Parliamentary

Ombudsman

of Finland

Summary

of the

Annual

Report

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TO THE READER

The undersigned, Licentiate of Laws Riitta-Leena Paunio, served as the Parliamentary Ombudsman in 2003. The Deputy-Ombudsmen were Mr. Ilkka Rautio, LL.M., and Mr. Petri Jääskeläinen, Doctor of Laws, LL.M.

The Constitution requires the Parliamentary Ombudsman to submit an annual report to the Eduskunta, the Parliament of Finland. This must include observations on the state of administration of justice and any shortcomings in legislation.

The report 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. 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. 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 2003.

Helsinki, 20 April 2004

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 the 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

- duties include attending to cases concerning the police, public prosecutors, prisons, immigration, and language legislation.

DEPUTY PARLIAMENTARY OMBUDSMAN

(until 31 March 2006)

PETRI JÄÄSKELÄINEN

Doctor of Laws

- duties include attending to cases concerning courts of law, the Defence Forces, distraint, transport, municipal and environmental authorities, and taxation.

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Review of activities in 2003

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 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 2003 mainly followed a pattern similar to that in earlier years. 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. They are replied to immediately and the persons who send them are provided with guidance and advice in relation to the issues raised.

A total of 2,876 new matters were referred to the Ombudsman in 2003. This was about 3% less than in the previous year. Actual complaints totalled 2,498, or about 3% less than in 2002. 52 matters were investigated on our own initiative and there were 35 invitations to formal hearings. All in all, the number of oversight-of-legality matters to be dealt with in 2003 was 4,614. That was because 1,738 matters held over from earlier years had to be dealt with in addition to the incoming new ones.

Oversight-of-legality matters	2003	2002
Complaints	2 498	2 588
Taken up on own initiative	52	35
Submissions and hearings	35	43
Other written communications	291	291
Total	2 876	2 957

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.

Decisions

A total of 2,928 decisions on oversight-of-legality matters were made in 2003. Of these, 2,561 related to actual complaints. That was a little less than in the previous year. 39 decisions related to matters investigated on our own initiative, and there were 40 submissions and attendances at formal hearings. 288 replies to other written communications were sent.

Oversight-of-legality matters	2003	2002
Complaints	2 561	2 610
Taken up on own initiative	39	35
Submissions and hearings	40	42
Other written communications	288	297
Total	2 928	2 984

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 532 matters belonging to this category in 2003, or around 18% 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 being 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 requiring extensive studies and reasoned stances with many legal ramifications. Thus this category of decisions is quite heterogeneous. In 2003 there were 1,076 of them, or about 37% 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 558 decisions in this category, or about 19% of the total, during the year under review.

Perhaps the most important category comprises decisions that 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 434 in 2003 and represented about 15% of all decisions (and 21% of

complaints investigated). No prosecutions against officials were ordered. 20 reprimands were issued and 371 opinions expressed. 178 of the opinions were admonitory and 193 intended to guide. Remedial measures were taken in 34 cases while the matter was still being dealt with. There were nine 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 7.7 months. The figure for the previous year was 7.8 months.

Main categories of cases

During the year under review, as in earlier years, the main categories of cases in which decisions were issued related to social welfare (245) and social insurance (252). This totality, collectively called social security, involved decisions in 497 cases in all. The next-biggest categories of cases involved the police (410), health care (242), prisons (226) and courts (220). Other big categories involved municipal affairs (130), environmental matters (97), distraint (82) and taxation (81). There has been a clear change in the categories of cases insofar as the year under review saw the health care and prisons categories grow to approximately the same size as the courts-related category, which has traditionally been a third big totality alongside social security and police.

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 96 locations during the year under review. These included 21 belonging to the Defence Forces, 7 prisons, 10 police units, 6 courts, 3 public prosecutor's offices and 4 psychiatric hospitals.

Coercive measures affecting telecommunications

Monitoring activities involving surveillance of telecommunications and technical eavesdropping are 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 these coercive measures. 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.

Over the past ten years changes in legislation have on several occasions substantially broadened the areas of application of coercive measures affecting telecommunications. The scope of technical eavesdropping has also been expanded on several occasions and since the beginning of 2004 the police have been able, with a court's permission, to eavesdrop on suspects in their homes. The number of court orders authorising these measures has likewise been constantly growing and in 2003, for example, 1,840 orders permitting telecoms to be tapped were issued. In addition to the police, the customs have also been making markedly greater use of these coercive measures. 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. 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 Rautio 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. 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.

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. Deputy-Ombudsman Rautio continued 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 very few applications are rejected.

During the year under review, Deputy-Ombudsman Rautio dealt with several cases which led to the police receiving reprimands. The most significant of these was a case in which the police were reminded that, according to the law, only the calls made by the person who was the subject of a court order authorising tapping of telecoms could be listened in on (case no. 200/4/01). In this case the police had listened in on one (only) call between the suspect's wife and an outside party. The call had been made using the complainant's connection, which was being monitored on the basis of the court order. However, the law allows the police to listen only to "telecommunications messages which the suspect sends" or "messages intended for him/her". If someone other than the suspect calls from a connection under surveillance - something that in and of itself does not appear to be unusual - eavesdropping must, according to Deputy-Ombudsman Rautio, immediately cease.

In the same decision the Deputy-Ombudsman drew the attention of the Ministry of Justice and the Ministry of the Interior to several defects in the legislation. He noted first of all that problems relating to the use of superfluous information continually arise. Superfluous information is information which is

not connected in any way with the crime in question or which relates to some crime other than the one with respect to which the order authorising the use of a coercive measure has been granted. In the view of the Deputy-Ombudsman, the problems are largely attributable to shortcomings in the way the matter is regulated. Other matters that he saw as problematic included the formulation of the present provision prohibiting eavesdropping on legal counsel and the absence of regulations concerning the handling of information obtained through surveillance of telecommunications. In another case, he highlighted the fact that the ways in which information obtained through surveillance of telecommunications can be used otherwise than in the investigation of the crime with respect to which the order has been granted are not regulated in law (case no. 2837/4/01).

Deputy-Ombudsman Rautio also criticised a judge for having illegally dealt with an application for an eavesdropping permit purely on the basis of documents and without arranging a hearing, as required by law, with the person making the application present (case no. 1240/4/01). Attention had also earlier been drawn to the same, and apparently common way of dealing with applications to monitor telecommunications. The importance of observing legal procedure has also been emphasised on inspections of district courts and there has obviously been a change in practice.

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. In 2003, Deputy-Ombudsman Rautio also conducted a separate inspection in relation to undercover operations by the National Bureau of Investigation.

The police carried out undercover operations for the first time in 2002, albeit on a very limited scale: there were only a few decisions to do so and the targets were fewer than 10 suspects. Undercover operations had slightly increased in the year under review, but their scale is still narrow and they mainly involve investigating and solving serious drug offences. So far, no concrete cases relating to undercover operations have cropped up in oversight of legality.

Challenges in developing oversight of legality

The total number of complaints and oversight-of-legality queries received during the year did not change markedly compared with the previous year. However, the number of matters requiring examination by the Ombudsman has been continuing to grow, as is indicated by the figures relating to the contents of decisions and numbers of measures.

As in the previous year, the main concentration in dealing with complaint matters was on an effort to reduce the number of long-pending cases. However, we also wanted to concentrate on actively monitoring fundamental and human rights. On-site inspections and investigating matters on our own initiative provide a good means of trying to achieve this. The number of inspections increased markedly compared with earlier years (up 31% from 2002). The number of matters investigated on our own initiative has likewise increased (49%).

In the period of nearly ten years since the relevant provisions of the Constitution were revised, monitoring of observance of fundamental and human rights has been conducted primarily by examining individual complaint cases from the perspective of observance of these rights. In addition, inspections as well as, among special tasks, monitoring of coercive measures affecting telecommunications and of observance of children's rights has meant an appraisal of compliance with certain central fundamental rights. Our aim has also been to give measures undertaken on our own initiative the same orientation to the extent that these measures have been possible.

It would appear that oversight of legality has in this period developed even further in the direction of guiding administration and observing defects

and shortcomings in the systems involved in the discharge of public tasks. Often, failure to implement fundamental and human rights is not the result of an individual official's decision, but rather a question associated with activities in a specific sector of administration, the conditions in which these activities take place or procedures.

It is important to develop monitoring of fundamental and human rights in an active direction. Inspections, measures undertaken on our own initiative and contacts with NGOs, advisory boards engaged with questions of fundamental and human rights and research institutions are important in this respect. As noted in the foregoing, the number of inspections was increased during the year under review. The number of matters taken up for examination on our own initiative was likewise greater than earlier. The discussions with representatives of NGOs that began in 2002 were continued.

The international trend in human rights is also reflected in many ways in the Ombudsman's work. Cooperation with national ombudsmen as well as with the Council of Europe and the European Ombudsman has increased substantially over the years. The intention with this cooperation is to strengthen the implementation of human rights in Europe.

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

The Ombudsman uses both printed publications and the Internet to provide members of the public with information on activities.

The report that the Ombudsman submits to the Eduskunta each year is still one of the most important channels for information. It is published in Finnish- and Swedish-language versions, in addition to an English summary. Besides the Eduskunta, the annual report's wide distribution includes public authorities and other bodies with which the Office of the Ombudsman cooperates. Since 1999, the annual reports have also been posted on the Ombudsman's web sites: www.oikeusasiamies.fi and www.ombudsman.fi

Also posted on the Internet since 2001 have been those decisions, submissions and statements by the Ombudsman and the Deputy-Ombudsmen that are of special legal significance or important in general. These are published in either Finnish or Swedish, depending on which language they were originally written in.

Bulletins outlining the most important decisions and positions adopted are drafted and distributed to the media. They have also been posted on the Ombudsman's web site since 2001. Since 2003 they have been drafted in Swedish in addition to Finnish.

A brochure intended for persons considering making a complaint describes the Ombudsman's tasks and explains the complaints procedure. The brochure was printed in Finnish, Swedish, Sámi, English and Russian in 2002–03. It has been widely distributed to various authorities and institutions of learning. It will be published in German, French, Estonian and sign language versions soon.

The brochure is currently on the web site in Finnish, Swedish and English versions. Sámi, English, German, French, Estonian and Russian versions will soon be added, as well as a sign language version at a later date. The complaint form can now be filled out online and submitted by e-mail.

The Ombudsman's web site was revamped in 2003. The aim was to increase the scope of the site's contents and its user-friendliness as well as to modernise its visual format. The new site went on line in March 2004.

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 2,500 telephone calls from clients were answered and about 180 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 288 in the year under review.

International cooperation

The Ombudsman cooperated extensively with her foreign counterparts and equivalent oversight bodies during the year under review. There was cooperation both on the Nordic, Baltic Sea states and European levels and globally.

The major international event of the year was the conference of Nordic ombudsmen held in Finland on 4-5.9.2003. The participants included the ombudsmen from Sweden, Norway, Denmark, Iceland and the Faeroe Islands as well as delegates from Greenland. The themes discussed included the allocation of resources to the ombudsman institution, quality factors in an ombudsman's work, ombudsmen as promoters of human rights as well as public servants' freedom of expression. These Nordic conferences have been held regularly at intervals of 2-3 years since the 1970s.

Ombudsman Paunio and Deputy-Ombudsman Rautio participated at a conference of national ombudsmen from EU member states in Athens. Ombudsman Paunio was the rapporteur at the conference, which was organised jointly by the European Ombudsman and the Greek Ombudsman. Deputy-Ombudsman Rautio and Senior Legal Officer Harri Ojala participated at the VIII Round Table of European Ombudsmen, which was organised in Oslo by the Council of Europe and the Norwegian Ombudsman. Deputy-Ombudsman Rautio presented a keynote speech at the conference. Secretary-General Mäkinen participated at the European regional conference of the International Ombudsman Institute. This conference took place in Cyprus and its theme was "The Changing Nature of the Ombudsman Institution in Europe".

Cooperation between the overseers of legality in Estonia and Finland remained lively. Its scope broadened during the year under review when the participants at a conference arranged in Tallinn this time also included chancellors of justice, ombudsmen and comparable officials from the other Nordic countries and the Baltic States. Ombudsman Paunio, Deputy-Ombudsman Rautio as well as Senior Legal Officer Juha Haapamäki and Legal Officer Kirsti Kurki-Suonio participated at the conference, where Ombudsman Paunio made a keynote presentation on children's rights and Deputy-Ombudsman Rautio on oversight of legality in guiding the activities of the police. The next conference will take place in Finland in 2005.

The Human Rights Commissioner of the Council of the Baltic Sea States and ombudsmen from countries around the sea also met in Tallinn. Deputy-Ombudsman Jääskeläinen and Secretary-General Mäkinen participated at the conference, where Deputy-Ombudsman Jääskeläinen made a keynote presentation on the Ombudsman's powers and the effectiveness of and quality criteria relating to the Ombudsman's work. With the post of Human Rights Commissioner of the Council of the Baltic Sea States having been abolished in autumn 2003, it would seem that conferences of ombudsmen from countries around the sea will no longer take place in this composition.

As in earlier years, the Office of the Parliamentary Ombudsman received numerous foreign guests.

Office

At the end of 2003 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 individual decisions concerning 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.

A SOCIAL WORKER'S DUTY TO OBSERVE SECRECY AND THE DUTY OF NOTIFICATION REQUIRED UNDER SECTION 10 OF CHAPTER 15 OF THE PENAL CODE

With the consent of a client named by them, two employees of an AIDS support centre in Helsinki criticised the procedure followed by the social affairs authorities in Helsinki. In the view of the complainants, the client's right to protection of his private and family life was violated when the social affairs authorities demanded of this HIV-positive client a written assurance that he would not expose his wife to infection with the virus. The client had signed the following undertaking:

"I XX hereby give an assurance that I shall take care of protection with absolute certainty so as not to expose my wife YY to infection with HIV. I myself have been diagnosed as HIV-positive, but my wife is not aware of the matter. This assurance has been given at the demand of the social workers, because they have been concerned about the state of my wife's health."

The Social Welfare Office stated in its report that officials at the special social services office were aware of the client's serious illness and of the fact that the wife was probably unaware of her husband's illness. The wife was a foreigner (Asian), considerably younger than her husband and could speak hardly any Finnish or English. Taking these matters into consideration, it was probable that the wife was financially and psychologically dependent on her husband. Under the circumstances, according to the

report, the authorities had had to appraise whether or not they had a duty to inform the wife, on their own initiative, of a very important matter relating to her private interest which had come to their knowledge. If they had, they also had to consider the means by which this obligation could be discharged.

Section 22 of the Constitution requires the public authorities to "guarantee the observance of basic rights and liberties and human rights". According to the revised constitutional provisions, this obligation to protect applies also to the implementation of rights in relations between private persons. Thus Section 7 of the Constitution (the right to life, personal liberty and integrity) implies an obligation on the public authorities to protect people from crimes committed by others or from other unlawful acts. When appraising whether a person's important fundamental and human rights should be protected even at the risk of violating someone else's at the same time, one has to weigh the interests involved in different sets of fundamental rights against each other. It is sometimes inescapable to safeguard the more important interest and at the same time justified to violate the less-important one. In situations where different fundamental rights must be weighed against each other, those safeguarded by Section 7 of the Constitution inevitably weigh heavily in the balance. Slight restrictions of other fundamental rights are relatively easy to accept if their purpose is to protect the rights guaranteed by Section 7. When weighing interests against each other it may be necessary to take into consideration also the fact that what is involved is not always two legal entities of equal standing, but that instead one person may be in a clearly weaker position.

Section 19.3 of the Constitution requires the public authorities to promote the health of the population. In its submission on a Government bill to amend the Infectious Diseases Act, the Constitutional Law Committee noted with reference to this that intervening in a person's private life is acceptable when it is done to protect the health of the population. Thus, in the view of the Committee, there were acceptable and weighty reasons, seen from the perspective of the fundamental rights system, for the proposed provisions, which would make it possible to restrict the fundamental rights of the individual in order to prevent the spread of infectious diseases.

Ombudsman Paunio made the following appraisal of the action taken by the social affairs authorities:

The tasks of municipal social welfare authorities as defined in the Social Welfare Act include the provision of social services. Social work is one of the social services defined in the Act. In the meaning of the act, social work refers to the provision by professional personnel of guidance, advice and assistance in dealing with social problems as well as other support measures which maintain the safety and functioning of individuals and families as well as the functioning of communities.

The social affairs authorities had a duty to safeguard the wife's fundamental and human rights. The European Court of Human Rights has taken the view that authorities have a duty also to take action on their own initiative to protect a person's life, and thus also his or her health.

Although preventing the spread of HIV infection and disseminating information about it are primarily the responsibility of the health authorities, the social affairs officials did not, in the Ombudsman's view, exceed their authority nor the scope of their discretionary powers when they emphasised to the client that he had a responsibility to protect his wife from infection. Nor, in her view, did they exceed the scope of their discretionary powers when they urged the client to inform his wife of his medical condition on his own initiative. It is important in efforts to prevent HIV infection that one party knows the other is infected and can then protect his- or herself.

Although it is not indicated in the documents that the client had been told he was obliged to sign an assurance, in the Ombudsman's view the wording of the document did, however, indicate that specifically a written assurance was required of the client. The client, who is living is a support dwelling belonging to the Social Welfare Office and receiving income support, can in any case have the perception, owing to his situation, that he does not have the option of refusing to sign the assurance, because refusal might

lead to negative consequences. However, on the basis of the available report, there does not appear to be any evidence that the social affairs authorities had exerted pressure on the client to give a written assurance, for example by threatening adverse measures.

The Ombudsman took the view that the written assurance had mainly emphasised the gravity of the concern felt by the social affairs authorities. That was because the assurance required the person signing it to assume responsibility for protecting his wife from infection. Taking these aspects into consideration, the Ombudsman concluded that the social affairs authorities had not acted unlawfully in requesting a written assurance of the kind referred to here from their client. She emphasised, however, that the actions of the authorities must be founded on appropriate legal provisions, in accordance with Section 2 of the Constitution, which requires that the exercise of public power be based on an Act. This means, among other things, that an authority does not have the right to impose on its client obligations which are not founded in law.

Nor, on the basis of the documents available was there anything to indicate that the client had been subjected to pressure to sign the written assurance by threatening adverse measures on the part of the social affairs authorities. However, it appeared on the basis of the complaint that the client had been unaware of the significance of the assurance he had signed.

Under legislation dealing with the position and rights of a social welfare client which entered into force at the beginning of 2001, personnel must inform clients of their rights and obligations as well as various alternatives and their effects, in addition to other matters with a significant bearing on their cases. In the opinion of the Ombudsman, the procedure followed by the social affairs authorities could be criticised on the ground that the client, contrary to the intention of the legislation, remained unaware of the significance of the document he signed.

Case no. 1034/4/01

SOCIAL INSURANCE

The right of everyone to basic subsistence in the event of unemployment, illness, disability and during old age as well as at the birth of a child or the loss of a provider is enshrined in Section 19.2 of the Constitution. Social insurance is the term used to describe statutorily arranged compulsory insurance against these risks. Decisions concerning social insurance often involve also such fundamental rights as the right to work and legal security.

A large proportion of complaints relating to social insurance during the year under review concerned disability pensions as well as housing subsidies, per diem payments in accordance with the Sickness Insurance Act, rehabilitation and other benefits under the Accident Insurance Act and the National Pensions Act. Several complaints concerning study grants were also received during the year. Most often, these involved repayment of grants having been demanded, although the students in question had not made provision for this. There were also some complaints concerning compensation matters under the Military Injuries Act.

As in earlier years, a general subject in these cases was that complainants had not received a benefit to which they thought they were entitled or that the benefit granted had not been large enough. Because the Ombudsman can not generally intervene in the contents of decisions concerning benefits, we often have to point out in replies that the authority had made its decision in the case on the basis of and within the parameters of its discretionary powers under the Act and advise the complainant to avail him- or herself of the existing appeals procedures.

Complaints concerning social insurance matters related largely to the procedures followed by authorities and in general to demands associated with good administration and the exercise of the law.

In many cases the Ombudsman drew attention to the long periods it had taken to deal with matters. Especially in insurance law (case nos. 1637/4/01 as well as 1865 and 2170/4/03) and in certain functions of the Social Insurance Institution (inter alia case nos.

329, 1787, 1942 and 2587/4/01) processing times are nowadays so long that, in the Ombudsman's view, they have become a problem of legal security. The fact that the reasons for decisions concerning pension- and rehabilitation-related decisions were only scantily presented was likewise often a subject of criticism (e.g. case nos. 2111 and 3175/4/01 as well as 308/4/02). In several instances (such as case nos. 1735, 3199 and 3128/4/01) shortcomings were noted with respect to authorities' carefulness as well as in the way they discharged their duty to provide advice and information.

Already in her annual report for 2002, the Ombudsman expressed her view that structural and functional problems relating to legal security can be observed in the appeals system for livelihood support. Examples that remain uncorrected are questions associated with the independence of appeal boards and their members. These matters were among those brought up in the course of the Ombudsman's inspections of appeals boards during the year under review.

The Ombudsman also drew attention to the fact that the European Court of Human Rights has in some of its decisions criticised certain levels of the livelihood support appeal system for presenting insufficiently elaborate reasons for their decisions and also expressed condemnation of the fact that appellants had not received documents that they felt related to them.

In the view of the Ombudsman, a prerequisite for safeguarding basic subsistence in the sense of Section 19.2 of the Constitution is that the conditions essential for effective operation are present on all levels of the appeals system. The resources available to appeals boards and the Insurance Court must be such that these bodies are able to issue reasoned decisions sufficiently expeditiously. That would not appear to be the case at the moment, given that alone the Insurance Court's processing period averages over 12 months, as can be seen in the Inspections section below. Appeals boards and the Insurance Court must have the prerequisites to examine, appropriately and thoroughly, whether a complainant dissatisfied with a decision on his or her benefits is entitled to receive the guaranteed basic subsistence for which Section 19.2 of the Constitution provides.

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.

HARM CAUSED TO PATIENTS BY DEFECTIVE ARTIFICIAL JOINTS

The complainant criticised the way in which the responsibility of manufacturers and importers of artificial joints had been arranged. He had not received compensation from the medical indemnity insurance after suffering harm due to an artificial joint which had proved defective and took the view that it is impossible for a patient to seek compensation under the Product Liability Act, because he or she has no role in deciding to purchase the device, has no knowledge of the importer or manufacturer and no knowledge of the instructions for use of the device, either.

Ombudsman Paunio noted the following in her statement on the matter:

In the view of the Ombudsman, the health care authorities had not acted illegally or negligently when treating the complainant. However, she informed the Government of the defects she had observed with respect to regulation of harm caused to patients by health care devices and supplies. In her opinion, legislation should contain better safeguards than at present for patients' right to compensation for harm caused by health care devices or supplies.

Something that the Ombudsman found problematic from the patient's point of view is that liability for compensation when harm is caused by defective health care devices such as artificial joints can not under the provisions currently in force be implemented in the same way as liability for harm arising in the course of a treatment relationship. It is difficult, if not impossible, for a patient to ascertain after treatment the facts that are necessary in order for liability for compensation in accordance with the Product Liability Act to be implemented with respect to a device that has been permanently installed in him or her. This applies, for example, to the importer, the product batch or the date on which the product has been released into circulation.

In the view of the Ombudsman, the problems relating to proof support the argument that it is not appropriate to place the burden of proof on the patient who has suffered harm. If the burden of proof in these matters were placed on a party other than the patient, this would improve the patient's prospects of obtaining compensation within a reasonable period, without having to take care of matters which he or she had no real opportunity to influence at the time that treatment was received.

The Ombudsman expressed her view that the regulations concerning compensation for harm caused by defective medical devices given to patients contain shortcomings from the point of view of patients. In her perception, assigning the primary financial responsibility arising from the harm to the producer of the health service or the medical indemnity insurance system would also contribute to promoting the patient's right to health care and medical treatment of a high standard.

The ability of and opportunities available to various parties to provide proof of harm should be taken into consideration in the development of legislation. For example, health care units that fit patients with artificial joints have a direct opportunity to influence the choice of devices and supplies used. Therefore their negotiating position vis-à-vis manufacturers, importers and vendors of devices is considerably stronger than that of the individual patient who has been harmed and has to negotiate for compensation. A body like the Finnish Patient Insurance Centre is also in a markedly better position to seek legal recourse and negotiate with manufacturers and importers than are patients. However, the Ombudsman takes the view that in any reform of the system care must be taken to ensure that handling of other instances of harm to patients is not adversely affected if the scope of liability under medical indemnity insurance is broadened.

Case no. 514/4/01

LIMITING SPECIAL HEALTH CARE SERVICES

The complainant was critical of a decision by a city basic welfare board to limit special health care services for residents in 2001.

The basic welfare board had made a decision to the effect that in 2001 the city would not pay for non-urgent operations. Examples of operations belonging to this category mentioned in the decision were varicose veins, haemorrhoids, tonsils, sterilisations, bunions and other toe operations, hernias, all cosmetic operations, operations on the nose septum, and so on. The decision applied also to private patients and those in the special fee category.

The following observations were among those made by Ombudsman Paunio in her decision:

The legislation concerning the arrangement of municipal health services is so-called framework legislation, in which municipalities' responsibilities are not usually defined in precise terms. In practice, this had led to a situation in which there can be

major differences between municipalities in the way they arrange services and in the contents of those services. The tasks included within the scope of a municipality's responsibility to arrange health services involve services belonging to the category basic welfare, the availability of which the public health care sector must ensure. Naturally, a municipality can also, if it so wishes, arrange services over and above these obligatory ones.

When making decisions concerning the arrangement of services municipalities must take the Constitution's equality provision into consideration in the same way as other fundamental rights provisions. Owing to the equality provision, discretionary powers must be exercised in such a way that the residents of the municipality receive at least services belonging to the basic health care category on a basis of uniform criteria. These criteria must be acceptable, known in advance and apply to all in the same way.

A municipality's internal decisions concerning the arrangement of services can bring uniformity to practice and therefore these decisions play an important role in increasing equality between residents of the municipality. Therefore, a priori, they are justified and even necessary. However, the decisions can be only complementary to the provisions of the relevant Act and decrees and can not be used to limit or exclude rights that are guaranteed in the Act or a decree. To the extent that decisions do not leave room for consideration of the individual need of a person seeking a service, they are in conflict with the legislation mentioned in the foregoing. Decisions of a kind that as a matter of routine exclude, for example, treatment of certain conditions or certain medical measures from the scope of special medical care are, in the Ombudsman's view, illegal.

Therefore, in the opinion of the Ombudsman, the city basic welfare board's decision to effect economies in special medical services was contrary to law.

The city basic welfare board had subsequently rescinded its decision and made a new legal decision in the matter. The matter had thereby been corrected, for which reason the Ombudsman saw no grounds for further measures beyond informing the city board and basic welfare board in question of her views concerning a municipality's duty to ensure that its residents receive necessary special medical treatment in accordance with the relevant Act.

Case no. 843/4/01

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.

Matters that the Ombudsman has investigated on her own initiative include parents' opportunities to obtain help with conciliation and advice in disputes between them concerning child custody and visitation rights. During the year under review she concluded the series of inspections relating to this matter that she had begun in 2002. These inspections have focused on such aspects as the opportunities available to parents to obtain conciliation services or advice, the appropriate organisation of conciliation and advisory services in a way that, for example, avoids conflicts of interest as well as the practice relating to secrecy in various conciliation situations.

An appraisal, based on inspections and other information that has come to light, of the conciliation and advisory services which municipalities offer parents will be completed in 2004.

It is fairly established practice for courts to order supervision of meetings between children and parents when they consider it necessary, although the matter is not regulated in law. Agreements have also been made between parents concerning

supervised meetings. In 2002 the Ombudsman began a round of inspections, during which she studied the preparedness of municipalities to arrange supervision of meetings between children and parents. The round of inspections was completed during the year under review. It revealed that the social affairs authorities in the municipalities inspected tried to arrange supervision in accordance with the instructions of courts, but not all of the supervision required could always be provided. The presence of an outside supervisor was sometimes considered necessary in contacts between children that had been taken into custody and their parents. Appraisal of a matter concerning supervised meetings will be completed in 2004.

Studies reveal that family violence is common in Finland and that instances of it do not always come to the attention of the authorities. Ombudsman Paunio takes the view that violence against children and sexual abuse within families is one of the most serious obstacles to the implementation of children's basic and human rights in Finland.

During the year under review, the Ombudsman initiated on her own initiative a project with the aim of studying the measures taken by the authorities to prevent, investigate and deal with family violence against children and sexual abuse of them. She examined this matter during her inspection visits to municipal social affairs authorities. In the same context, she gave attention to cooperation between social affairs, police and health authorities. The project is continuing in 2004 as collaboration between Ombudsman Paunio and Deputy-Ombudsman Rautio and in its implementation greater attention is being paid to the prerequisites, as seen from the perspectives of the health, police and educational authorities, for successful cooperation. The intention is complete the round of inspections by the end of the current year.

POLICE

Complaints concerning the police are one of the biggest categories. During the year under review 411 complaints relating to police actions were resolved, roughly the same number as in the previous year (427). In earlier years the number of police-related complaints had been on a slightly lower level (300-400). It is difficult on the basis of only two years to assess what might be the cause of this growth or whether what is involved is just a 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 Ombudman´s perspective.

In addition to dealing with complaints, the Ombudsman each year takes up a number of police-related cases for investigation on his own initiative. In 2003 it became publicly known through the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that foreigners being deported from Finland had been sedated against their will. The question of the use of medication is being dealt with by the Supreme Administrative Court with respect to the health care personnel involved. Deputy-Ombudsman Rautio decided to investigate this matter on his own initiative, specifically in relation to the actions of the police in the case and more generally the appropriateness of the procedures employed by the authorities and the guidelines they follow. Investigation of the case is still in progress.

On-site inspections are also an important part of oversight of legality. These were conducted especially in district police stations.

The inspections are not of a surprise nature, but instead prepared in advance by obtaining documentary material from the police stations. 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 my 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. Investigation of family violence cases and especially of crimes against children as well as other related police activities have also been the focus of special attention.

During the year under review, Deputy-Ombudsman Rautio inspected the Ministry of the Interior's Police Department and five small/medium police stations. In addition, he conducted partial investigations of the Tampere (especially aliens' affairs) and Helsinki (especially investigation of violent crimes) police services.

Some examples of cases in the police-related category are given in the following:

CELL DEATHS AND MONITORING OF PERSONS WHO HAVE BEEN DEPRIVED OF THEIR LIBERTY

Investigation of so-called cell deaths and monitoring of them were examined on our own initiative. The intention was to ascertain, inter alia, how thoroughly these death on police premises (20-30 each year) had been investigated and how the investigation had been arranged. Deputy-Ombudsman Rautio broadened the scope of the investigation to include also monitoring of persons who have been deprived of their liberty.

Investigation and monitoring of cell deaths

Most cell deaths do not lead to a criminal investigation; instead, it is established that there is no reason to suspect a crime has been involved. On the basis of material relating to the investigations of the 27 cell deaths that occurred in 2000, Deputy-Ombudsman Rautio observed that the standard of the investigations varies quite a lot. However, the cases did not include

any that had been so deficiently investigated that grounds for further measures would have existed. However, in the view of the Deputy-Ombudsman, thorough investigation of deaths on police premises is important not only from the perspective of the individual case, but also in order to preserve public trust in the police. Indeed, attention should be paid to ensuring that investigations are of a high standard.

With respect to the arrangement of investigations, the Deputy-Ombudsman noted that a cell death had not always been investigated by a police unit other than the one that had been responsible for keeping the person in custody. In his view, an investigation should always be entrusted to another police unit, if only to maintain external credibility. He additionally pointed out that good reasons why an investigation of a cell death should always be led by an authority outside the police organisation can be presented. At present, the police themselves decide whether there are grounds for suspicion that a crime has been committed.

A cell death is always a serious event. The Deputy-Ombudsman emphasised also that by analysing the causes of cell deaths and the authorities' actions it is possible to identif problematic features that may exist - completely independently of whether any individual case leads to legal consequences or not. In addition, he stressed the importance of training police personnel. He called for the level of training given police guards to be raised: almost completely untrained personnel are employed as guards in several police stations.

Monitoring of persons who have been deprived of liberty

The legislation concerning persons detained on police premises is quite scanty and nowhere does it contain, for example, a binding specification of the minimum standard of monitoring. The Deputy-Ombudsman expressed his view that it would be very desirable for legislation being drafted at the Ministry of the Interior in relation to the treatment of persons remanded in custody or otherwise detained (the so-called Police Cell Act) to be introduced in the Eduskunta as soon as possible.

The Deputy-Ombudsman noted that in practice the standard of monitoring varies quite a lot. Observations made in the course of on-site inspections and other evidence indicate that at some police stations the intervals between checks of cells can be alarmingly long - in some instances clearly in excess of two hours. Even in large police stations, there may be only one guard on duty at any time. The guard often has a lot of other tasks to take care of and therefore cannot give monitoring of prisoners full attention. Technical equipment which as such provides guards with excellent assistance in their monitoring work exists, but the standards to which police stations are equipped vary a lot.

Leaving unattended

It emerged on Deputy-Ombudsman Rautio's round of inspections in northern Finland in autumn 2002 that a person in custody is sometimes left completely alone in a police station when the only patrol car based there has to depart in response to an urgent alarm. A report received by the Deputy-Ombudsman revealed that in 16 of Finland's 90 police departments persons who have been deprived of their liberty have to be left completely unsupervised, at least sometimes.

The Police Department at the Ministry of the Interior did not regard this situation as good, but in its view it is not possible in practice to arrange constant monitoring at all police stations. In the Deputy-Ombudsman's opinion, leaving someone who has been deprived of their liverty alone and completely unsupervised in a police station for, say, two hours always involves a risk. It appears that within the police organisation definition of this risk has been largely left to the individual police station. The Deputy-Ombudsman did not find it acceptable that the situation is as described in the foregoing without the adoption by the legislator of an explicit position.

Another matter that the Deputy-Ombudsman found problematic was so-called remote monitoring: a person in a police cell can be monitored from as far as 100 kilometres away with the aid of a camera. In the assessment of the Deputy-Ombudsman,

this involves a greater risk than monitoring conducted by a guard who is personally present. The planned widespread adoption of remote monitoring presupposes, in the appraisal of the Deputy-Ombudsman, careful advance planning and regulation. In its present form, it can lead to danger situations, which the Deputy-Ombudsman believes should not be considered acceptable.

Case no. 2865/4/00

DURATION OF A CRIMINAL INVESTIGATION

The length of time taken to complete a criminal investigation featured quite often in decisions during the year under review. It is obvious that what was involved in delays was not necessarily negligence on the part of individual officials, but rather that such things as workloads, resources and prioritisation influenced appraisals of cases. Investigators and the officers in charge of investigations also bear their own responsibility for ensuring that an investigation does not take unduly long. The State of Finland can likewise have to bear responsibility for the length of a criminal investigation in and of itself, irrespective of whether or not any individual official can be found to have acted in a blameworthy fashion. That was what happened in the decision by the European Court of Human Rights in the Kangasluoma v. Finland case (20.1.2004). There are indications that the times taken to complete criminal investigations are lengthening and in the future Finland may have to accept similar responsibility more often.

Attention was paid to the duration of criminal investigations also on inspection visits and some cases were taken up for investigation on our own initiative during the year under review. Matters investigated on the basis of inspections conducted in earlier years, included the situation regarding the police service in the Inari-Utsjoki court district in northern Finland. Deputy-Ombudsman Rautio noted in his decision that although the Police Act gives the police a right to rank tasks in order of importance, this does not mean an entitlement to leave tasks unattended to altogether. Nor should long delays be allowed to occur at least in relatively serious cases, such as crimes against life and health. The Deputy-Ombudsman noted that especially on the list of two policemen there had been several offences the preliminary investigation of which could have been brought to completion with relatively little effort and the matters referred to the prosecution authorities for a decision as to whether or not to file charges. Some of the offences had become statute-barred during the investigation. In the Deputy-Ombudsman's view, in most cases it was not possible to demonstrate an acceptable reason for the delay; there had been unjustifiable delay in conducting the criminal investigation. He issued reprimands to two investigating officers and one officer in charge of an investigation.

Case no. 2256/4/00

SEARCH AND SEIZURE ORDERS

Searches of premises are often the subjects of complaints. Especially when their focus is the home of persons other than those suspected of a crime, they can understandably prompt questions about the reasons underlying the police's actions. However, such considerations as the failure of a search to yield any result does not in itself demonstrate that the use of this coercive measure has been unfounded. The situation must always be appraised in light of the, often imperfect, information that has been available to the police when they decided to use this measure. Very often, also seizures are associated with searches. The number of search-related cases in which the decisions leading to measures were made was exceptionally large during the year under review. The police were criticised for, among other things, the fact that the person who was the focus of a premises search was not allowed to be present during the search (case nos. 642/4/02 and 644/4/02) and delay in producing the minutes of a premises search (case nos. 1109/4/01 and 1185/4/01). Searches and seizures in computer environments have likewise proved problematic. The law is drafted largely on the basis of a traditional conception of objects and in practice what procedure should be followed when seizing, for example, files on a hard disk drive is subject to interpretation.

PRISONS

Complaints from prisoners are, in terms of numbers, one of the biggest categories and the number continued to grow during the year under review. A total of 280 were received (compared with 240 the previous year and 140 the year before that). The reason for the increase would appear to be growth in the prison population and the resultant overcrowding in several prisons, which has heightened tensions among prisoners. However, there are signs that growth in the prison population is now slackening off. The prison population at the end of the year under review was 3,562 (2,663 in 1999).

Decisions were announced in 220 complaint cases during the year under review. This was a substantial increase on the total for the previous year (113). The increase in the number of solutions that led to measures (nearly 50) was even more dramatic, because there had been only about ten in 2002. However, the increase in the number does not warrant the conclusion that the standard of the prison service has as such been lowered. The cases in which measures were taken often involved quite trivial procedural errors or matters in relation to which the Deputy-Ombudsman deemed it appropriate to express, with future guidance in mind, an opinion on what would have been the correct procedure to follow in the matter that was the subject of the compliant.

The complaints in which decisions were announced concerned a very wide variety of matters. Prisoners complained about, inter alia, the procedures followed in employing coercive measures or enforcing discipline, the behaviour of staff, inmates' conditions in prisons (living conditions, clothing and possession of property), prisoners' opportunities to maintain contact with the world outside the penal institution (leave passes, correspondence, the use of the telephone, and so on) or opportunities to have family meetings. Some complaints concerned transfers to an open institution or the cancellation of transfers to one, or transfers from one institution to another. Quite many expressed dissatisfaction with health services in prisons.

Deputy-Ombudsman Rautio, whose tasks include matters concerning prisons, inspected four closed prisons and three open institutions during the year under review. During these inspections, special attention was paid to the premises and their condition, the prisoners' living conditions as well as to conditions in closed and isolation departments and to the areas where family meetings take place, prisoners' contacts with the outside world, opportunities for leisure pursuits as well as disciplinary practices. The matters brought up in discussions with prison managements were investigation of offences of which prisoners were suspected and the practice followed with respect to application of authority to use coercive measures as well as monitoring of the health of prisoners in solitary confinement. There was also discussion of the effect that overcrowding is having on prison conditions and of the increased difficulty of finding space to accommodate activities. Prisoners have to wait long times to take part in activities. Another matter brought up during inspections was the detrimental impact of overcrowding on staff workloads and their sense of safety. Staff were especially concerned that various gangs were being formed in prisons.

A central feature of inspections was the opportunity of prisoners to have a personal conversation with the Deputy-Ombudsman. A total of 71 availed themselves of the opportunity. Matters of concern to prisoners could generally be dealt with already in the course of an inspection. The Deputy-Ombudsman decided on his own initiative to investigate some of the matters brought up in conversations with prisoners. These included the problems encountered by HIV-positive prisoners and those receiving replacement therapy for opiate dependence with respect to such matters as work classification as well as their possibilities of receiving leave passes (Konnunsuo), WC problems in the cell section of a prison (Helsinki) as well as accommodation-related solutions to problems arising from overcrowding (Vaasa). These cases are still being dealt with. Most of the matters brought up by prisoners concerned the same problems as those featuring in complaints in general.

Some examples of prison-related complaints in which decisions were made during the year under review are set forth in the following.

LIVING CONDITIONS OF PRISONERS

The detrimental effects of overcrowding on prison inmates arose also in cases resolved by the Deputy-Ombudsman. In one prison, shortage of space meant that an inmate was housed in a solitary confinement cell. This the Deputy-Ombudsman found unacceptable because, in his view, a cell of this kind can not be considered a suitable place for even short-term housing of a prisoner other than when the prisoner is being kept in solitary confinement as provided for in law. In another prison, a prisoner had been kept in a reception cell, where there were also prisoners who smoked. Deputy-Ombudsman Rautio criticised this and pointed out that prisoners must have the opportunity to avail themselves of all the rights to which the law and regulations entitle them, which includes the right not to be exposed to tobacco smoke. Taking this into consideration, it should be ensured in all situations that prisons contain enough accommodation areas in which smoking is not possible.

SO-CALLED FAMILY MEETINGS (UNSUPERVISED MEETINGS)

According to the law, a prisoner is entitled to receive visitors under supervision. However, unsupervised visits by close family members can also be allowed. This so-called family meeting has established itself as a usual opportunity for prisoners who, because of the length of their sentence, can not be granted leave passes to meet members of their immediate family or other close persons. The guidelines on family meetings and the practices followed differ somewhat from each other. The restrictions which institutions impose on meetings had to be appraised in several of the decisions issued by the Deputy-Ombudsman during the year.

Deputy-Ombudsman Rautio noted that a decision to grant a family meeting is within the prison governor's discretionary powers. The first thing that must be assessed when making this decision is whether the relationship between the prisoner and the person wishing to have an unsupervised visit is such that a family visit is possible (i.e. whether the person is a close family member in the sense of the relevant legislation). One criterion in this assessment is how established the relationship is. Another factor that the governor must take into consideration is whether an unsupervised meeting is possible with order within the prison in mind. How established or long-standing the relationship is can weigh in the balance also in this consideration, but the focus of the assessment is nevertheless the requirements of prison security. The third factor to be considered when deciding whether or not to grant a family visit is the premises available. The Deputy-Ombudsman further took the view that a prisoner marrying only after beginning a sentence is not in itself a sufficient ground to deem a relationship so inadequately established that a family visit should not be granted (case no. 2245/4/03). In the view of the Deputy-Ombudsman, the definition of a close relative can not be a factor when setting a priori conditions for family meetings. In one prison, for example, a family meeting had been refused to a prisoner's adult siblings and mother (case no. 423/4/03). Imposing conditions places prisoners who do not have a spouse or children de facto in a position of inequality relative to those with families, and in the view of the Deputy-Ombudsman this is not the intention of the law.

HEALTH CARE IN PRISONS

Relative to the increased prison population, the resources available for prisoners' health care are meagre and prison staff have less time to spend helping sick prisoners. Complaints reflect symptoms of access to treatment becoming more difficult.

In two cases, prisoners' access to surgical treatment and to a waiting list for an operation had been delayed. A time for a medical procedure at a central hospital had been reserved for one of the prisoners, but he was transferred to another prison before the procedure could be carried out. From there a referral note for treatment for him was sent to a city hospital, but the referral note was returned with the

annotation "treatment after release". The estimated release time was about one year later. In the view of Deputy-Ombudsman Rautio, appropriate treatment was delayed because the person was in prison. The delay could have been avoided if, for example, the prison doctor had upon receipt of the reply from the hospital examined possibilities of obtaining treatment elsewhere. A report on the waiting list at the city hospital revealed that the prisoner could have received the necessary treatment there before his release. The doctor in charge of the ward should not have been content to return the referral note, but instead should have contacted the prison doctor to agree whether to put the patient on the waiting list or have the prison arrange treatment in some other way (case no. 241/4/01). The other prisoner's access to a waiting list for an operation had been delayed when the prison polyclinic failed to act in accordance with the consultant surgeon's request. This negligence was due in part to the polyclinic's then workload and also to the patient's own failure to mention the matter at the polyclinic (case no. 1033/4/02).

One of the prisoners had had serious, albeit varying heart symptoms. As the outcome of a discussion with the staff, the prisoner was prepared to remain in his cell for the night. According to the doctor's statement appended to the complaint, the prisoner had suffered a heart infarction and the damage it caused to the heart muscle would probably have been less if the patient had been taken to the hospital already the previous day. Deputy-Ombudsman Rautio pointed out that the threshold for taking a prisoner suspected of having suffered a sudden attack of illness for treatment by professionals must be low and that in uncertain situations it is better to err on the side of safety than to underestimate the significance of the symptoms indicating the prisoner's state of health. The Deputy-Ombudsman also expressed his view that sending a patient for treatment must not depend on whether or not he or she demands it. The Deputy-Ombudsman also informed the Criminal Sanctions Agency, which oversees prisons, of his view that all prison warders should have sufficient basic knowledge of health care and first aid training as well as accessible guidelines on what to do when a prisoner announces that he or she is ill (case no. 264/4/01).

FOREIGNERS

General review

What is broadly called administration of foreigners is divided between several different sectors of administration (the ministries responsible for home and foreign affairs, labour and social affairs and health). The Office of the Parliamentary Ombudsman mainly counts foreigners' affairs as including matters falling within the scope of the Aliens Act and the Citizenship Act. The subjects of complaints are in most cases the authorities responsible for issuing permits and submissions, especially the Ministry of the Interior, the Directorate of Immigration, the police, the Ministry for Foreign Affairs or diplomatic missions abroad as well as the Frontier Guard. By contrast, not all matters that involve persons other than Finnish citizens are classed as foreigners' affairs. The borderline between a foreigners' matter and other matters can be blurred, for example when the issue involved is discrimination directed against a foreigner.

Under the division of responsibilities between the Ombudsman and the Deputy-Ombudsmen, foreigners' affairs cases were assigned to Deputy-Ombudsman Rautio during the year under review.

A total of 38 foreigners' affairs were resolved during the year. As in earlier years, the focuses of most complaints in this category were the Directorate of Immigration as well as the police, the Frontier Guard and diplomatic missions abroad.

Most complaints related to the length of time taken to deal with an application for a permit or dissatisfaction with an authority's decision not to grant a residence permit or visa. In a decision issued by him, the Deputy-Ombudsman drew the attention of the Directorate of Immigration to the long times taken to process asylum applications and especially citizenship applications (in greater detail below). In one decision the Deputy-Ombudsman criticised a police department for having availed itself of the assistance of a member of the Russian milis (police), who happened to be visiting the police station at the time, as an interpreter in an asylum case. The Deputy-

Ombudsman also adopted a position on whether a Muslim woman has a right to wear a scarf in a passport photograph. He pointed out that freedom of religion includes both the right to profess one's religion and the right to live according to it in practice. Intervening in the outward manifestations demanded by a religion can mean intervening also in internal freedom to practise religion. In the view of the Deputy-Ombudsman, freedom of religion also includes the religious obligation, which some Islamic women observe, to wear a scarf.

The following is an example of a case in this category:

TIMES TAKEN TO PROCESS ASYLUM AND CITIZENSHIP APPLICATIONS AT THE DIRECTORATE OF IMMIGRATION

Deputy-Ombudsman Rautio inspected the Directorate of Immigration on 10.12.2002. Special attention was paid during the inspection to the times taken to process asylum and citizenship applications. Arising from the inspection and under the provisions of Section 4 of the Parliamentary Ombudsman Act, the Deputy-Ombudsman decided on his own initiative to examine the lengths of time the longest-pending asylum and citizenship applications had been under processing at the Directorate of Immigration.

The following were among the observations made by Deputy-Ombudsman Rautio in a decision issued as a result of the inspection:

Processing of the oldest current asylum applications included in the scope of examination had begun at the Directorate of Immigration in January 2001. The oldest citizenship applications still unresolved had been made as long ago as the 1980s.

Information received at the Directorate of Immigration during the inspection and reports received from there later indicated that the long times taken to process matters had not resulted from individual officials having caused undue delays in their work; instead, the blame lay with problems stemming from the Directorate's overall workload and work practices there. Therefore the Deputy-Ombudsman did not consider it appropriate to appraise the times taken to process the oldest individual asylum or citizenship applications or decide whether there had been undue delay in dealing with these cases.

However, on the basis of the reports supplied to him by the Directorate of Immigration the Deputy-Ombudsman evaluated the times taken to process asylum applications and especially citizenship applications as being unduly long and, viewed from the perspective of fundamental and human rights, even contrary to the law and the relevant conventions which are binding on Finland. Since the Ombudsman's requests for reports, the Directorate of Immigration appears to have arrived at decisions on some of the oldest pending applications.

The long times taken to process asylum and citizenship applications are a serious problem for many reasons. First of all, Section 21 of the Constitution guarantees everyone the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

In addition to the avoidance of undue delay, the legal security which the Constitution safeguards also includes the opportunity to have a case reviewed by a court via an appeals process. If an authority does not make a decision in a matter, the matter can not if necessary be referred to a court or other independent organ for review. The Deputy-Ombudsman has in several decisions concerning complaints drawn the attention of the Directorate of Immigration to the problems relating to legal security which can arise when processing times are years long.

On the basis of a report received, it could be concluded that an essential reason for the length of the time taken to process applications was the scanty resources available to the Directorate of Immigration. Although the tasks of the overseer of legality do not include appraising the appropriateness

of issues relating to the allocation of resources, the Deputy-Ombudsman nevertheless considered himself duty-bound to draw attention to the fact that in part the present situation gives the impression of being, also when viewed from this perspective, quite unsatisfactory and unwise. On the basis of the available data, asylum applicants cost Finland tens of millions of euro each year. The longer asylum applicants remain in reception centres while awaiting decisions in their cases, the more expensive their maintenance becomes. From the perspective of implementing the legal security of an asylum applicant, it would naturally be better, in the assessment of the Deputy-Ombudsman, to channel funds and resources into arriving at solutions in asylum application cases instead of consuming resources on the maintenance and upkeep of people in reception centres for years and dealing with the problems that arise from long waiting periods. However, processing of asylum applications must not be speeded up at the expense of the quality of the application procedure and the legal security of applicants.

Long waiting times also jeopardise the applicant's chances of coping, irrespective of what solution is arrived at in the matter. Especially young people become accustomed to living in Finnish society and returning them to their home countries is not always reasonable in humane terms, even though it might be legally justified. Also for older applicants who have been waiting for a long time, a negative decision can be a severe blow, and sometimes even one that surpasses their capacity to endure. Even a positive decision can sometimes come so late with the present processing periods that the applicant's chances of achieving a balanced life and integrating into Finnish society can be very weak after such a long and taxing wait.

On the basis of the material available to the Deputy-Ombudsman, he concluded that no illegal action that could be considered attributable to any individual official had been observed in the Directorate of Immigration's processing of asylum and citizenship applications. Nevertheless, he judged the time taken by the Directorate to process asylum and especially citizenship applications unduly long and (in the oldest cases mentioned in the report delivered to the Ombudsman) even in contravention of the legal security demanded in Section 21 of the Constitution.

The Deputy-Ombudsman expressed satisfaction with the plans, mentioned in submissions by the Directorate of Immigration, relating to the inauguration of a register of foreigners and intended also to shorten the times taken to process asylum and citizenship applications. He asked the Ministry of the Interior to inform him, by 31.3.2003, of the measures it had taken to eliminate the undue delays mentioned in the decision and to prevent their recurrence. A copy of his decision was also sent to the Ministry of Labour's immigration policy unit for its information.

The Aliens Department of the Ministry of the Interior announced on 29.3.2004 that it had made adding efficiency to the Directorate of Immigration's work a special goal in its target plan for 2004-2008. In accordance with the plan, the Ministry of the Interior established a project on 9.2.2004 with the goal of speeding up processing of asylum and citizenship applications and putting decision making on a regional basis. The matters examined during the project will include the factors that prevent or slow down processing of and decision making in relation to applications for asylum or citizenship. Information received reveals that processing times shortened markedly during spring 2004.

Case no. 362/2/03

LANGUAGE AFFAIRS

According to the Constitution, Finnish and Swedish are the national languages of Finland and people are entitled to use them in dealings with the authorities as specified in greater detail in language legislation. Since 1998 the annual report of the Ombudsman has included a chapter dealing with complaints with a bearing on language rights. Complaints to do with minority rights have been recorded separately in the statistics since 2001. The category language affairs comprises cases involving the constitutionally guaranteed right to use one's own mother tongue, the duty of the public authorities to ensure that the educational and social needs of the Finnish- and Swedish-speaking segments of the population are provided for in accordance with similar principles as well as more generally to safeguard language rights.

According to the division of responsibilities within the Office of the Parliamentary Ombudsman, cases relating to language legislation and language rights are dealt with by Deputy-Ombudsman Rautio.

During the year under review, deliberation of 23 cases classed as language complaints was initiated. 29 cases in this category were resolved during the same period, including 9 which led to measures by the Deputy-Ombudsman. The matters which these solutions concerned included the application of the Language Act to the provision of information via the Internet, an applicant's obligation to supplement the application with a translation, the language to be used in replying to a written enquiry, the naming of roads in bilingual municipalities, the choice of language to be used in a criminal investigation and an emergency centre's telephone service in different languages.

Other complaints resolved concerned, inter alia, the influence of bilinguality on the television licence fee, the language to be used in the conduct of statutory land survey actions, the publication in both national languages of a set of guidelines issued by a ministry, the language to be used in the minutes kept by municipal authorities, publication of authorities' contact particulars in both national languages in a for-a-fee service directory and the language in which a trial was conducted.

As a general rule, language-related cases are initiated through complaints from private citizens, but on inspection visits attention is also regularly paid to the implementation of language rights as part of the inspection work overall. During the year under review, the Deputy-Ombudsman, as a result of an inspection he had conducted at the police service of one court district, decided on his own initiative to examine the position with regard to investigations through the medium of Swedish of economic crimes there. It had emerged in the course of the inspection that a shortage of economic crime investigators fluent in Swedish was a particular problem at the police service in question.

New legislation that entered into force in Finland on 1.1.2004 further emphasises the importance of safeguarding the status of Swedish as the other national language and will probably increase the number of language-related complaints.

COURTS OF LAW

The Ombudsman's duties include exercising oversight to ensure that courts and judges observe the law and fulfil their duties. This includes especially monitoring that the right to a fair trial, which is guaranteed everyone as a fundamental and human right, is implemented also in practice.

Clients of the judicial system who turn to the Ombudsman often harbour excessive expectations concerning the opportunities available to her to help them in their cases. That is because the Ombudsman can not in her role as an overseer of legality influence the handling of a case still before a court nor alter a court's decision. Her task is to adopt a position only on whether an exerciser of law has acted within the limits of the discretionary powers which the law gives him or her. An appeal must be made following the normal procedures, generally to a higher court.

Oversight of legality with courts as its focus has been concentrated on procedural guarantees of legal security. The perspective has often been precisely that of appraising whether the constitutionally guaranteed right to a fair trial has been realised in practice. Oversight of legality has been focused especially on the kinds of "dead zones" in legal security which remain beyond the reach of other means of justice. Typical matters of this kind are delay in dealing with cases as well as the behaviour of judges and treatment of clients. Attention has also been drawn to appropriately presenting the reasons for decisions. The issue in some complaint cases has required the Ombudsman to negotiate the dividing line berween the exercise of law by a court and court administration. Questions concerning guidance of and advice given to clients have also been dealt with. A special aim of the Ombudsman in the positions she has adopted has been to develop so-called good court practice.

Solutions statistically classified as court-related totalled 220 during the year under review. Once again, a considerable share of the complaints concerning the exercise of law by courts were of such a nature that the Ombudsman could not intervene in the principal matter itself.

Delay in dealing with cases in courts is a problem about which complaints have often been made to the Ombudsman. In most cases, this has been attributable to district courts' large work backlogs. In conjunction with the decisions issued in delay-related complaints, it was also possible to bring the problematic work volume of district courts to the attention of the Ministry of Justice.

There were also several complaints relating to conflicts of interest on the part of judges and more generally to the impartiality with which the law is exercised. It is not enough for judges to act impartially; they must also be seen to be acting impartially. However, jeopardising impartiality must be, objectively seen, justified. In the view of Deputy-Ombudsman Jääskeläinen in relation to one case, a quite forceful opinion included in a conciliation proposal drafted by a court after the main handling of the case was problematic from the perspective of the judge's image of impartiality. In its present form, promoting conciliation has been seen as possibly lessening the involved parties' trust in the impartiality of a court. This problem has been highlighted in, e.g., the report of a working group which studied the development of conciliation arranged by courts.

There were fairly many complaints concerning the behaviour of judges and the general treatment of clients. Whether or not the parties to a case feel they have received a fair trial generally depends on how they have been treated in court. A judge's office involves a task that requires special trust and esteem and therefore presupposes emphatically appropriate behaviour. Even in situations of conflict, a judge must be able to adopt a calm and measured attitude to persons and opinions. During the year under review, Deputy-Ombudsman Jääskeläinen issued three opinions concerning the behaviour of judges and one opinion concerning a district court lay assessor.

Expressions of dissatisfaction with the conduct of proceedinmgs by the presiding judge have often been associated with complaints relating to a conflict of interest on his or her part or the way in which he or she has behaved in court. However, the conduct of proceedings has been the subject of other complaints as well. For example, Deputy-Ombudsman Jääskeläinen issued some opinions concerning the presiding judge's oversight of order in the courtroom.

There have been several complaints relating to the publicity of trials and documents. The opinions issued by Deputy-Ombudsman Jääskeläinen during the year under review related to the presentation of reasons for a decision to hold a hearing in camera and the length of time that trial material had been kept secret as well as the right to obtain information on the contents of a District Court audio recording in the way requested. The news media's increased interest in the operations of courts and, on the other hand, needs associated with protection of people's privacy are coming into conflict with each other more often than they used to. It appears that it is not always possible to find a satisfactory solution to these problems in current legislation. An improvement will probably be brought about when a comprehensive revision of the legislation on publicity of trials is carried through.

There have also been complaints relating to the reasons presented in support of decisions. Deputy-Ombudsman Jääskeläinen drew the attention of members of the Court of Appeals who had decided a case to the importance of care in drafting the reasons supporting a decision, because the factual content included in the text had been entered erroneously.

Other complaints related to serving subpoenas, notices and summonses. In one case, a summons had been served on a defendant after the offence in question had become statute-barred. Deputy-Ombudsman Rautio formally informed a District Justice of his view that the justice had followed flawed procedure. Deputy-Ombudsman Jääskeläinen drew the attention of a district court to the preconditions which must be met when a criminal case is investigated and resolved, despite the defendant being absent, when the certificate of notification of a summons does not state on what penalty the defendant has been summoned to the sitting. In a case concerning the procedure followed by a summons-server, Deputy-Ombudsman Jääskeläinen issued a reprimand for future reference, noting that the summons-server had acted carelessly in handling population register data relating to a person who had changed sex.

DEFENCE FORCES AND FRONTIER GUARD

RESTRICTIONS ON MOVEMENT IN FRONTIER GUARD AREAS

The complainant reported that he and a friend had been picking wild berries in an area under the control of the Frontier Guard. He requested an investigation as to whether a Frontier Guard official had acted appropriately and within the limits of his authority when ordering them to leave the area. The Frontier Guard had marked the area with signs forbidding movement there.

Deputy-Ombudsman Jääskeläinen pointed out in his decision that Section 9.1 of the Constitution gives Finnish citizens and foreigners legally resident in Finland the right to move freely within the country and to choose their place of residence.

According to the Government bill to amend the fundamental rights provisions in the Constitution, the status of freedom of movement as a fundamental right means that restrictions on the right in question must be founded in law. The restrictions must also meet the conditions, which are defined in greater detail in case law concerning the provision, relating to their essential necessitity and acceptability.

The Environmental Protection Act states that a sign prohibiting entry to a land or water area or otherwise restricting the right of access to the natural environment may not be erected without a reason founded in law. Picking berries is one of the activities in which everyone is entitled to engage, without requiring separate permission, as part of the right of access to the natural environment.

The investigation also revealed that the Ministry of the Interior had not issued a police regulation or decree concerning restrictions on movement or sojourn in the Frontier Guard area in question, as it is empowered to do under the Police Act. Nor had any other reason founded in law been presented for erecting the prohibitory signs mentioned in the complaint. Thus Deputy-Ombudsman Jääskeläinen concluded that there had been no legal justification for erecting the prohibitory signs or removing berry-pickers from the area.

In the opinion of the Deputy-Ombudsman, responsibility for appraising the appropriateness of the prohibitory signs had resided in the final analysis with the General Staff of the Frontier Guard. A decision taken by the General Staff in 1995 to the effect that the prohibitory signs could remain in place without a separate police regulation being issued by the Ministry of the Interior could therefore, in the present situation, be regarded as erroneous from the perspectives of both the constitutional provision on freedom of movement and the Environmental Protection Act. Restrictions on freedom of movement, which is guaranteed as a fundamental right, must be founded in law. The Environmental Protection Act also unambiguously forbids the erection of prohibitory

signs without a legal basis. Even a Ministry of the Interior decree can restrict freedom of movement under the Police Act only when this is necessary to safeguard very important activity or property or to protect people.

The Deputy-Ombudsman pointed out that it is not possible for the Ombudsman to assess more generally the necessity for or the legality of restrictions on movement in all of the areas under the control of the Frontier Guard, and that this is not included in her duties, either. Taking the nature of the Frontier Guard's tasks into account, there could have been even very weighty reasons for restrictions in some cases. Some areas could also have been included in the scope of the Penal Code's provisions prohibiting public order offences.

The Deputy-Ombudsman drew the attention of the General Staff of the Frontier Guard and of its South-East Finland division to the fact that no reason founded in law had been presented to justify the erection of the prohibitory signs mentioned in the complaint nor the restriction on movement which they indicated. On the basis of the investigation, the legal preconditions for erecting the prohibitory signs or removing the berry-pickers from the area had not existed.

The Deputy-Ombudsman formally informed the General Staff of the Frontier Guard of his opinion that there is a need to examine all of the areas under the control of the Frontier Guard in order to ascertain the legality of any restrictions on movement. He requested that the General Staff report to him by the end of 2003 on what measures had been taken with respect to the matter.

The General Staff of the Frontier Guard sent the Deputy-Ombudsman a cope of an order it issued to its administrative units on 24.11.2003. In it the administrative units were told to remove from the Frontier Guard's areas all signs which, without a reason founded in law, prohibited movement there. The General Staff also reported that a comprehensive revision of the legislation on the Frontier Guard was in progress at the Ministry of the Interior and that the intention was in conjunction with this to enact, inter alia, restrictions on movement in areas under the control of the Frontier Guard. In the order, the administrative units were asked to prepare a list of areas in which restrictions on movement could be imposed under the provisions of future amended legislation.

ENVIRONMENTAL AFFAIRS

TAKING PERSONS WITH IMPAIRED MOBILITY INTO ACCOUNT IN AN ALTERATION AND IMPROVEMENT PROJECT AT A RAILWAY STATION

The City of Kerava and the Finnish Rail Administration (RHK) were criticised for their actions because in carrying out a basic improvement project at a railway station no lifts had been installed in a tunnel under the lines and the wheelchair-suitable access routes to some platforms were hundreds of metres long. According to the complaint, the regulations concerning wheelchair accessibility had not been taken into account when the building permits were granted.

According to a report received in the case, wheelchair-suitable routes between the station building and the platforms had not been arranged through the tunnel, but instead were detour routes more than half a kilometre longer than a link through the tunnel would have been. In addition, there were no lifts between the underpass and platform levels, but instead ramps. The arrangement of wheelchair-suitable routes that involved a long detour was to be considered a highly unsuitable solution from the point of view of travellers with impaired mobility.

When the equality and non-discrimination guaranteed in the Constitution as well as aspects relating to freedom of movement were taken into consideration with respect to the case, Deputy-Ombudsman Jääskeläinen took the view that in the building permit-related decisions concerning the

project, there would have been grounds for arriving at a final result other than the one in the permits granted by the city's building inspector. In that case, the licensing authority should have stipulated as a condition for granting a licence that the wheelchair-suitable route between the station building and the platforms be arranged via the tunnel or otherwise following an equally short route.

The Deputy-Ombudsman also criticised RHK and the City of Kerava, which had implemented the project. When the aims of the constitutional provisions concerning equality, non-discrimination, freedom of movement as well as of those guaranteeing fundamental rights, for example the aim of implementing in reality the equality and freedom of movement in society of persons with impaired mobility, the Deputy-Ombudsman took the view that it would have been appropriate for RHK and the City of Kerava to ensure when planning and implementing the project that the wheelchair-suitable route provided between the station building and the platforms was substantially shorter than what had actually been built. In addition, considerations associated with independence on the part of persons with impaired mobility and especially situations in which they must change trains would have warranted the links between the underpass and platform levels on this route being arranged preferably by means of lifts rather than ramps.

The Deputy-Ombudsman emphasised that when a state authority and a city began a significant project of this kind affecting the use of public transport services, sufficient attention should have been paid in its planning and implementation to the above-mentioned fundamental rights aspects. What was involved besides wheelchair-suitable building was also how well state authorities and municipalities, which represented public power, generally took fundamental rights into consideration in decisions of significance from the point of view of public transport users.

Measures

The Deputy-Ombudsman formally informed the City of Kerava's building inspector and environment committee of his opinion regarding the importance of a fundamental-rights-positive interpretation of the provisions and regulations concerning wheelchair-suitable building when processing building permit applications. In addition, he formally informed RHK as well as the City of Kerava's city board and technical committee of his view of the importance of taking the above-mentioned aspects into consideration, as a guaranteed fundamental right to equal treatment and non-discrimination as well as freedom of movement, when arranging wheelchair-suitable access routes at a railway station.

In conjunction with the complaint case the Deputy-Ombudsman had observed that when the provisions and regulations concerning wheelchair-suitable building are being applied it is possible for situations to arise which are subject to interpretation and can lead to the end result of solutions concerning permits for the project being such that they can be regarded as unsatisfactory from the point of view of persons with impaired mobility. Therefore he sent a copy of his decision also to the Ministry of the Environment for its information and for deliberation of whether consideration for the needs of persons with impaired mobility could be promoted by, for example, clarifying, amending or complementing the building regulations collection.

The Deputy-Ombudsman also sent a copy of his decision to the Ministry of Transport and Communications for its information.

Annexes

ANNEX 1

Statistical data on the Ombudsman's work

MATTERS UNDER CONSIDERATION IN 2003

Oversight-of-legality cases under consideration			*4,614*
Cases in initiated in 2003		2,876	
* Complaints to the Ombudsman	2,469		
* Complaints transferred from the Chancellor of Justice	29		
* Taken up on the Ombudsman's own initiative	52		
* Submissions and attendances at hearings	35		
* Other written communications	291		
Cases held over from 2002		1,225	
Cases held over from 2001		485	
Cases held over from 2000		28	
Cases resolved			*2,928*
Complaints		2,561	
Taken up on the Ombudsman's own initiative		39	
Submissions and attendances at hearings		40	
Other written communications		288	
Cases held over to the following year			*1,686*
From 2003		1,193	
From 2002		488	
From 2001		5	
Other matters under consideration			*173*
On-site inspections		96	
Administrative matters in the Office		77	

OVERSIGHT OF PUBLIC AUTHORITIES IN 2003

Complaint cases		*2,561*
* Social welfare authorities		491
- social welfare	240	
- social insurance	251	
* Police		399
* Health authorities		235
* Prison authorities		226
* Courts		220
- civil and criminal	189	
- special	4	
- administrative	27	
* Local-government authorities		127
* Environment authorities		97
* Distraint authorities		82
* Tax authorities		81
* Labour authorities		80
* Agriculture and forestry		62
* Military authorities		58
* Education authorities		47
* Immigration authorities		38
* Prosecutors		35
* Transport and communications authorities		32
* Customs authorities		32
* Highest organs of state		28
* Church authorities		7
* Other subjects of oversight		184
Taken up on the Ombudsman's own initiative		*39*
* Police		11
* Other authorities		10
* Health authorities		7
* Social welfare authorities		6
- social welfare		5
- social insurance		1
* Local-government authorities		3
* Military		2
Total number of decisions		*2,600*

MEASURES TAKEN BY THE OMBUDSMAN IN 2003

Complaints		*2,561*
Decisions leading to measures on the part of the Ombudsman	411	
* recommendation	2	
* reprimands	18	
* opinions	361	
* matters redressed in the course of investigation	30	
No action taken, because	1,618	
* no incorrect procedure found to have been followed	551	
* no grounds to suspect incorrect procedure	1,067	
Complaint not investigated, because	532	
* matter not within Ombudsman's remit	69	
* still pending before a competent authority or possibility of appeal still open	283	
* unspecified	62	
* transferred to Chancellor of Justice	11	
* transferred to Prosecutor-General	5	
* transferred to other authority	9	
* older than five years	41	
* inadmissable on other grounds	52	
Taken up on the ombudsman's own initiative		*39*
* recommendation	7	
* reprimand	2	
* opinion	10	
* matters redressed in the course of investigation	4	
* no illegal or incorrect procedure established	7	
* no grounds to suspect incorrect procedure	9	

ANNEX 2

Constitutional provisions pertaining to 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 basic rights and liberties 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 in the High Court of Impeachment and 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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