

Parliamentary

### **Ombudsman**

of Finland

Summary

of the

Annual

Report

2004

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### TO THE READER

The undersigned, Licentiate of Laws Riitta-Leena Paunio, served as the Parliamentary Ombudsman in 2004. The Deputy-Ombudsmen were Mr. Ilkka Rautio, LL.M., and Mr. Petri Jääskeläinen, Doctor of Laws, II 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 general comments by 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 2004.

Helsinki, 20 May 2005

Riitta-Leena Paunio Parliamentary Ombudsman of Finland

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### **General comments**

Parliamentary Ombudsman (until 31 December 2005) Licentiate of Laws

### **RIITTA-LEENA PAUNIO**

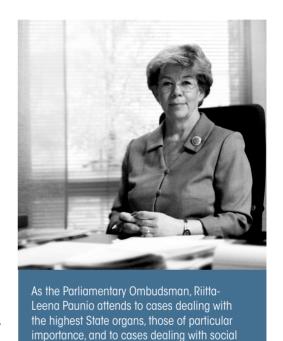
### PRESENT AND FUTURE CHALLENGES IN THE OMBUDSMAN'S WORK

The work of the Parliamentary Ombudsman began in Finland 85 years ago. In the beginning the Ombudsman was first and foremost a prosecutor who exercised oversight to ensure that judges and officials were not mis- or malfeasant in the performance of their duties. Over the years, however, the operating environment has changed and with it the emphases in the Ombudsman's activities. The role of prosecutor has receded into the background, to be replaced by guidance and development of the authorities' actions. Oversight of legality emphasises good administration and sets demands for official actions to meet. This change has been especially clear in recent decades.

# Since the revision of the Constitution's fundamental rights provisions

Of all of the changes that have taken place in the operating environment, perhaps the one that has had the most profound impact on the Ombudsman's oversight of legality is development of fundamental and human rights.

The Constitution of Finland was amended in 1995 to make oversight of respect for fundamental and human rights one of the Ombudsman's tasks. This has had several effects on the formulation of questions



and performance of functions in oversight of legality, although of course the Ombudsman's underlying goal has always been to ensure that nobody is deprived of their legal rights.

welfare, social security, health care, and

children's rights

Since the revision of the Constitution's fundamental rights provisions, however, the implementation of fundamental and human rights perspective has become of topical relevance in all matters, irrespective of whether suspected violations are serious or minor. Evaluation of the implementation of fundamental rights has meant above all that principles tending in different directions have had to be weighed against each other and attention has had to be paid to aspects that promote implementation of fundamental rights.

This emphasis has also been reflected in the orientation of activities. Questions that are sensitive in the light of fundamental rights have been focused on in the course of on-site inspections and in investigations launched on the Ombudsman's own initiative, and also in individual cases more generally. Examples of matters that have been investigated on the Ombudsman's own initiative in the past decade have included the right of Swedish-speakers to a fair trial through the medium of their own mother tongue in criminal cases, the circumstances of refugee children who have arrived unaccompanied in Finland, the procedures through which patients who are in psychiatric care without having given their consent to it are put in isolation, the sub-standard conditions under which homeless alcoholics are housed in shelters as well as the actions of the authorities in preventing, investigating and dealing with instances of family violence against children.

Alongside oversight of compliance with fundamental and human rights, I believe that the Ombudsman's duties also include promotion of these rights. In my view, it is precisely this that is involved in the actions taken on the Ombudsman's own initiative. Questions arising from complaints have likewise changed to some extent in the period since the fundamental rights provisions were revised.

Good administration would seem to have assumed a more accentuated status as a fundamental right than it earlier enjoyed. Social rights have likewise received more emphasis since the revision of the fundamental rights provisions. Indeed, appraisal of implementation of economic, social and educational rights has become a central area in the Ombudsman's oversight of respect for fundamental and human rights.

### Facing choices

It would seem that the Ombudsman's oversight of compliance with fundamental and human rights provisions faces certain choices and a need to set development policy lines. The growing numbers of complaints and the other challenges facing oversight of respect for fundamental and human rights call for

decisions concerning what emphases need to be observed in the work. A point also worth pondering is whether developing the means that oversight of legality provides would create opportunities to respond better than at present to citizens' expectations with respect to receiving help from the Ombudsman. How the international development of human rights will affect the Ombudsman's activities is another matter that has become of topical interest.

Clearly, the process through which complaints are dealt with must be expeditious and of a high standard of quality. However, the number of complaints is growing and the Ombudsman has a duty to examine all in which there appear to be grounds for the suspicion that an illegal procedure has been followed or duty nealected, irrespective of how minor the suspected transgression may have been. On the other hand, the obligation to promote fundamental and human rights likewise presupposes that the Ombudsman has the opportunity in practice - and not just in theory - to intervene on her own initiative in any official activities that threaten the implementation of important fundamental and human rights. Thanks to the broad scope of the Ombudsman's on-site inspection activities and her extensive rights to receive information, this office is an excellent vantage point from which to observe problems of this kind.

In my view, reconciling all of these different goals presupposes new means of managing the situation, unless we want to continually increase the number of personnel at the Office of the Ombudsman. One possibility is to give the Ombudsman greater discretionary powers than at present with respect to the matters to be taken up. Of course, there are also other means, although they would not be as effective. One would be to transfer responsibility for investigating complaints to the administrative sector's own oversight bodies.

The fact that causes a lot of dissatisfaction in people who appeal to the Ombudsman is her lack of power to alter official decisions or order payment of compensation. It has been proposed that, in contrast to the existing practice, the Ombudsman should act as a mediator between the authorities and citizens

and thereby strive to get the former to change their decisions or compensate for the damage or losses that their actions have caused.

Indeed, I believe there is a need to consider whether the Ombudsman should be provided with means that would enable her to give more concrete help to people who turn to her than it is now possible to give them. Mediation could be one such means. On the other hand, it is not well compatible with the range of other measures at the Ombudsman's disposal. In my opinion, the oversight of observance of legality in official actions that is one of the foundations of the rule of law should not be abandoned, nor should the possibility of making public servants responsible for their actions under criminal law. In my perception, the fact that the Ombudsman's powers include the possibility of bringing a prosecution is one of the strenaths of the institution.

Instead, I believe that the means of examination and investigation at the Ombudsman's disposal should, to the extent that this is possible, be made more streamlined than the present mainly cumbersome paperwork-based procedures. Less cumbersome means of dealing with matters could even lead to corrective measures being taken more often than is now the case.

I consider it especially important that the measures taken by the Ombudsman promote and develop good administration and other fundamental and human rights in the activities of the authorities. As I see it, ensuring that these measures have an influence in this respect is an important goal.

### International development and its influence

The international development in the sphere of human rights and international oversight of respect for these rights are reflected in the Ombudsman's activities in many ways. The ombudsman institution has been regarded as a valuable guarantee of respect for human rights and has spread widely to many parts of the world in recent decades.

International oversight of respect for human rights has also been reflected in the Ombudsman's work. International human rights conventions require periodic national reports. In conjunction with the drafting of these, the Ombudsman is nowadays often asked for submissions, and her views on the situation regarding fundamental and human rights in Finland are often included in the reports. The same applies when our own government is drafting reports on the state of human rights in Finland and presenting them to our national parliament, the *Eduskunta*.

In this context I wish to mention three interesting international projects that may be of significance for the development of the ombudsman institution – the creation of a Human Rights Agency within the European Union, the establishment of national human rights institutions in accordance with the UN's Paris Principles as well as the creation of the national oversight systems called for in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The possible adoption of the Constitutional Treaty will mean a further strengthening of the human rights dimension in the European Union. Oversight of observance of fundamental and human rights will be the task of the Human Rights Agency now being brought into being. However, what powers and functions the Agency will have are not yet known, for which reason it is difficult at this stage to assess what its effects on the Ombudsman's activities will be.

As part of the international development in the field of human rights, national human rights institutions are also being created in some countries in accordance with the so-called Paris Principles adopted by the UN. In accordance with these principles, national human rights institutions are permanent bodies with as broad a mandate as possible, covering also the private sector. The composition of national human rights institutions must be such that it includes especially those bodies with roles in promoting and protecting human rights. The institutions must have an independent status. Their most important task is to issue expert advice and recommendations, draw the attention of governments to human rights problems and draft reports concerning them. The arrangement

of human rights education and increasing awareness of human rights are likewise among the institutions' central tasks.

The need for a national human rights institution of this kind has been the subject of discussion in Finland in recent times. It has been seen as possible that the Ombudsman or some or other independent research institution that concentrates on human rights could serve as a national institution of this kind.

Independent research institutes have been designated as national human rights institutions in some countries, e.g., Denmark and Norway. Tasks like compiling research data, drafting reports, maintaining international contacts and information and advisory functions suit bodies of this kind very well. The same applies to participation in drafting national periodic and other reports.

It is also conceivable that the Ombudsman could fill this role as a national human rights institution. The Ombudsman's independent status, tasks and powers provide good preconditions for observing and highlighting problems with fundamental and human rights. On the other hand, conducting general investigations and drafting reports presupposes quite different resources from those now at the Ombudsman's disposal. In my view, however, investigation of individual complaint matters does not suit a national institution of this kind well, nor do at least the kinds of measures that the Ombudsman is empowered to take. Therefore the expansion of the Ombudsman's tasks to create a national institution of this kind is something that should be carefully examined and pondered.

The intention with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is to create or designate a national oversight system for preventing torture. In Finland, the Ombudsman's tasks include those envisaged for the national oversight body provided for in the Optional Protocol. Also in the case of this project it has been seen as possible that the Ombudsman could function as a body of this kind.

I believe that all of these international projects need careful appraisal with respect to their effects in both principle and practice before any decisions with a bearing on the Ombudsman institution are taken.

Deputy Parliamentary Ombudsman (until 30 September 2005) Master of Laws

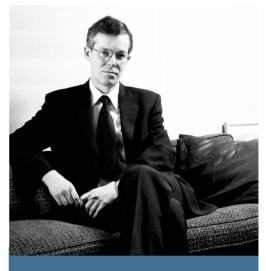
#### **ILKKA RAUTIO**

### MAINTAINING SECRETS AND OVERSIGHT

Publicity is of decisive importance in oversight of the exercise of power. The actions and documents of authorities and officials as well as of others who wield public power or perform public tasks are generally public, which gives both the media and anyone else the opportunity to follow and appraise the exercise of power. In Finland, the right of a concerned party to sub-ject an official's action to the appraisal of outsiders is accentuated by an opportunity, which is extensive compared with the situation in most other countries, to make an official accountable under criminal law for his or her actions in office. The oversight that takes place through courts of law is complemented by the oversight of legality that is available to everyone and with the aid of which it is possible – with certain limitations – to obtain a completely cost-free legal review of an official action of which one is critical.

However, the publicity that is a prerequisite for oversight of the exercise of power has been narrowed in some respects in recent years. Here I shall examine the problems that limitations on publicity of police actions have caused or can cause. It has always been inherently self-evident that some police actions are, for a variety of reasons, secret. The most typical example of this is the Security Police, some of whose actions are secret in Finland, as is the case with police organisations responsible for security functions in any country. Now, a change in the pattern of crime has led to publicity also with respect to other police actions being curtailed.

An essential change took place in Finland in relation to the use of so-called coercive measures affecting telecommunications, especially when the police were allowed to tap phones. It is true that a criminal investigation has always been public to only a



Ilkka Rautio's duties include attending to cases concerning the police, public prosecutors, prisons, immigration, and language legislation

limited degree during its active phase, but the use of coercive measures was public for the parties involved only until the use of coercive measures affecting telecommunications was introduced. Indeed, coercive measures affecting telecommunications are also called secret coercive measures. In addition to the use of coercive measures affecting telecommunications, also other secret police measures directly affecting crime suspects, such as bogus purchases and undercover operations, have been made possible. The use of secret coercive measures or investigation methods has also been approved in some respects for purposes of crime prevention.

In the sector of "more everyday" investigation of crimes, it would appear on the basis of observations to be made from complaints that the need to maintain secrecy increases when information received through tip-offs is used. Increasingly often, police actions are prompted by tip-offs and when checking their reliability the police run into the problem of protecting the identity of the source of the information received. Since, on the other hand, pressure to use information received through tip-offs

is increasing, the opportunity to check the grounds on which the police act is inevitably weakened.

The maintenance of secrecy extends also broadly into visa matters. Under international agreements, the ordinary obligation to present reasons for decisions does not extend to decisions on visas. It is true that an effort is made to explain, where possible, on what negative decisions are based, if such an explanation is requested. Sometimes, however, the reasons are founded on information relating to national security which cannot be revealed. It is also possible that the information that has led to a negative decision is disclosed or revealed, but the party concerned has no possibility of checking its veracity. He or she must be content with the reply "we have information to the effect that a visa cannot be granted to you". From the perspective of the visa applicant, the State then seems faceless and introverted. All that one can do is submit without being able to present itemised criticism of the information's reliability.

### How can the appropriateness of secret actions be overseen?

One way of preventing secret activities from remaining completely hidden is to make the granting of permission by an outside instance a prerequisite for their use. This solution has been arrived at in the case of coercive measures affecting telecommunications, the use of which generally requires a court order. Indeed, the system of legal security in Finland is founded in this respect very centrally on the power of decision that has been entrusted to courts of law.

This arrangement to ensure legal security does not in and of itself increase the publicity of the matter from the individual's point of view at this stage, because court proceedings in these matters are, for understandable reasons, secret. Under existing legislation it is additionally "one-sided" as a rule, because the object of the coercive measure is not represented at the hearing at all, except in cases where permission is sought to eavesdrop on someone's dwelling. In these cases, the party

to be eavesdropped on is represented by a public advocate. I have additionally observed in the course of my inspections that there has been room for improvement in the advance oversight conducted by courts. Some judges have clearly had an inadequate conception of the importance of their task.

Some oversight can also be credibly handled in retrospect. For example, the use of coercive measures affecting telecommunications can be retrospectively subjected to the scrutiny of an overseer of legality and the officials in question can be brought to account for any errors they have made in the same way as with respect to their other official actions.

However, effective retrospective oversight presupposes adequate reasons. It must be possible for the reasons for an action and the methods of operation to be credibly established after the fact; otherwise retrospective oversight remains thin or even completely loses its significance. In the case of coercive measures affecting telecommunications, this means that the police must present adequate reasons in support of their applications, and courts of the decisions they have issued.

The system limps also in this respect. The reasons presented in support of applications to use coercive measures affecting telecommunications are too often flimsy and, what is most worrying, the information presented in support of requests is not always adequately checked. A judge can be content to refer to tip-off information received by a police officer without ascertaining what information has been received from an informant and what is his own conception of whether the threshold set by the law is reached on the basis of such matters. This should not happen. A judge must not "hide behind the police's back" by stating that, according to information received from the police, there are grounds to suspect a crime of a nature warranting the use of coercive measures affecting telecommunications. Conclusions arrived at by the police must not be used as grounds for court decisions.

#### Secret official actions

Involved parties themselves have no opportunity whatsoever to conduct retrospective oversight if they remain completely unaware of the official actions of which they have been the subjects. In this light it is worrying that courts often grant permission not to disclose at all to the subject of a coercive measure affecting telecommunications that this measure has been used. The law allows this only in very exceptional situations. I have drawn attention to this during my on-site inspections of courts and police stations as well as in one of my decisions. In the light of statistics and experience gained in the course of inspections, an improvement has clearly taken place, but the situation still cannot be regarded as satisfactory.

The police have explained that what has been involved is a desire to keep the use of coercive measures secret in order to safeguard their future effectiveness. Courts, in turn, have "understood" the police's wish to protect an effective means of investigation. Both the police and courts seem to be paying too little attention to the fact that by adopting this solution they are excluding the possibility of an interested party making them accountable for secret official actions. In a democratic state under the rule of law, allowing official actions to remain beyond the possibility of oversight by interested parties is something that should not be accepted without really strong grounds.

The appropriateness of an official action can also remain beyond the reach of oversight if it is based on tip-offs that cannot be checked. Situations of this kind have sometimes arisen also when traditional coercive measures have been used. For example, a tip from a reliable police informer that someone is transporting drugs in his car has been presented as a ground for issuing a warrant to search his home. One of the cases in which I issued a decision last year involved *inter alia* keeping the name of an informant secret. I took the view that in a state under the rule of law the exercise of power on the basis of secret grounds could take place on only a very limited scale and even then only when it is specifically and otherwise appropriately provided for in the law. I

regarded and still regard as erroneous the kind of thinking in accordance with which the police, based on their experience of an informant's reliability, consider a suspicion of a crime to be so certainly correct that they believe the preconditions for issuing a search warrant have been met. The object of a coercive measure must be able to know what facts have provided the basis for its use. Although not all information can always be given, the involved party must be presented with at least evidence that the threshold for the use of a coercive measure has been reached. Arguing that the police had received what they themselves considered to be a reliable tip-off is not enough to demonstrate the appropriateness of using a coercive measure. Accepting a practice of this kind would open the way to arbitrary action.

### Oversight of legality and maintaining secrecy

Official measures that must be kept secret are not a direct problem for oversight of legality. A constitutionally enshrined right of access to information guarantees that all necessary information, secret or otherwise, is provided to overseers of legality. Experience also shows that the authorities have a good understanding of the needs of oversight of legality and even the most secret of information is flexibly disclosed. Thus an overseer of legality has access to all the information that the authorities possess. It is obvious that if the grounds for secret actions are deficient, the information base available to the overseer of legality will likewise be thin. At least in more recent cases, reports can still fill in the gaps fairly reliably, but a report given retrospectively always loses out in authenticity to information written down when a decision is being made.

What is problematic, by contrast, is what way and how credibly an overseer of legality can report his or her findings to outsiders. An overseer of legality does not have the right to disclose secret information, either.

This problem manifests itself most typically in everyday life in a reply in which a complainant is told that, in the light of investigation of the matter

and referring to reports, nothing illegal has been observed to have happened in the case. Since no information on the contents of a report can be given, the credibility of the reply has to depend largely on the general credibility of oversight of legality. Of course, this is added to if information on the methods of investigation can be provided; for example, if it can be reported that the information source in question and the reason for recording the information have been specifically checked by the overseer of legality. That has sometimes been done when there have been claims to the effect that information provided by the Security Police has been incorrect. On the other hand, it follows from the nature of the matter that only a very minimalist reply has been given. In a few complaints each year, the suspicion is expressed that the police are tapping the complainant's phone and the Ombudsman is asked to examine the legality of this. It is obvious that the overseer of legality cannot send a reply stating whether the person in question has been the subject of tapping or not, even when no tapping has taken place. A reply of this kind would provide criminals with an easy means of checking whether they are correct in their suspicion that coercive measures are being used against them. However, it is understandable that a reply to the effect that no illegal procedure has been observed easily allows a suspicion to smoulder on.

A very special situation arises when an overseer of legality cannot reveal information about observations concerning secret coercive measures or interpretations of the law that he or she considers problematic, because information describing the problem is in and of itself of such a nature that it must be kept secret. An example of a configuration of this kind is included in the section of the 2003 annual report dealing with undercover operations. The problem in question could probably be resolved in an appropriate way without revealing information that is required to be kept secret. There have also been other somewhat similar situations, and we may one day face issues of a kind that, on the one hand, would call for open discussion of a need to amend legislation. but at the same time could mean the loss of a benefit that the legislation was intended to protect. However, it is obvious that the law cannot be changed in secret. The examples outlined in the foregoing indicate that a need for secret official actions leads partly also to the publicity of oversight being limited. From the perspective of the credibility of oversight, however, it is important that also oversight can be subjected to as broad outside appraisal as possible.

Extensive publicity is one of the most important guarantees of appropriateness in official actions. If the foundation of this oversight on the part of the media and the "public at large" has to be narrowed, what must be guaranteed as far as possible is at least the right of the parties concerned to obtain information on official measures affecting them. If not even this is possible and external oversight is left entirely for the overseer of legality to take care of, it is important that its results can be reported with the greatest possible openness. There must also be an awareness that oversight of legality cannot be a complete substitute for other oversight. Oversight of legality is inevitably retroactive and random, and that is also what it was intended to be.

Secrecy inevitably lessens opportunities to perform oversight functions. The problems can be reduced in the ways that I have described, but not eliminated.

Deputy Parliamentary Ombudsman (until 31 March 2006) Doctor of Laws

### PETRI JÄÄSKELÄINEN

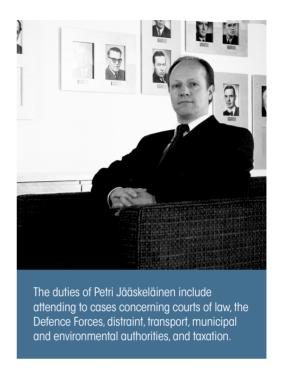
#### EQUALITY IN OVERSIGHT OF LEGALITY

### The importance of the new Non-Discrimination Act

The Non-Discrimination Act entered into force at the beginning of February in the year under review. Two European Commission directives explicating the prohibition of discrimination in Community law, i.e. the so-called equal treatment directive and equal treatment in employment directive were incorporated into national legislation through the Act and amendments to some other associated Acts. The former directive is intended to combat discrimination based on racial or ethnic origin, the latter discrimination in employment and occupation.

To be true, the provision in Section 6.1 of the Constitution to the effect that everyone is equal before the law and the prohibition of discrimination in Section 6.2 already covered the prohibitions enshrined in both directives. From the perspective of the Constitution, what the Non-Discrimination Act represents is a concretisation of the constitutional provisions prohibiting unequal treatment.

Looked at from the perspective of the Ombudsman's oversight of legality and promotion of the implementation of fundamental rights, the Non-Discrimination Act has not substantially altered the environment in which we operate. The Constitution's provisions on equality and its prohibition of unequal treatment have always featured centrally in the Ombudsman's work. However, the new Act underscores and concretises the importance of equal treatment and non-discrimination in both public and private activities. Since the Ombudsman is an institution that complements other legal security bodies, the new legal security arrangements



implemented in conjunction with the adoption of the Non-Discrimination Act may steer matters into the spheres of other authorities or means.

Under the new legislation, the duty of the labour protection authorities to oversee compliance with the prohibition of discrimination was broadened to include also service relationships under public law, i.e. the prohibitions of discrimination that are enshrined in the State Civil Servants' Act and the Act on Civil Servants in Local Government. Thus the tasks performed by the district labour protection administrations have broadened to include activities that are subject to oversight by the Ombudsman. Outside the sector of employment relationships and public service positions, oversight of compliance with the prohibition of discrimination based on ethnic origin will be the responsibility of the Ombudsman for Minorities, whose tasks and powers have been increased under the new legislation, as well as a newly established legal security body, the Discrimination Board. The new means legislated for to support victims of discrimination, such as the possibility of claiming compensation or measures in response to violations

of the prohibition as well as an inverse burden of proof when discrimination-related matters are being dealt with by courts and other authorities, may channel matters within the Non-Discrimination Act's sphere of application away from the Ombudsman and towards primarily other means of legal security. In my view, also the Ombudsman can if necessary give complainants this kind of guidance and also transfer a case to the competent special oversight authority.

## Some stances within the area of application of the Non-Discrimination Act

Only fairly rarely do the categories of matters entrusted to me under the division of labour between the Ombudsman and the Deputy-Ombudsmen include suspected discrimination based on ethnic origin within the area of application of the Non-Discrimination Act. By contrast, suspicions of discrimination relating to work, occupation or training within the area of application of the Act are expressed fairly often.

One example of the ways in which application of the Non-Discrimination Act has assumed tangible form in my work of overseeing legality was when I examined the question of making an applicant's non-smoker status a selection criterion when municipal offices and other jobs are being filled.

I have considered the question of whether or not a job applicant is a smoker to be a selection criterion that can be taken into consideration as a recruitment principle only in the event of the justification for unusual treatment being a real and decisive demand, of the kind specified in the Act, relating to the nature of job tasks and their performance. In other cases, different treatment is in violation of the prohibition of discrimination enshrined in the Constitution, the Non-Discrimination Act, the Act on Civil Servants in Local Government and the Employment Contracts Act. Whether or not applicants smoke can not, therefore, be accepted as a general criterion for appointment when assessing the suitability of applicants for official posts or other jobs (see p. 41).

The area of application of the Non-Discrimination Act also includes access to education. The Act applies to *inter alia* selection of students, selection procedures and evaluation of prowess in study. I have referred to the Act when appraising the extra points awarded to so-called new matriculants in a university's selection procedures.

The Constitution and the prohibition of discrimination which the Non-Discrimination Act enshrines do not forbid the making of all kinds of distinctions between individuals. The essential question is whether a reason that is acceptable from the perspective of the system of fundamental rights can be presented as justification for treating people differently. The acceptability of unequal treatment depends on such considerations as its purpose and degree. The reasons for favouring new matriculants are connected, on the one hand, with a desire to put them on the same footing as people who have completed their schooling earlier and, on the other, with education policy goals.

Thus the awarding of extra points to new matriculants can be justified on the ground that they are disadvantaged relative to earlier graduates when they have to sit selection exams, which require protracted preparation. Rapid placement from second-level education to third level and reducing the overall length of study time are, in turn, in and of themselves acceptable education policy goals. Thus the issue as seen from the perspective of equality is whether the degree of differentiation is acceptable. In this appraisal I have regarded the seven extra points awarded to new matriculants as problematic from the perspective of equality in view of the fact that the maximum number of points has been 43.

Complaints concerning situations in which persons apply for various public service positions or other jobs also feature fairly often in complaints received by the Ombudsman. In practice, the document-based procedure for examining a complaint does not make it easy to obtain evidence of the discrimination to which the complainant feels he or she has been subjected in some or other respect. For that reason, there has been an extra emphasis in our oversight of legality on formal and procedural guarantees of legal

security, for example careful drafting of appointment memoranda and putting comparison of merit on a basis of equality, that must be observed when filling posts. I have found, among other things, that when an appointment memorandum does not include a comparison of merit, the person who decides on the appointment has not been able to make sure that the information on applicants available to him is impartial. Applicants, in turn, have not been able to find out whether they have been treated equitably. had their merit lists been written correctly and had the selection criteria been in compliance with the law. Thus the memoranda did not meet the legal security demands set for them. For these reasons I have reminded the authority in question of the obligation which the Non-Discrimination Act specifically imposes on it to follow established administrative and operational procedures which will ensure promotion of equality in the consideration of matters and when decisions are being made.

When I appraise a submission on applicants that a court has made to a selection board for a judicial appointment, I draw attention to the requirement that if a negative assessment of an applicant's professional skill is presented, the reasons on which it is based must be stated and, with equal treatment in mind, a corresponding assessment, be it positive or negative, of the other applicants must be presented.

Complaint cases concerning selection of persons generally involve an individual believing that his or her rights have been violated, but suspicion that a discriminatory action has been taken can sometimes apply to a specific group. According to the Act on Peace Support Operations, an employer cannot refuse to allow persons, who are suitable for the task and may otherwise be chosen, to take leave of absence to participate in peacekeeping duties. For this reason I have taken the view that when persons are being selected for peacekeeping tasks, members of the Frontier Guard cannot be excluded from consideration on the basis of a negative submission by the employer. Thus the system of so-called nondetachability submissions gareed between the Defence Staff and the Frontier Guard Headquarters was in conflict with the provisions of the Act on Peace Support Operations and there was no acceptable

reason for treating members of the Frontier Guard differently to other applicants from outside the Defence Forces.

Section 9 of the Constitution gives Finnish citizens and foreigners legally resident in Finland the right to freely move within the country and to choose their place of residence. It has become an established principle that it follows from the right to choose one's place of residence that differential treatment on the basis of residence can be regarded as also contrary to the constitutional prohibition of discrimination. In my oversight of legality I have had to draw attention to the view, which has also been confirmed in the case law of administrative courts, that a municipality can not when considering appointments favour its own residents, even though this could be regarded as lying in the municipality's own interest for *inter alia* reasons relating to tax revenue.

### Equality in some other situations

Residence as a ground for differential treatment has featured also in several other complaint cases. The principles to be observed when choosing tenants of rental housing built with the aid of State subsidies and the grounds on which exceptions to these principles can be accepted are exhaustively defined in the relevant Act and the decree promulgated by the Government on its basis. These principles do not include the applicant's municipality of domicile nor the length of residence there. If it was not possible on the basis of the legal criteria for selecting tenants to differentiate between some applicants, the municipality deciding on the choice of tenant or the owner of the building containing the rental dwellings cannot apply new differentiation criteria, such as municipality of domicile, no matter how appropriate they might be from some perspective or other. In a situation of this kind, the choice must be made on a non-discriminatory around, such as a chronological priority determined by the date of the application, or else by lot. The guestion of whether the municipality of domicile should be a legal ground on which to choose tenants is one that belongs to the sphere of

social policy decision making, in the final analysis a matter to be decided by the *Eduskunta*, and therefore not one for an overseer of legality to address. I have recommended to the Ministry of the Environment that it give consideration to whether the guidelines on choosing tenants need to be developed so that choices of tenants can in all situations be made on grounds that are legal, non-discriminatory and appropriate.

Discrimination on the basis of place of residence has featured also in the way a local authority determines waste management charges. In my view, the local authority could not have completely waived the waste management charge for a leisure property on the basis that the owner of the property was permanently resident in the same municipality, since the charge had been collected from persons domiciled outside the municipality.

Problems relating to buildings in which there are impediments to mobility are likewise often associated with municipal decision making. Building legislation requires that administrative and service buildings as well as commercial and service premises to which. looking at the matter from the perspective of equality, everyone should be able to gain access must be suitable for use by persons whose physical mobility or other capacity to function is impaired. I have drawn attention to these demands having been ignored or inadequately taken into consideration in relation to, e.g., the design and construction of access routes in a commercial centre and a railway station. These norms in building legislation apply only to new buildings and some repair and renovation work, and the legislation does not specifically require that existing buildings be upgraded to meet them. However, I have considered it unsatisfactory from the fundamental rights perspective that the State has public premises, such as district court buildings, which do not meet the access standards. Therefore I have pointed out that promoting equal treatment of persons with impaired mobility by bringing existing premises into line with the norms concerning unimpeded access to buildings would be a material safeguarding of fundamental rights, in accordance with Section 22 of the Constitution, that should be allowed for also in the allocation of funds.

Criticism of age-related unequal treatment is a fairly common feature of complaints. This is often based on an age limit stipulated in law, and in these cases the Ombudsman cannot intervene. However, it cannot always be demonstrated that there is an age limit enshrined in law. I have found, for example, that an administrative court acted contrary to the constitutional prohibition of discrimination by adopting a practice whereby a person aged over 65 was not considered for a new provisional task in the sector of protecting interests.

As a kind of anecdote, I would still like to mention a Government decree on compensation for damage sustained in collisions with elk and deer. Under the statute, compensation for damage resulting from a collision between a motor vehicle and one of these animals can be paid out of State funds. Given that damage of this kind is in practice equally liable to result from avoiding the animal, I have proposed to the Ministry of Agriculture and Forestry that, in the name of equal treatment of all who suffer damage, they take revision of the regulations under consideration.

### Equality as a legal safeguard expectation

The above examples taken from our oversight of legality work will probably give the reader a good idea of the diversity of situations in which the issue of equality crops up. Equality has sometimes been called a kind of super fundamental right and the opposite of "might makes right" or the law of the jungle. In my perception, people's expectations with regard to legal security are indeed focused emphatically on the demand for equality. People's perceptions and experiences of how equality is being implemented in society probably have a significant influence on how they form their perception of the legitimacy of public bodies and institutions and their actions. Perceptions of legitimacy, in turn, are of decisive importance from the perspective of the trust people place in the public authorities, voluntary compliance with the norms which these authorities set and ultimately social peace.

Equality is an ideal that can never be completely realised. However, that does not mean we shouldn't try. The demand for equality is also in a certain way relative in many situations, because it can be deviated from if acceptable grounds exist. The question of what grounds can be regarded as acceptable in various situations is not always easy. It is, nevertheless, important that means of legal security, with the aid of which any discriminatory treatment can in a legitimate way be investigated and resolved, are at the individual's disposal. From this perspective, the Non-Discrimination Act and the new instruments of legal security that it enshrines are an important step forward. Because of the way the Non-Discrimination Act came into being, it is not by any means general in its area of application, but instead creates different rights for different persons and groups, and the various discrimination grounds do not fall within the scope of similar legal security instruments and consequences. Indeed, that is something at which the *Eduskunta*'s Constitutional Law Committee has levelled criticism.

However, a complaint to the Ombudsman is one means, which is available to everyone and in all situations of public action, of having the acceptability of treatment that is felt to have been discriminatory assessed.

# Review of activities in 2004

#### **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 2004 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. 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 quidance and advice in relation to the issues raised.

A total of 3,347 new matters were referred to the Ombudsman in 2004. This was about 16% more than in the previous year. Actual complaints totalled 2,950, or about 18% more than in 2003. 52 matters were investigated on our own initiative and there were 28 invitations to formal hearings. All in all, the number of oversight-of-legality matters to be dealt with in 2004 was 5,033. That was because 1,686 matters held over from earlier years had to be dealt with in addition to the incoming new ones.

Oversight-of- legality matters	2004	2003
Complaints	2,950	2,498
Taken up on own initiative	52	52
Submissions and hearings	28	35
Other written communications	317	291
Total	3,347	2,876

### **Decisions**

A total of 3,286 decisions on oversight-of-legality matters were made in 2004. Of these, 2,889 related to actual complaints. The number of complaints in relation to which decisions were made was 13% greater than in the previous year. 54 decisions related to matters investigated on our own initiative, and there were 29 submissions and attendances at formal hearings. 314 replies to other written communications were sent.

Oversight-of- legality matters	2004	2003
Complaints	2,889	2,561
Taken up on own initiative	54	39
Submissions and hearings	29	40
Other written communications	314	288
Total	3,286	2,928

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 610 matters belonging to this category in 2004, or around 19% of all decisions.

The essence of some decisions is that we have had to conclude there are no grounds to support the allegation of an illegal procedure having being followed in the matter or a duty 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

2004 there were 1,058 of them, or about 32% 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 731 decisions in this category, or about 22% 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 auidance. 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 542 in 2004 and represented about 18% of all decisions (and 23% of complaints investigated). The number of decisions involving measures was about 25% higher than in the previous year and in several sectors of administration the number of decisions involving specifically more

serious measures grew. In 3 cases prosecutions against officials were ordered. 37 reprimands were issued and 462 opinions expressed. 204 of the opinions were admonitory and 258 intended to guide. Remedial measures were taken in 24 cases while the matter was still being dealt with. There were 17 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 7.6 months. The figure for the previous year was 8.6 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 (314) and social insurance (281). This totality, collectively called social security, involved decisions in 595 cases in all. The next-biggest categories of cases involved the police (438), health care (253), courts (218) and prisons (208). Other big categories included environmental matters (155), work-related matters (121), municipal affairs (120), taxation (113) and distraint (90). The number of decisions concerning social security and environmental affairs has grown considerably. The number of decisions concerning the police has also increased somewhat.

them 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 79 locations during the year under review.

# 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 on these problems.

### **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 in

### Challenges in developing oversight of legality

### NUMBER OF COMPLAINTS GROWING

The total number of complaints and oversightof-legality queries received during the year grew considerably. 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. We were successful in this and the average period that cases had been pending declined. The number of cases in which decisions were reached was also greater than in the previous year. The number of inspections was slightly less than in 2003, whereas the number of matters investigated on our own initiative remained the same.

Work methods have continued to be appraised and developed in order to speed up the processing of complaints. Considerable inputs into personnel training have also been made.

### FUNDAMENTAL AND HUMAN RIGHTS

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, the implementation of certain central fundamental rights has been appraised in the course of on-site inspections and on our own initiative. It appears 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.

It is important to develop monitoring of fundamental and human rights in an active direction. In addition to what has been done in the course of on-site inspections and as part of investigations on our own initiative, we have worked towards this end by maintaining contacts with NGOs, advisory boards engaged with questions of fundamental and human rights and research institutions.

#### INTERNATIONAL COOPERATION

The international development in the sector of human rights is reflected to a growing degree in the Ombudsman's work. In conjunction with drafting of the periodic reports which Finland is required to submit under international human rights conventions, the Ombudsman is often asked for submissions. The problems relating to fundamental and human rights to which the Ombudsman draws attention are usually included in these reports.

The international development in the sector of human rights is reflected in the Ombudsman's work also in other respects. Meetings between Ombudsmen from different countries have become increasingly common and focus more than was earlier the case on examining certain key questions of fundamental and human rights. That is the case at, for example, meetings between Ombudsmen from the Council of Europe and European Union countries. Strengthening of the human rights dimension in the European Union and the planned Human Rights Agency will further strengthen international oversight of respect for fundamental and human rights.

#### OTHER ACTIVITIES

### **Presentations**

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

### **Information**

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, www.ombudsman.fi* and *www.ombudsman.fi/english* 

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 is available in Finnish, Swedish, Sámi, English, German, French, Estonian and Russian. It has been widely distributed to various authorities and institutions of learning.

The brochure is on the web site in Finnish and Swedish sign language in addition to the abovementioned printed language versions. 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 314 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.

A major event during the year was the eighth International Conference of the International Ombudsman Institute in Québec, Canada in September 2004. Ombudsman Paunio was elected to the Board of Directors of the Institute at the Conference.

Ombudsman Paunio attended the seminar Kontrollmakten och JO inför framtiden, on the subject of oversight and Ombudsmen, in Stockholm and a meeting in Vienna of leaders of the International Ombudsman Institute's European region. Deputy-Ombudsman Rautio attended a meeting in Warsaw of Ombudsmen from the Baltic Sea region.

Cooperation between the overseers of legality in Estonia and Finland continued in 2004 with a visit by referendaries from the office of the Estonian Chancellor of Justice. While in Finland, they accompanied Deputy-Ombudsman Rautio on one of his on-site prison inspections.

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

### Office

At the end of 2004 the staff of the Office of the Parliamentary Ombudsman comprised the Secretary General, five legal advisers and twenty 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, two filing clerks and eight office secretaries.

# Central sectors of oversight of legality

### **SOCIAL SECURITY**

Section 19 of the Constitution requires the public authorities to augrantee for everyone, as provided in more detail by an Act, adequate social services. This provision also guarantees everyone the right to the indispensable subsistence and care necessary for a life of dignity. The issue raised in complaints concerning social security relates to the implementation of these rights in social welfare services and income support provided by local authorities. Income support is a subsidy of last resort and everyone who is unable to earn a livelihood through paid unemployment, enterprise, other benefits to safeguard livelihood or in any other way is entitled to it. Social services are a central welfare service which nearly everyone needs at some stage or other in the course of his or her life.

During the year under review, as in earlier years, the biggest category of complaints concerning social security related to income support, protection of children and services for the handicapped. There were only a few each of complaints concerning other social services such as children's day care, home help services, institutional care and housing services as well as allowances for caring for relatives.

The expeditiousness with which a matter is dealt with is an important factor in the light of both good administration and the client's legal security. The Administrative Procedures Act that entered into force at the beginning of 2004 requires that all matters be dealt with without delay. The Income Support Act emphasises that especially income support matters must be dealt with without delay, but does not specify a time limit. However, when the Act was passed, the *Eduskunta* stipulated that the Ministry of Social Affairs and Health conduct monitoring to ensure that the

time required to process applications for income support be brought down to one week.

During the year under review, the Ombudsman dealt with numerous complaints concerning delay in processing applications for income support. She stated in her decisions on these complaints (e.g. case no. 1147/4/03) that income support is a key cash benefit, which safeguards the constitutionally guaranteed right to indispensable subsistence and care. Therefore the starting point for processing without delay can be regarded as being that processing of an application begins not later than one week after it has arrived.

The Act and Decree on the services and support measures that must be provided on the basis of disability require local authorities to arrange reasonable transport services together with the associated escort services for severely handicapped persons. Transport services must be arranged in such a way that a person is able to make, in addition to essential trips associated with work and study, at least eighteen one-way trips per month for purposes of shopping, recreation and other aspects of everyday life.

Several complaints contained criticism of the way transport services for severely handicapped persons were arranged through journey combination centres or hubs. The complaints related to especially the transport service experiment launched by the City of Helsinki in 2002. Trips had earlier been arranged by reimbursing persons for the costs they had incurred using taxis and other modes of transport. In the view of the complainants, the availability of transport had been considerably lessened with the introduction of the new system. The Ombudsman pointed out that a severely handicapped person has a subjective right to receive the transport services provided for in the

relevant legislation. However, a local authority does not have a statutory obligation to provide transport services for a severely handicapped person solely in the form of separate services if it is able to arrange services in another way, e.g. as joint transport services, by using service lines or by routing trips through hubs.

The Ombudsman also investigated several complaints in which the inadequacy of numbers of care and pedagogical staff in day care centres in Helsinki was highlighted. Also criticised in the complaints was the Helsinki social welfare department's monitorina and statistical reporting of staff strengths. The Ombudsman took the view that the social welfare centre operational method, in accordance with which children had been admitted to area day care centres systematically using a 105 per cent capacity utilisation rate, had not been in accordance with the provisions of the Day Care Decree concerning numbers of care and pedagogical staff. Nor, in the Ombudsman's view, had the statistical and monitoring method employed by the Helsinki social welfare department with respect to numbers of care and pedagogical staff, which was based on retrospective monthly day-care-centre-specific figures, given a sufficiently precise picture and information on the day-to-day fluctuation in implementation of the ratio between children and care and pedagogical staffs (case no.1147/4/03).

The Ombudsman recommended to the Government that the legislation be explicated with respect to the level of staff strength. In her view, the provisions concerning the level of staff strength at day care centres should be so clear and precise that it cannot jeopardise the adequacy of skilled care and pedagogical staff. The Ministry of Social Affairs and Health informed the Ombudsman in its reply that work to revise the legislation concerning children's day care had been commenced at the Ministry. The first phase of this work will be an explication of the day care staffing level referred to in the Ombudsman's recommendation.

#### **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, reimbursement of medicine costs, 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. There were additionally some complaints concerning compensation matters under the Military Injuries Act. The number of complaints relating to determination of social security for Finnish citizens resident abroad and persons moving to Finland was also greater during the year under review than in earlier years.

Complaints in relation to social insurance matters often concerned the procedure followed and in general the requirements of good administration and exercise of law. Many complaints concerned delays in processing applications for benefits, the scanty reasons presented in support of decisions, shortcomings in carefulness and service as well as other questions with a bearing on legal security. Another theme of criticism was that the complainant had not received a benefit to which he or she felt entitled, or that the benefit granted had been too small.

The Ombudsman drew attention in several of her decisions to the long times required to process matters. Slowness in the Social Insurance Institution's offices in growth centres featured especially prominently in complaints. This problem has also been highlighted in the media. Since the situation

seemed to be worsening somewhat, the Ombudsman took the matter under investigation on her own initiative (case no. 2017/2/03). She stated in her decision that processing times in the Insurance Court are so long that in her view this constitutes a problem of legal security. The average processing time in 2004 was 13 months. The Ombudsman took the view that especially in social insurance matters processing should be expeditious. They often involve the granting of a benefit on the basis of some or other illness. defect or injury, in addition to which decisions are of great financial importance to the persons who have applied for benefits. Another subject of criticism was that only scanty reasons were presented in support of decisions as well as that they were unclear and difficult to understand.

### **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.

Some examples of the health-care-related cases examined during the year under review:

### PROSECUTION AGAINST A SPECIALIST DENTIST

Ombudsman Paunio ordered a State prosecutor to bring a charge against a dentist specialising in oral surgery at the Vaasa Central Hospital in north-west Finland because the dentist had extracted all of the teeth of a legally incompetent patient without having consulted the patient's legal representative or next-of-kin and without having obtained the consent of such a person. Taking the nature of the dentist's action into account, merely issuing a reprimand would not, in the Ombudsman's view, be a sufficient measure in the matter. For a patient, having all teeth extracted meant an irreversible procedure.

The referral document, which had been drafted at a State psychiatric hospital, indicated that the patient's illness was very serious. On the basis of this information, there were grounds to suspect that the disturbed nature of the patient's mental health precluded the ability to make a decision concerning dental treatment. According to the information included in the referral document, the patient's teeth were severely affected by caries. The document also revealed that the patient had refused absolutely to have a local anaesthetic or to visit a dentist. The specialist dentist was aware that the patient's teeth would have to be examined and treated under a general anaesthetic, which would be necessary also in the expressed opinion of the referring physician. The specialist dentist was also aware that it would not be possible to take an X-ray of the patient's teeth before a general anaesthetic was administered nor even while the patient was under anaesthesia.

In the view of the Ombudsman, the specialist dentist should have known on the basis of the referral document that he would have to make an important decision concerning the patient's dental treatment. Therefore, before commencing treatment, or at the latest during the treatment, he should have consulted the patient's legal representative, next-of-kin or other close person in the manner required under Sections 6.2 and 6.3 of the Act on the Status and Rights of Patients and obtained the consent of such a person to extract the teeth.

Thus what was essential was that before making an important decision on treatment, in other words before extracting all of the patient's teeth, the specialist dentist should have consulted the patient's guardian or next-of-kin, in the manner required by Section 6.2 of the Act on the Status and Rights of Patients, in order to ascertain what kind of treatment would correspond best to the patient's wishes. Likewise of essential relevance was the fact that the specialist dentist had extracted all of the patient's teeth without the consent of the patient's guardian or next-of-kin as Section 6.3 of the Act on the Status and Rights of Patients requires in a case like this.

The Vaasa District Court found the specialist dentist guilty of negligence in the discharge of his official duty and sentenced him to a caution. It also ordered the Vaasa district health board to pay the legally incompetent patient compensation for pain and suffering, a permanent injury and permanent cosmetic defect. The sentence was not appealed and has acquired the force of law.

Case no. 2447/2/04

### ILLEGAL GUIDELINE ON MEDICAL AIDS

The Ombudsman investigated a complaint criticising the social welfare and health authorities in Helsinki's neighbouring city of Espoo for having refused to provide an article for use in medical rehabilitation.

A doctor at a health centre had diagnosed the complainant as suffering from a disease called *Alopecia universalis* (a complete loss of body hair) and recommended a wig as an aid to medical rehabilitation. However, the complainant was not granted the wig, because she did not meet the preconditions stipulated in the city's guidelines on the granting of aids of this kind. According to the guidelines, a wig could be granted as an aid to medical rehabilitation only to persons under 18. The city had excluded persons over 18 also from access to other medical rehabilitation services besides the provision of wigs.

The first paragraph of Section 6 of the Constitution states that everyone is equal before the law. The second paragraph states that no one shall, without an acceptable reason, be treated differently from other persons on the ground of, for example, age or health. This anti-discrimination provision does not prohibit all forms of distinguishing between people, even when the distinction is made on the basis of a reason specifically mentioned in the anti-discrimination. provision. What is of essential relevance is whether the distinction can be justified in a manner that is acceptable from the perspective of the system of fundamental rights. However, the demands that must be met in order for a distinction to be justified are high, especially with respect to the reasons for discrimination prohibited by the provision.

Thus health services must be provided in such a way that no one is treated differently from others on a ground such as age, unless there is an acceptable reason for doing so. Section 3 of the Act on the Status and Rights of Patients likewise guarantees the right, without discrimination, to the health and medical care a person's state of health requires.

The reason presented by the City of Espoo for setting an age criterion for wigs and factory-made special footwear was that persons aged over 18 are in a better position to prioritise the ways in which they spend their own income. In the view of the Ombudsman, this is not an acceptable justification for unequal treatment from the perspective of fundamental and human rights. The Ombudsman explained her view by pointing out that a patient's right to the medical services provided by the local authority and therefore also to medical rehabilitation services is not, under the legislation currently in force, dependent on the patient's disposable income nor the wealth that he or she possesses. By contrast, the determining factor in relation to receiving these services is the medically demonstrated need for health care and medical treatment which the patient's state of health presupposes.

Prohibiting discrimination in treatment-related decisions is a centrally important question of fairness in health care and has a bearing on the implementation of fundamental rights. In the view

of the Ombudsman, no prioritisation other than in relation to the illness, the need for treatment and the effectiveness of treatment is legal in individual decisions concerning treatment.

Thus the City of Espoo had not presented the acceptable reason required by Section 6.2 of the Constitution when it included the age criterion in its guidelines on the provision of medical aids. Therefore, in the view of the Ombudsman, it was in breach of the constitutional provision prohibiting age discrimination. She informed the city of her view that its guidelines on auxiliary medical equipment were illegal and requested that she be notified by 31.3.2005 of what measures had been taken in response to her view.

The city announced that it had removed the age limit with respect to wigs and factory-made special footwear. The principles enshrined in the new guidelines are equality of persons needing medical aids and non-discrimination against them as users of this equipment as well as consideration of their individual need for such articles.

Case no. 45/4/03

### **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.

Finland's first Children's Ombudsman will begin work at the beginning of September 2005. The incumbent's tasks will be to promote realisation of children's interests and rights. However, the Children's Ombudsman will not deal with individual cases. When the legislation establishing the new post was being enacted, the assessment was that the activities of the new authority would not affect the Parliamentary Ombudsman's duties in the sector of oversight of implementation of children's rights.

In addition to investigating individual complaints, the Ombudsman has also, on her own initiative, examined some fairly broad issues with a bearing on children and carried out on-site inspections. 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 *inter* alia this matter that she had begun in 2002. On the basis of her observations during these inspections, she noted in a decision dated 30.12.2004 (case no. 2059/2/03) that the law obliges local authorities to arrange conciliation or advisory services for families to lessen conflicts between parents. By providing services at the right time, the authorities are, in the view of the Ombudsman, taking the best interests of the child into consideration as Article 3 of the Convention on the Rights of the Child requires. On the basis of the inspections, however, it appears that these services are not sufficiently available in all municipalities or that parents were having to wait too long for conciliation or advice. The Ombudsman also observed that the services had been arranged in widely varying ways in different municipalities, with the result that practices with respect to such matters as secrecy differed from municipality to municipality. The Ombudsman also drew the social welfare authorities' attention to good administrative procedure in cases where parents have been in conciliation or received counselling. In her view, special attention should be paid in later measures involving the same parents to the requirements of non-discrimination and impartiality (Section 21 of the Constitution).

It is fairly established practice for courts to order supervision of meetings between children and parents, especially in situations in which one parent fears that the child's safety might be threatened during visitations with the other parent, although there are no specific legal provisions regulating this matter. A second matter that the Ombudsman studied during her visits to local authority social affairs offices was the preparedness of municipalities to arrange supervision of meetings between children and parents. It emerged 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 be provided.

The Ombudsman recommended to the Government on 30.11.2004 that it examine whether implementation of children's and parents' fundamental and human rights could be promoted by legislating for a right to have outside supervision in certain situations where meetings take place between a child and a parent (case no. 2752/2/04). The Ministry of Social Affairs and Health informed the Ombudsman in March 2005 that, as a consequence of her letter, an examination of the need to develop legislation had been commenced.

Studies suggest 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 fundamental and human rights in Finland, considering *inter alia* Article 19 of the Convention on the Rights of the Child, Section 7 of the Constitution as well as the right of children, as especially vulnerable individuals, to special protection as indicated in Section 6.3 of the Constitution.

During the year under review, the Ombudsman continued a project, which she had launched on her own initiative, with the aim of studying the measures taken by the local authorities to prevent, investigate and deal with family violence against children and sexual abuse of them. She examined this as a third matter during her inspection visits to municipal social affairs and health authorities. In the same context, she gave attention to cooperation between social affairs, police and health authorities. She also requested, on 30.6.2004, all Provincial State Offices to report on the powers available to the health authorities in their areas in situations where a child was suspected of having become a victim of violence within the family: this report was to be based on an investigation of inter alia the operational guidelines issued to various units and their preparedness for cooperation with especially the police and social welfare authorities. The

Provincial State Offices' reports and submissions were supplied to the Ombudsman by January 2005. The project is continuing in 2005 as a collaboration between Ombudsman Paunio and Deputy-Ombudsman Rautio.

#### **POLICE**

Complaints concerning the police are one of the biggest categories. During the year under review 424 complaints relating to police actions were resolved, roughly the same number as in the previous year (411). 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 a few 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. About 25% of the decisions made during the year under review led to measures being taken. In six cases the measure was a reprimand.

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 with 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 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 an investigation had been wrong or the length of time taken to complete it 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 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 criminal investigation. As such, this is justified from the Ombudsman's perspective.

### Own initiatives and inspections

In addition to dealing with complaints, the Ombudsman each year takes up a number of policerelated cases for investigation on her own initiative. Also on-site inspections are an important part of oversight of legality.

During the year under review, Deputy-Ombudsman Rautio inspected the Ministry of the Interior's Police Department and five small/medium police stations. He also inspected two national units of the police force, i.e. the National Bureau of Investigation and the Security Police, the concentration in both cases being on *inter alia* undercover operations, coercive measures affecting telecommunications and internal oversight. In addition, the way in which aliens' affairs are handled in the Lappeenranta (eastern Finland) and Helsinki police districts was examined.

Inspections are not of a surprise nature, but are instead prepared for 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 the Deputy-Ombudsman's 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.

### Debate on oversight of the police

Oversight of legality with the police as its focus was the subject of quite a lively public discourse during the year under review. This was fuelled by especially suspicions that some officials in the police administration had committed criminal offences involving the use of telecommunications data. An issue particularly highlighted was the effectiveness of present-day oversight of the Security Police and a possible need to revise it. Attention to this was also drawn by the official appointed by the Ministry of the Interior to investigate the matter, Deputy Chancellor of Justice Jaakko Jonkka, in his report published in November 2004. The title of the report in Finnish translates as "The Police Management System and Internal Oversight of Legality". The report also contains broader appraisals of the need to develop internal oversight of the police. In the assessment of Deputy Chancellor Jonkka, oversight of legality has not been accorded high priority within the police force, and it is easy to concur with that view. Efforts to improve the situation were made already during the vear under review, but it remains to be seen what the effect of the measures will be.

The following are a few examples of police-related matters investigated during the year under review:

## PROSECUTION FOR NEGLECT TO MONITOR A PERSON TAKEN INTO CLISTODY

A complaint was made to the Ombudsman by a person whose son had died in a police cell where persons under the influence of intoxicants are detained and was dead for nearly 12 hours before what had happened was noticed. A criminal investigation of the matter was conducted on Deputy-Ombudsman Rautio's orders.

Deputy-Ombudsman Rautio pointed out that the police must ensure the safety of persons who have been deprived of their liberty and are in their custody. Since the reason for taking intoxicated persons into custody is that they are not capable of looking after themselves, the importance of action by the authorities on their own initiative is accentuated. In the final analysis, what is involved is the authorities' duty to actively safeguard the implementation of fundamental and human rights, in this case the right to life and personal safety.

The legislation concerning the treatment of intoxicated persons states that "while in custody, an intoxicated person must be checked as opportunities permit. To the extent possible, he or she must be given the care and other treatment that his or her degree of intoxication and state of health require." Thus the law does not specify how often personnel should go and check a person detained in a cell nor otherwise carry out monitoring, nor how monitoring should be conducted.

Although the regulations are loose and to some degree subject to interpretation, even in them one can find limits as to what kind of monitoring and care is in accordance with official duties and what, on the other hand, is in violation of them. In the view of the Deputy-Ombudsman, inspection directly includes paying sufficient attention to whether a person taken into custody is moving at all; this includes checking to see if, for example, the rib cage is rising and falling.

#### Consideration of prosecution

In the case of the guard who had been on duty during the first shift, the Deputy-Ombudsman concluded that the material gathered during the criminal investigation showed that he had not paid any or at least not sufficient attention to lack of movement for at least six hours on the part of the complainant's son, even though, taking his other duties and the help available into account, he undeniably had the opportunity to do so. Thus he had neglected his official duty as a guard. In the view of the Deputy-Ombudsman – taking *inter alia* the provisions of the Constitution into consideration – the most important task of a guard at a place where intoxicated persons are in custody is to ensure that no danger is caused to the health or life of these detainees. In the fnal analysis, what is involved in monitoring and inspecting intoxicated persons in custody is their important interest, the right to life and personal safety as a part of their fundamental and human rights.

In the case of the guard who had been on duty during the second shift, the Deputy-Ombudsman noted that for four hours he had not paid attention to a complete lack of movement on the part of the complainant's son. In the view of the Deputy-Ombudsman, this did not meet the level of monitoring that can be considered appropriate. The other persons who had arrived to be kept in custody during the guard's shift had not kept him so busy that his ability to carry out appropriate monitoring would have been lessened. The starting point in appraising the action of the latter guard could not be that, due to the other persons who had to be kept in custody, his duty to check a person in a cell could somehow be regarded as less than normal or that it would lessen the intensity of observation called for.

Deputy-Ombudsman Rautio concluded that both guards had through carelessness failed to fulfil their official duties. He requested the Prosecutor-General to take measures to have the guards charged with neglecting their official duties. The case has not yet come before a court.

Case no. 3491/2/04

#### THE POLICE AND PUBLICITY

Issues of publicity have featured more and more often in complaints in recent years. What is sometimes involved is a very difficult balancing act between implementing the principle of publicity as broadly as possible and protecting an investigation and the parties involved.

Deputy-Ombudsman Rautio considered the National Bureau of Investigation's provision of information problematic in a case where it had published a bulletin in which it was stated that a suspect had committed several grave sexual offences. The bulletin gave the impression that the person suspected of the crime had undoubtedly acted in the way described in the bulletin ("The man in custody has sought --- the man has steered the conversation to sex and sexual fantasies --- the man has coerced them into it by using threats"). It is true that in the beginning of the bulletin it was stated that the man in custody was suspected of inter alia the crimes mentioned in the bulletin. However, the descriptions mentioned had been written in a way that led the reader to believe that with respect to them the police already had indisputable information on the deed committed. The bulletin conveyed the picture that the suspect had confessed to the crimes or that it had otherwise been established with complete certainty that he had committed them

Deputy-Ombudsman Rautio pointed out that in the provision of information it would not have been essential to describe the cases as having definitely been solved; instead, the police's view of the manner in which the crimes had been committed could have been mediated with appropriate cautionary mentions that what was involved was only suspicions. The bulletin could also have included mention of the facts underlying the information, such as what the suspect had admitted and what the parties involved had said. if this had been necessary to convey the degree of uncertainty of the information. In support of his view the Deputy-Ombudsman cited, e.g., the presumption of innocence which the European Human Rights Convention requires. However, since the suspect's name was not mentioned in the bulletin and the wording of the Act left scope for interpretation in its

application, the bulletin could not be deemed illegal. The Deputy-Ombudsman drew the attention of the National Bureau of Investigation to his views on the provision of information as outlined in the foregoing.

Case nos. 258/4/02 and 1913/4/02

In another case, Deputy-Ombudsman Rautio pointed out that although stating the gender, name and age of a suspect does not generally lead, at least in the Helsinki metropolitan region, to disclosure of a suspect's identity in the criminal investigation stage, it is nevertheless always advisable to consider carefully what information is provided. In a case investigated by the Deputy-Ombudsman, a combination of the items of information supplied to the press could, due to certain of its special features, provide quite a lot of clues as to the identity of the suspect.

In the view of the Deputy-Ombudsman, information concerning a suspect must not be provided in such a way that because of its detailed nature or otherwise the identity of the suspect is in practice revealed. Even quite scanty information can reveal a suspect's identity to at least his or her immediate circles. It is also probable that when friends or relatives become aware of the name of a suspect, unnecessary inconvenience or harm can easily be caused. Sometimes a combination of items of information that are in and of themselves "harmless" can lead to the unwarranted disclosure of a suspect's identity. The suspect can then find him- or herself linked to a crime, in a way that is problematic from the perspective of presumption of innocence, in the media (or immediate circle of friends and relatives) even though the criminal investigation in question may still have reached only a quite early stage.

Case nos. 461/4/02 and 541/4/02

#### **PRISONS**

The number of complaints from prisoners has remained on an exceptionally high level for several years. This trend continued during the year under review, when 278 complaints were received. As recently as the late 1990s the annual total had been only half as large.

Decisions were announced in 208 complaint cases last year. The number of decisions that led to measures was 47. The number of complaints in which decisions were made and the ratio between this and the number that led to measures remained approximately the same as in the previous year. However, the matters that led to measures being taken often involved quite trivial procedural errors or matters in relation to which Deputy-Ombudsman Rautio 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. One case led to a reprimand being issued.

The complaints in relation to which decisions were announced concerned a very wide variety of matters. Nevertheless, the range of themes remains quite stable from year to year. The complaints made by prisoners during the year under review concerned inter alia the procedures followed in employing coercive measures and security measures or enforcing discipline, the behaviour of staff, inmates' conditions in prisons, such as living conditions, clothing and possession of property, prisoners' opportunities to maintain contact with the world outside the penal institutions, such as leave passes, correspondence, the use of the telephone and so on, as well as opportunities to have a family meeting. Some complaints concerned transfers to an open institution or the cancellation of transfers to one, or transfers from one institution to another. Dissatisfaction with health services in prisons was expressed quite often. A few decisions concerned procedures followed by the Probation Service. Prisoners also complained about procedures followed by authorities other than the prison service. However, most complaints concerned the convicted person's punishment or the way in which the matter had been dealt with during the criminal investigation or in the court.

### **Inspections**

A central task in the Ombudsman's oversight of legality is the conduct of on-site inspections in especially closed institutions, such as prisons. These inspections are regular and conducted in accordance with an annual schedule. The sites to be inspected are notified well in advance of a visit.

During the year under review, Deputy-Ombudsman Rautio inspected six closed prisons, one open prison department and one labour camp as well as a prison psychiatric hospital. During these inspections. special attention was paid to the prison premises and their conditions, 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 in the institutions and possible discrimination. The matters brought up in discussions with prison managements were investigation of offences of which prisoners were suspected, the practice followed with respect to authority to use coercive measures as well as monitoring of the health of prisoners in solitary confinement.

The effects of prison overcrowding on the conditions in which prisoners live as well as on opportunities to accommodate activities were also discussed. Prisoners sometimes have to wait long periods to take part in activities. It is not even possible to arrange work or activities for all who wish to take part in them. This is partly due to understaffing. In one prison there were even plans to go over to a "night mode" if the number of staff available fell below a certain minimum level. Under this plan, activities for prisoners would be cut back and the staff on duty would take care of only statutory basic functions and essential transports.

It was revealed in the course of inspections that a large number – hundreds – of prison sentences for non-payment of fines were awaiting implementation because the relevant computer software at the Legal Register Centre, which handles data on penalties, had malfunctioned. When this backlog is cleared, there will be a considerable increase in

the prison population. The prisons inspected had made preparations in varying ways to accommodate prisoners incarcerated for non-payment of fines in already congested premises. A concern raised, however, concerned the special requirements stemming from the general condition of these prisoners, the result of such factors as a background of alcohol and drug abuse, given that staffing levels are already too low relative to the increased prison population. As a result, personnel were concerned about both security in the institutions and their own safety. There was a serious escape incident during the year under review, involving the death of one prison warder and serious injury to a teacher who was a member of staff.

A central feature of inspections is that prisoners are given the opportunity to have a personal conversation with the Deputy-Ombudsman. A total of 118 prisoners (71 in 2003) availed themselves of this opportunity during the year under review. Matters of concern to prisoners could generally be dealt with already in the course of an inspection. However, prisoners also submitted around ten written complaints, which were taken separately under investigation. The matters brought up by prisoners in the course of inspections mainly included the same themes as those featuring in prisoners' complaints in general, although criticism of prison conditions tend to be accentuated.

Some examples of prison-related matters in which decisions were issued during the year under review:

# RESTRICTIONS ON THERAPY SESSIONS

An inmate of Turku Prison, nowadays renamed South-West Finland Prison, criticised the then governor of the prison for having limited the number of couples therapy sessions that he and his wife were allowed to attend to only two.

The Governor cited a danger to order and security in the institution as justification for his decision. By this he meant *inter alia* that visits at which actual supervisory personnel were not present facilitated

various abuses, such as attempts to smuggle drugs and weapons. He also pointed out that the events had not been arranged by a doctor or a psychiatrist, but by a prison psychologist. Nor did he believe that what was involved was the good health care and medical treatment that the law requires. He was of the opinion that the psychologist should, at the very least, have shown him the patient's records if he believed that what was involved was a health care measure.

Deputy-Ombudsman Rautio concurred with the view of a senior physician from the Prison Service that the visits by the complainant and his wife to the psychologist did constitute treatment to be classed as therapy, and decisions on this matter were within the psychologist's authority. The couples therapy provided at the sessions with the psychologist must be regarded as health care as defined in the Act on Health Care Professionals and the Act on the Status and Rights of Patients, and whether this care is needed is decided by a psychologist or a doctor, not by a prison governor. In the view of the Deputy-Ombudsman, there was nothing in the case to indicate that therapy was unnecessary.

Section 13 of the Act on the Status and Rights of Patients prohibits the provision to outsiders of information contained in documents concerning a patient without the patient's written consent. In this case, the prison governor must be regarded as an outsider. That a person should consent to his or her medical records being shown to an outsider must not be made a precondition for being allowed to receive care or treatment. In this respect, the stance adopted by the governor in his report was, in the view of the Deputy-Ombudsman, legally unfounded and erroneous.

A prison governor is responsible for ensuring that prisoners and the premises used by prisoners are supervised in the way that order in the prison institution, keeping prisoners there and ensuring prisoners' safety require. In the view of the Deputy-Ombudsman, a governor can therefore influence the arrangement of therapy sessions to the extent that it is necessary and justified in order to guarantee order and security in the institution.

The Deputy-Ombudsman agreed with the opinion of the Criminal Sanctions Agency that a prison governor can prevent the arrangement of therapy sessions only on the ground that there is evidence that a meeting between a prisoner and his wife/partner poses in some concrete way or other a threat to order and security in the institution and a meeting cannot be arranged under supervision because the parties concerned oppose this. Thus a prison governor cannot forbid couples therapy by invoking prison order and security in general terms. There was nothing in the report to indicate that increasing the number of therapy sessions would have jeopardised order and security in the institution in any concrete way.

When the matter is examined from the perspective of endangering order and security in the institution, a matter that must, in the view of the Deputy-Ombudsman, be taken into consideration is that regulations give an institution very extensive powers to inspect visitors. In this respect it was difficult to take the view that in this case increasing the number of sessions would have posed a concrete threat to order or security in the institution.

Deputy-Ombudsman Rautio issued a reprimand to the prison governor for having followed an illegal procedure. A factor that he had taken into account in assessing the blameworthiness of the procedure followed was that Deputy Chancellor of Justice Jaakko Jonkka had earlier, in a decision issued on 6.4.2000 for future reference, informed the governor of his view that the procedure had been erroneous.

Case no. 1459/4/02

## ACCOMMODATION OF ROMANY PRISONERS IN KONNUNSUO PRISON

Acting on his own initiative, Deputy-Ombudsman Rautio launched an investigation into why all Romany prisoners were accommodated in an isolation section of Konnunsuo prison. The prison authorities said this was based on the prisoners' own requests, which were prompted by pressure and violence on the part of other prisoners.

The Ministry of Justice's prison department had already drawn attention to the matter during an inspection in 2001. An attempt to solve the problem had also been made by a working group appointed by the Criminal Sanctions Agency. The working group recommended several measures to improve the conditions of Romany prisoners. The question of accommodating these prisoners had also been dealt with in the prison on several occasions. However, they had announced that they were not prepared to leave their section. The prison staff, for their part, had tried to intervene firmly when racist behaviour on the part of other prisoners had manifested itself. However, the problem was that this generally happened without staff noticing.

According to the prison, guaranteeing the safety of Romany prisoners would require additional supervisory staff in the accommodation sections and areas used for work and recreational activities as well as the division of the prison into sections. The Criminal Sanctions Agency had assessed that there were no possibilities of effecting a rapid improvement in the position of Romany prisoners. Owing to scarcity of funding, it had not been possible to increase the number of supervisory staff, but a basic renovation of the prison, albeit starting only in 2008, would probably facilitate the structural alterations needed to guarantee safety.

The Deputy-Ombudsman pointed out that Romany prisoners' opportunities to participate fully in all of the activities at the prison had been reduced by reason of their birth. He did not find the accommodation arrangement illegal, especially when the measures taken by the prison authorities to resolve the situation are taken into consideration. However, he informed the prison authorities of his opinion that they had an obligation to treat all prisoners impartially.

Case no. 713/2/03

## **FOREIGNERS**

The complaints included in the statistics as foreigners' affairs by the Office of the Parliamentary Ombudsman are mainly those relating to 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 Finnish 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.

Deputy-Ombudsman Rautio issued decisions in about 30 cases involving foreigners' affairs during the year under review. 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 few cases, the police were criticised for the way in which they had enforced deportation orders.

One complaint received by the Ombudsman involved the deportation of a pregnant woman. According to the complaint, the police endangered the life of the mother and her unborn child by subjecting them to a long air journey when the deportation was carried out. Since a quite recent doctor's certificate revealed that the pregnancy had proceeded normally and since no impediment to travel had been stated in the certificate, Deputy-Ombudsman Rautio found nothing illegal in the way the police in Jyväskylä (central Finland) had acted (case no. 2729/4/03).

A typical foreigners' complaint that cannot usually lead to measures on the part of the Ombudsman concerns such matters as a negative visa decision. The overseer of legality has also had hardly any possibility of intervening in asylum- and residence-permit-related decisions that have acquired the force

of law. Cases like this largely involve discretionary decisions. However, the Ombudsman has intervened in some aspects associated with handling of applications for both visas and residence permits and in some cases investigated the grounds on which visa applications have been denied.

The fact that during the year under review the Ombudsman received no complaints concerning the behaviour of or attitude problems on the part of the authorities dealing with foreigners can be regarded as indicating that the services provided by these authorities have developed positively.

# COURTS OF LAW AND JUDICIAL ADMINISTRATION

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 between 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.

The number of new court-related complaints received in 2004 was about 200.

Complaints often concerned delay in dealing with cases in courts. The delays were mostly due to district courts' large workloads.

There were also many complaints relating to conflicts of interest on the part of judges and more generally to impartiality in the exercise of the law. Complaints of this kind often relate to the behaviour of judges and the general treatment of clients. 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. Whether or not the parties to a case feel they have been given 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.

In addition, the Ombudsman received complaints relating to the publicity of trials and documents. Other subjects of complaints were the ways in which decisions were drafted and the reasons for them explained as well as the provision of information, notifications and summonses. There were also complaints relating to such matters as legal impediments and the right to be heard.

The Ombudsman's tasks also include inspections of courts. About ten inspections were conducted during the year under review.

# MILITARY MATTERS AND THE DEFENCE ADMINISTRATION

The Parliamentary Ombudsman Act requires the Ombudsman to monitor the treatment of especially conscripts and other persons serving in the Defence Forces as well as of peacekeeping personnel and to conduct inspections of various units belonging to the Defence Forces. Under legislation establishing the division of labour between the Chancellor of Justice and the Ombudsman, matters relating to the Defence Forces, the Frontier Guard and peacekeeping personnel as well as to courts martial are specifically within the Ombudsman's remit. In practice, the Ombudsman is the only instance outside the Defence Forces that oversees the rights of conscripts and other military personnel. Even in an international comparison defence forces and military organisations that are subject to independent external oversight are rare.

Complaints concerning matters in the military affairs category have been made to the Ombudsman by both regular personnel of the Defence Forces and Frontier Guard and conscripts, and sometimes by conscripts' parents. The threshold for making a complaint remains fairly high for conscripts and others doing military service. They often consider it advisable to wait until they are nearing the end of their time in the military or have already ended it before turning to the Ombudsman. However, complaints by conscripts have proved to be wellfounded more often than with complaints on average. Their complaints generally relate to the treatment accorded them or to disciplinary measures to which they have been subjected. A considerable proportion of complaints by conscripts concern medical care and especially the way sick conscripts are treated.

From time to time there have also been complaints of bullying in various forms. Traditions of bullying and mobbing mainly make their influence felt within conscripts' own circles, but the Ombudsman has underscored the responsibility for oversight that resides with regular personnel.

About 50 complaints concerning military matters were resolved during the year under review.

# **Inspections**

On-site inspections of military units are a central part of oversight of legality with soldiers as its focus. The aim in recent years has been to make these inspections more effective and frequent. Material ordered in advance from sites scheduled for inspection contains *inter alia* an explanation of the numbers of regular personnel and conscripts in the unit, decisions concerning disciplinary matters and damage as well as reports on duty arrangements and medical care for conscripts.

In conjunction with inspections it has been important that specifically conscripts are offered the opportunity to have a confidential discussion with the Deputy-Ombudsman. The same opportunity has been arranged for regular personnel as well. Discussions with conscripts have both a symbolic and a preventive significance.

Conversations with conscripts often touch on matters which the Ombudsman takes up with superiors belonging to the regular personnel in the final discussion together with the unit commander. Many problems of a fairly minor character can thus be taken care of. If matters of principle or serious shortcomings are involved, the Ombudsman launches a separate study or criminal investigation following the inspection.

In advance of inspections, the units' documentary records of disciplinary measures in the past few months are examined and the discipline-related statistics of inspected sites and defence regions are also reviewed.

## **GENERAL MUNICIPAL AFFAIRS**

## LOCAL-AUTHORITY SMOKING BANS MUST BE FOUNDED IN LAW

Deputy-Ombudsman Petri Jääskeläinen adopted a position on a decision by the social affairs and health committee of the municipality of Paltamo in northern Finland to ban smoking in the outdoor area of the health centre there as well as on its decision to prohibit persons employed at the health centre and in its immediate vicinity from smoking during working hours. In addition, he criticised the use of non-smoker status as a selection criterion in appointments.

# Smoking ban in the health centre's outdoor area

The Deputy-Ombudsman noted in his decision that smoking is as such a legal activity. It belongs in the sphere of the individual's free will and right of self-determination, which are safeguarded in the Constitution. Therefore smoking bans imposed by the public authorities must be founded in law. The smoking ban imposed by the social affairs and health committee in Paltamo was not founded in law insofar as it applied also to the outdoor areas surrounding the health centre and, as the Deputy-Ombudsman understood it, tobacco smoke can not penetrate from these areas into indoor spaces and there contravene the Tobacco Act, the Health Protection Act or the Occupational Safety and Health Act.

# Smoking by members of staff during meal and coffee breaks

Secondly, the Deputy-Ombudsman noted that a municipality can, as an employer, determine how, where and when work is to be done. By contrast, an employer cannot give an employee orders that have no relevance from the perspective of the conduct of the work.

The municipality of Paltamo's social affairs and health board invoked efficient use of working time and imposed a complete ban on its staff employed at the health centre and in its immediate vicinity from smoking during working hours. The ban also applied to the daily rest periods, i.e. meal and coffee breaks, which are included in working time, but not used effectively in any case.

In the conception of the Deputy-Ombudsman, banning smoking during rest periods which are to be counted as working time means that what the municipal employer has in actual fact determined, without a reason founded in law, is behaviour belonging to the sphere of the individual's right of self-determination and free will, and not effective use of working time. By contrast, the employer has the right to ban smoking breaks at times other than rest periods in the same way as other additional breaks can be prohibited.

# Non-smoker status as a selection criterion in recruitment

The Paltamo municipal board had additionally taken the view that non-smoker status could be used as one of the selection criteria when making appointments.

In the view of the Deputy-Ombudsman, whether or not a person is a smoker is one of the person-related reasons that are specified in the Non-Discrimination Act and which can be taken into consideration as a recruitment principle and in other situations of application of the Equality Act only in the event of the justification for unusual treatment being a real and decisive demand, of the kind specified in the Act, relating to the nature of job tasks and their performance. The Deputy-Ombudsman does not regard non-smoker status as being, in general, a demand of this kind even in the case of job tasks at a health centre. Correspondingly, neither can being a smoker generally be regarded as an item of personal information which, under the terms of legislation protecting privacy in working life, is to be deemed necessary from the perspective of the worker's employment relationship and which the employer may process and about which the employer can obtain a report.

#### Measures

Deputy-Ombudsman Jääskeläinen informed the Paltamo Municipal Board and the social affairs and health committee there of his view as outlined in the foregoing and requested the Municipal Board to inform him of what measures the positions outlined in his decision have made necessary. The Municipal Board subsequently announced that the decision of the social affairs and health committee referred to in the Deputy-Ombudsman's decision had been changed.

The Deputy-Ombudsman further pointed out that the issues dealt with in his decision may in individual cases and by way of the appeals procedure provided for in the Local Government Act be referred to administrative courts for resolution. In the light of the general significance of the matter, however, the Deputy-Ombudsman took the view that it would be important for smoking bans imposed by local authorities as well as the treatment of smokers as workers and job-applicants to be clearly regulated in law. Accordingly, he sent copies of his decision in the matter to the Ministry of Social Affairs and Health, the Ministry of Labour and the Ministry of the Interior.

The Deputy-Ombudsman emphasised that in his decision he was not adopting a position on the desirability of smoking bans from the perspective of health policy. What was involved in this case is that the public authorities can intervene in the individual's constitutionally protected sphere of freedom only when there is a legal foundation for doing so.

# **ANNEX 1**

# Statistical data on the Ombudsman's work

## MATTERS UNDER CONSIDERATION IN 2004

Oversight-of-legality cases under consideration			5,033
Cases in initiated in 2004		3,347	
- complaints to the Ombudsman	2,913		
- complaints transferred from the Chancellor of Justice	37		
- taken up on the Ombudsman's own initiative	52		
- submissions and attendances at hearings	28		
- other written communications	317		
Cases held over from 2003		1,193	
Cases held over from 2002		488	
Cases held over from 2001		5	
Cases resolved			3,286
Complaints		2,889	
Taken up on the Ombudsman's own initiative		54	
Submissions and attendances at hearings		29	
Other written communications		314	
Cases held over to the following year			1,747
From 2004		1,405	
From 2003		341	
From 2002		1	
Other matters under consideration			205
On-site inspections	79		
Administrative matters in the Office	126		

<sup>1</sup> Number of inspection days 50

## **OVERSIGHT OF PUBLIC AUTHORITIES IN 2004**

Complaint cases Social welfare authoritie - social welfare - social insurance Police	306 278	584 424	2,889
Health authorities Courts - civil and criminal - special - administrative	191 3 23	243 217	
Prison authorities Environment authorities Labour authorities Local-government authorities Tax authorities Distraint authorities Agriculture and forestry Education authorities Prosecutors Transport and communications authorities Military authorities Immigration authorities Customs authorities Highest organs of state Church authorities Other subjects of oversight		203 153 121 120 113 90 80 75 58 50 43 37 30 21 15 212	
Taken up on the Ombudsman's own initiative Police Social welfare authorities - social welfare	8 3	14 11	54
- social insurance Health authorities Prison authorities Military authorities Education authorities Highest organs of state Environment authorities Agriculture and forestry Prosecutors Courts - administrative Immigration authorities	3	10 5 4 2 2 2 1 1 1	

Total number of decisions 2,943

## MEASURES TAKEN BY THE OMBUDSMAN IN 2004

Complaints			2,889
Decisions leading to measures on the part of the Ombudsman		508	
- reprimands	35	300	
- opinions	443		
- recommendation	9		
- matters redressed in the course of investigation	21		
- maners redressed in the course of investigation	21		
No action taken, because		1,771	
- no incorrect procedure found to have been followed	723		
- no grounds to suspect incorrect procedure	1,048		
Communication and investigation that he converse		/10	
Complaint not investigated, because	99	610	
- matter not within Ombudsman's remit			
<ul> <li>still pending before a competent authority or possibility of appeal still open</li> </ul>	324		
- unspecified	56		
- transferred to Chancellor of Justice	16		
- transferred to Prosecutor-General	9		
- transferred to other authority	5		
- older than five years	43		
- inadmissible on other grounds	58		
Taken up on the ombudsman's own initiative			54
- prosecution	3		
- reprimand	2		
- opinion	18		
- recommendation	8		
- matters redressed in the course of investigation	3		
- no illegal or incorrect procedure established	8		
- no grounds to suspect incorrect procedure	10		
- termination of investigations	2		

## **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 onsite 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.



FI - 00102 Helsinki telephone +358 9 4321 telefax +358 9 432 2268 eoa-kirjaamo@eduskunta.fi http://www.ombudsman.fi