a Justice of the Supreme Court or the Supreme Administrative Court, he or she shall refer the matter to the Ombudsman for a decision.

Section 15 – Decision-making by the Ombudsman

The Ombudsman or a Deputy-Ombudsman shall make their decisions on the basis of drafts prepared by referendary officials, unless they specifically decide otherwise in a given case.

Section 16 – Substitution

(1) If the Ombudsman dies in office or resigns, and the Parliament has not elected a successor, his or her duties shall be performed by the senior Deputy-Ombudsman.

(2) The senior Deputy-Ombudsman shall perform the duties of the Ombudsman also when the latter is recused or otherwise prevented from

attending to his or her duties, as provided for in greater detail in the Rules of Procedure of the Office of the Parliamentary Ombudsman.

(3) When a Deputy-Ombudsman is recused or otherwise prevented from attending to his or her duties, these shall be performed by the Ombudsman or the other Deputy-Ombudsman as provided for in greater detail in the Rules of Procedure of the Office.

Section 17 – Other duties and leave of absence

(1) During their term of service, the Ombudsman and the Deputy-Ombudsmen shall not hold other public offices. In addition, they shall not have public or private duties that may compromise the credibility of their impartiality as overseers of legality or otherwise hamper the appropriate performance of their duties as Ombudsman or Deputy-Ombudsman.

(2) If a person elected as Ombudsman or Deputy-Ombudsman is a state official, he or she shall be granted a leave of absence for the duration of his or her term as Ombudsman or Deputy-Ombudsman.

Section 18 – Remuneration

(1) The Ombudsman and the Deputy-Ombudsmen shall be remunerated for their service. The Ombudsman's remuneration shall be determined on the same basis as the salary of the Chancellor of Justice of the Government and that of the Deputy-Ombudsmen on the same basis as the salary of the Deputy Chancellor of Justice.

(2) If a person elected as Ombudsman or Deputy-Ombudsman is in a public or private employment relationship, he or she shall forgo the remuneration from that employment relationship for the duration of their term. For the duration of their term, they shall also forgo any other perquisites of an employment relationship or other office to which they have been elected or appointed and which could compromise the credibility of their impartiality as overseers of legality.

Section 19 – Annual vacation

The Ombudsman and the Deputy-Ombudsmen are each entitled to annual vacation time of a month and a half.

CHAPTER 4 – OFFICE OF THE PARLIAMENTARY OMBUDSMAN AND DETAILED PROVISIONS

Section 20 – Office of the Parliamentary Ombudsman

There shall be an office headed by the Parliamentary Ombudsman for the preliminary processing of cases for decision and for the performance of the other duties of the Ombudsman.

Section 21 – Staff Regulations of the Parliamentary Ombudsman and the Rules of Procedure of the Office

(1) The positions in the Office of the Parliamentary Ombudsman and the special qualifications for those positions are set forth in the Staff Regulations of the Parliamentary Ombudsman.

(2) The Rules of Procedure of the Office of the Parliamentary Ombudsman contain further provisions on the allocation of duties and substitution among the Ombudsman and the Deputy-Ombudsmen, on the duties of the office staff and on codetermination.

(3) The Ombudsman, having heard the opinions of the Deputy-Ombudsmen, approves the Rules of Procedure.

CHAPTER 5 – ENTRY INTO FORCE AND TRANSITIONAL PROVISION

Section 22 – Entry into force

This Act enters into force on 1 April 2002.

Section 23 – Transitional provision

The persons performing the duties of Ombudsman and Deputy-Ombudsman shall declare their interests, as referred to in Section 13, within one month of the entry into force of this Act.

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