Parliamentary

Ombudsman

of Finland

Summary

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Annual

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TO THE READER

The undersigned served as the Parliamentary Ombudsman in 2005. I was first appointed to the position with effect from 1.1.2002 and on 1.12.2005 the Eduskunta re-elected me for a further four-year term, from 1.1.2006 to 31.12.2009.

The Deputy-Ombudsmen were Mr. Ilkka Rautio, LL.M., until 30.9.2005 and after him Mr. Jukka Lindstedt, Doctor of Laws, LL.M., who was elected to the post by the Eduskunta on 22.9.2005 for a four-year term, from 1.10.2005 to 30.9.2009, and Mr. Petri Jääskeläinen, Doctor of Laws, LL.M., who was re-elected by the Eduskunta on 28.2.2006 for a four-year term, from 1.4.2006 to 31.3.2010. Mr. Jääskeläinen has been a Deputy-Ombudsman since 1.4.2002.

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 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 2005.

Helsinki, 20 April 2006

Riitta-Leena Paunio
Parliamentary Ombudsman of Finland

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General comments

RIITTA-LEENA PAUNIO

SHOULD REDRESS BE AFFORDED FOR VIOLATIONS OF FUNDAMENTAL RIGHTS?

There is a perception that a liability on the part of the state authorities to make recompense for violation of human rights is an essential aspect of protecting these rights. Violations must be prevented where possible, they must be investigated, mistakes acknowledged and recompense for their consequences made on the national level.

This perception has been accentuated in recent years in interpretations reached by the European Court of Human Rights when applying the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The case law of the Court of Justice of the European Communities has also increased the significance of the state's liability to provide compensation.

In my view, recompense should also be made when fundamental rights are violated on the national level. Thus my reply to the question in the heading is in the affirmative. However, a question that is more difficult to answer is for which violations recompense should be made, how this could be done and could the Ombudsman, as an overseer of legality, have some kind of role in this. These are the questions that I shall examine in this comment.

As the Parliamentary Ombudsman, Riitta-Leena Paunio attends to cases dealing with the highest State organs, those of particular importance, and to cases dealing with social welfare, social security, health care, and children's rights.

Examples of delays in bringing cases to trial

Article 13 of the ECHR requires that everyone whose rights and freedoms as set forth in the ECHR are violated shall have an effective remedy before a national authority. The European Court of Justice has in recent years set stricter demands with respect to state actions than were made in the past.

Delays in trial procedures have featured prominently among cases before the European Court of Human Rights. National remedies have been appraised in exactly those cases, among others, when the Court has applied the provisions of Article 6 of the ECHR, which states: *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

The way in which this article has been interpreted in the case law of the European Court of Human Rights is that also many rights and obligations relating to administrative law are included in its scope of application.

In a judgment issued in 2000 (Kudla v. Poland) the European Court of Human Rights required for the first time that a national legal system provide effective domestic remedies in the event of cases not being brought to trial within a "reasonable time". It also pointed to this requirement in a judgment against Finland (Kangasluoma v. Finland).

The Supreme Court in Finland has in several of its judgments adopted a position on affording redress for delays in trial procedures. In one precedent-setting judgment (KKO 2005:73) it has stated that, as one of the effective remedies required by the ECHR, retroactive compensation is appropriate, because effective legal remedies to expedite trials are not available, and that compensation can be implemented by taking delay into account in the final outcome of the case. This can be done, according to the judgment, by mitigating the penalty, substituting a milder form of penalty, not imposing any penalty at all or sometimes dismissing charges.

Thus in criminal trials compensation can be effected by taking delay into account in a clear and measurable way in the final outcome of a case. In a civil case, by contrast, a court can not under the current national legal system reject a suit on the basis of the length of time that the proceedings have taken. I am not aware of the question of compensation for delay in proceedings having been dealt with in administrative law procedures.

Financial compensation based on Tort Liability Act is not a substitute for affording redress when fundamental rights are violated

Redress afforded by a court for a violation of the ECHR can also be in the form of financial compensation for a violation of a human right. The state's liability to provide compensation under our national legislation likewise means paying financial compensation.

However, the conditions precedent for redress on the basis of the ECHR do not include someone having caused damage deliberately or through negligence, but this is a requirement under our national Tort Liability Act. A further condition precedent not applying to redress on the basis of the ECHR, but included in our Tort Liability Act, is that in those cases where damage has been caused through the exercise of public power, compensation is made only if *"the performance of the activity or task, in view of its nature and purpose, has not met the reasonable requirements set for it"* (the so-called standard rule).

Compensation based on the ECHR covers both pecuniary and non-pecuniary consequences. By contrast, compensation under our national legislation covers primarily personal injury and damage to property. It provides for compensation to be paid for financial losses that are not associated with personal injury and damage to property only on very compelling grounds – when the damage has resulted from a punishable offence or been caused through the exercise of public power. Compensation for mental suffering can be paid only to a very limited degree.

Section 118 of the Constitution states that *"Everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public task shall have the right to request that the civil servant or other person in charge of a public task be sentenced to a punishment and that the public organisation, official or other person in charge of a public task be held liable for damages."* Thus also this provision requires that unlawful action or negligence be involved.

However, our national legislation does already contain some provisions concerning redress for violations of human rights. For example, compensation for deprivation of personal liberty is paid to an innocent person who has been held in detention or convicted. In these cases, compensation is paid for the costs and suffering caused by unjustified deprivation of liberty. The Non-Discrimination Act and the Equality Act also provide for the possibility of compensation when the prohibition on discrimination is violated. When allegations of discrimination of this kind are being dealt with, there is an inverse burden of proof.

Alongside delay in legal proceedings, there are also other violations for which redress should be made

Our national Constitution guarantees, as fundamental rights and liberties, the international human rights enshrined in the ECHR. However, our Constitution guarantees many rights of a fundamental character much more broadly than does the ECHR. In the cases of some rights it also provides better and more in-depth protection than, for example, the ECHR. The rights that it guarantees more comprehensively than the ECHR include the right to a fair trial and good administration.

One key factor in a fair trial is the expeditiousness with which a case is handled. But also expeditious administration is important from the perspective of implementing people's rights. Many questions of central importance in people's lives, essential subsistence and care, benefits to ensure basic subsistence, protection of private and family life, and so on are decided on in administrative procedures. In all of these and many other matters, it is of first-rate importance that administrative procedures are conducted without delay.

What is also important is that people have the right to have their case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to their rights or obligations.

Passivity in decision making on the part of the authorities leaves people without legal remedies. A key component of the fundamental right to legal remedies is that individuals can have their cases dealt with by authorities. Good administration includes also correct advice, appropriate presentation of the reasons for decisions, legal publicity of decision making, and so on.

Problems relating to implementation of the fundamental rights to legal remedies and good administration are an everyday aspect of the Ombudsman's oversight of legality. Violations of these rights and deficiencies and shortcomings in their implementation repeat themselves year after year. I am bringing them up in this context because they feature so centrally in the Ombudsman's oversight of legality. My example does not, however, mean that other fundamental rights and violations of them do not deserve the same degree of attention in this respect.

Safeguarding fundamental rights includes also redress for violations

I believe that only adequately effective legal remedies in the event of violations of fundamental rights can lead to effective results. One such means is financial compensation.

In my view, the obligation to protect fundamental rights and liberties that Section 22 of the Constitution imposes can well be regarded as including an obligation to provide compensation for violations of fundamental rights. The view taken in the legal literature has been that what this provision concerning the authorities' obligation to guarantee the observance of basic rights and liberties and human rights demands of the authorities is that they, through legislative measures, allocation of resources as well as legal interpretations amenable to fundamental and human rights, ensure that these rights are implemented in practice. My premise for adopting a position in the matter has always been that also adequate oversight is essential. I believe that affording redress for violations that have occurred is a natural extension of this.

As I see it, the Finnish system as presently constituted does not, however, provide an effective and comprehensive legal remedy in the form of redress for a violation of a fundamental right. I have emphasised in various connections that an official strategy covering all sectors of administration and aimed specifically at protecting human rights and carrying through the practical measures that this requires, is a prerequisite for active implementation of fundamental and human rights. There is no such strategy in Finland. As I see it, work to create one has just begun in Sweden. In our country, for example, the Ministry of Justice's legal policy strategy is, in keeping with its sector of administration, primarily concerned with the administration of justice and the enforcement of penalties.

An examination starting from the premise that redress should be afforded for violations of fundamental rights would suit a comprehensive strategy of this kind well. This would be exceptionally important for the reason of principle that the public authorities have a duty to implement fundamental rights. It would be important also because redress for violations of human rights is a significant factor in protecting these rights. If it is not possible to receive redress of this kind on the national level, it must be sought at international fora. That can not lie in anyone's interests.

The means available to the Ombudsman in a situation where a fundamental right has been violated are a prosecution for misfeasance or malfeasance in the discharge of a public duty, a reprimand, the issuing of an opinion for guidance or a proposal. A prosecution involves implementation of officials' obligation to perform their duties. The aim in issuing a reprimand or an opinion for guidance is to develop official actions in such a way that fundamental rights are taken more carefully into consideration in the future. A proposal, in turn, is intended to redress gaps and deficiencies in legislation. It is also possible for the Ombudsman to propose that a decision or sentence be quashed. By contrast, the view has been taken that the Ombudsman does not adopt a position on any liability for recompense nor order that compensation be paid. It is true that some proposals that compensation be paid have been made in the course of the decades and these have even led to very good outcomes from the point of view of those who have complained to the Ombudsman.

As the implementation of fundamental and human rights has assumed an even more accentuated role in the Ombudsman's tasks since the relevant provisions of our Constitution were revised, I believe there is justification for the Ombudsman being able, within the framework of this task, to make recommendations or proposals that redress be afforded for violations of fundamental rights. The expression by the Ombudsman of an opinion for guidance or some other form of rebuke and an official apology are not always enough. The authorities should also be prepared to pay financial compensation for a violation of a fundamental right.

PETRI JÄÄSKELÄINEN

LEGAL SECURITY OF PERSONS WHOSE INTERESTS ARE BEING PROTECTED BY GUARDIANSHIP SERVICES

The duties of Petri Jääskeläinen include attending to cases concerning courts of law, prisons, enforcement, protection of interests, municipal and environmental authorities, and taxation.

Alongside general oversight of legality and monitoring implementation of the fundamental and human rights of everyone, the legislator has given the Ombudsman the special task of monitoring the rights and treatment of certain groups of people. Under the Parliamentary Ombudsman Act, he or she has the special task of conducting inspections in prisons and other closed institutions as well as in various units of the Defence Forces in order to monitor the treatment of inmates and conscripts. These persons subject to so-called institutional power are *a priori* in a weaker position than people in general to protect their own rights and ensure that they are well treated.

The opportunities available to others to monitor activities in closed institutions or units are likewise limited. For these reasons, the need for outside independent control is especially accentuated. Therefore the special task that the legislator has assigned to the Ombudsman is well founded. However, there are several other groups in society whose legal security is, for a variety of reasons, vulnerable. Therefore I shall focus on one such group that I have observed to be receiving little attention, namely persons whose interests are being protected by guardianship services.

What is involved in protection of interests?

The objective of guardianship services is to look after the rights and interests of persons who cannot themselves take care of their affairs owing to incompetency, illness, absence or another reason. The custodians of a minor are usually his or her guardians. If a minor is without a guardian or if an adult is incapable, owing to illness or another comparable reason, of taking care of his- or herself or managing his or her financial affairs, a court can appoint a guardian.

A guardian can also be appointed to take care of a one-off matter, for example a certain task or some or other contractual transaction. My main attention in this comment is on cases where a guardian has been appointed until further notice.

If an adult is incapable of managing his or her financial affairs and his or her important interests are for this reason in jeopardy, a court can limit his or her competency, for example by ruling that he or she is incompetent to perform certain contractual transactions or not entitled to administer certain of his or her assets. If these measures are not sufficient to safeguard the person's interests, a court can declare him or her legally incompetent. The appointment

of a guardian does not normally prevent the ward from administering his or her assets or performing contractual transactions; instead, the guardian has the task of supporting the ward and taking care of this person's affairs in agreement with him or her.

A guardian generally has eligibility to represent his or her ward in contractual transactions relating to the ward's assets and financial affairs. However, a guardian must not, for example, give away the ward's assets and for certain important contractual transactions, such as alienating real estate, a guardian must obtain the permission of a guardianship authority, i.e. a district administrative court. In the management of financial affairs the guardian must conscientiously look after the ward's rights and promote his or her best interests.

A guardian appointed for an adult has a duty to ensure that the ward is provided with the treatment, care and therapy that are to be deemed appropriate in view of the ward's need of care and other circumstances, as well as the ward's wishes.

A key principle enshrined in the Guardianship Services Act is respect for human dignity. This means that when a decision is made to protect an incompetent person through measures provided for in the Act, the point of departure must be the inviolability of that person's fundamental and human rights. The ward's interests and safeguarding his or her opportunity to participate in decision making concerning him or her are of paramount importance. Therefore the wards' own eligibility to act and right of self-determination may not be limited more than protection of their interests requires.

On the other hand, it is precisely guardianship that safeguards implementation of the ward's fundamental and human rights. For example, protection of wards' property, legal security and often also their right to indispensable subsistence and care can in practice depend on measures taken by a guardian. By taking care of wards' affairs and rights, guardians also promote the wards' equality with others who are capable of looking after their own affairs.

Private and public guardianship

Under the Guardianship Services Act, a suitable person who consents to this can be appointed as a guardian. A guardian can be a relative of the ward or some other private person who is close to him or her. Under the Act, however, the State is obliged to ensure that a sufficient number of public guardians to cover the national territory are also available. District administrative courts arrange the provision of these guardianship services.

A municipality is responsible for the provision of guardianship services in its territory unless otherwise agreed by the district administrative court and the municipality. If a municipality does not arrange guardianship services, the district administrative court must ensure that another suitable public or private body does so.

All in all, about 60,000 persons are acting as guardians. About half of them are working in a public capacity. Public guardians perform a public task and are subject to the Ombudsman's oversight. By contrast, oversight of private guardians does not fall within the Ombudsman's remit. The only way in which the Ombudsman can intervene in the activities of private guardians is by exercising oversight to ensure that district administrative courts perform their oversight task appropriately.

For these reasons, matters concerning private guardianship only rarely come to the attention of the Ombudsman. In one case, I have adopted a position on the procedure followed by a district administrative court in deciding that a person aged over 65 was not suitable to assume a new guardianship task for an indefinite period. In my view, e.g. a spouse can, in spite of the advanced age referred to, often be capable and, as a close person, the best alternative choice of guardian to ensure implementation of the ward's interests in the manner intended in the Guardianship Services Act. For this reason, stereotypically setting an age limit for guardians is in conflict with the constitutional prohibition on age discrimination and the protection that it affords family life.

Problems of guardianship

A major shortcoming in public guardianship services is the large number of wards for each guardian. Whereas, for example, a committee appointed by the Ministry of the Interior to study cooperation in the field of guardianship has recommended that a public guardian should have maximally 150 wards to look after, guardians in some municipalities have had as many as three times this number on their books. This causes many kinds of problems.

A precondition for the fundamental and human rights of wards being respected, their interests being accorded primacy and their right of participation being safeguarded is that guardians have good familiarity with their wards and their personal circumstances and financial affairs. Guardians must work in collaboration with wards and there must be a relationship of trust between them.

Public guardians do not have prior acquaintanceship with their wards. This means, in turn, that a guardian must get to know each of his or her wards and gain familiarity with that person's affairs in order to be able to perform the guardianship task appropriately. If one guardian has hundreds of wards, it is obvious that gaining familiarity with the circumstances of each individual is impossible. In the worst cases, the guardian has never even met all of the wards, let alone have had regular meetings with all of them. In my view, this is starkly at variance with the fundamental requirements of appropriate safeguarding of interests.

Since guardians are appointed precisely because their wards are incapable of looking after their own affairs, they must be able to begin performing their tasks immediately and efficiently. The suspicion that a person is being financially exploited may also be a factor in the background to the appointment of a guardian. Public guardians can not refuse to take on a guardianship task even if the number of wards they already have prevents them in practice from familiarising themselves with the new task to the degree that would be necessary. Therefore expeditious intervention in the ward's affairs is not always possible.

I regard it as very much a cause for concern that it is not possible to conduct an initial examination of every new ward's affairs immediately upon assuming a new guardianship task. This delays the revelation of any shortcomings that may exist and tends to make all future management of matters more difficult. From the perspective of safeguarding the ward's basic subsistence, it must be possible to initiate, for example, applications for various social welfare or social insurance benefits as speedily as possible. Also over the longer term, a guardian's working time is used up taking care of essential day-to-day matters, whereas more demanding things have to wait.

The problems that the Helsinki Guardianship Office has had are presented later on in this report, but it should be emphasised that similar problems have been encountered in numerous other municipalities.

It has been observed in some situations that there is unclarity associated with the arrangement of guardianship. That is the case when, e.g., a guardian should, under the provisions of the Mental Health Act, be informed when a person involuntarily receiving treatment is isolated or restrained, but the guardian has been appointed solely to take care of the patient's financial affairs. It has also been unclear whether a guardian should be appointed for those situations if the patient does not have a guardian. The Ombudsman has recommended to the Ministry of Social Affairs and Health that the Mental Health Act be explicated.

Oversight of guardianship

The activities of guardians are overseen by district administrative courts. For purposes of oversight, a guardian must give the court a list of his or her wards' property, an annual statement of accounts and a final statement when the task has been terminated. Upon receipt of an annual or final statement, the court must immediately conduct an audit of how the property has been administered, examine whether the ward has been given adequate funds for day-to-day necessities and check that the statement has been correctly drafted.

Oversight by a district administrative court is of very great importance, because under the system for which the Guardianship Services Act provides, not even relatives of wards are entitled to obtain information concerning them without the wards' consent. If a ward is unable to give this, a traditional control mechanism deriving from a family link can not function.

The heavy workload with which public guardians have to deal means that they are not always able to draft lists of property and submit them to the court within the period of three months after assuming a guardianship task, as specified by the Act. Nor can annual statements always be provided on time; instead, requests to the court for extensions have become the standard practice in some municipalities. In common with guardians, many district administrative courts are likewise under-resourced, with the result that audits of statements can be delayed. In the worst cases, the statements relating to the same ward can have remained unaudited for even two consecutive years.

I find this situation very unsatisfactory. The ward's interest requires that statements be provided on time and audited swiftly so that any unclarities, deficiencies or illegalities are revealed as early as possible. It is also important from the perspective of the legal security of guardians that through the audits they receive information and feedback on their work so that they can change their ways of doing things if necessary. Guardianship is done under the law regulating the responsibility of officials and a guardian can also be liable to compensate a ward for any damage caused.

The Ombudsman's opportunities to intervene in individual guardianship matters is limited mainly to cases set in train as a result of complaints. On a more general level, I have tried to explore guardianship-related problems during my visits to district administrative courts and municipal guardianship offices.

Most complaints relating to guardianship come from persons with the status of ward, but some are also made by relatives or other persons close to them. Since wards are not often in a position to demand their rights on their own, the number of complaints remains small in practice. Investigation of 35 guardianship-related cases was initiated during the year under review.

The most usual reason for a ward complaining is the amount of funds made available to him or her. The Guardianship Services Act stipulates that "a reasonable amount of money, in view of the needs and other circumstances of the ward, shall be left to the administration of the ward." Disagreement between guardian and ward over the amount of funds to be made available generates a conflict to which it is difficult to find a legal resolution.

Respect for the ward's right of self-determination has led in practice to it being extremely rare for the competency of a ward to be limited. This means that wards themselves have the right, alongside their guardians, to administer their property and enter into contracts. On the other hand, in order to protect their wards' interests, guardians sometimes factually limit the right of competent wards, for example by not giving them the amount of disposable funds that they would wish to have. I have found this problematic insofar as only courts have the power to limit competency.

For these reasons I have taken the view that in obvious and continually recurring conflict situations the guardian should refer the question of limiting a ward's competency to a court so that the guardian's powers would be appropriately arranged in the legal sense and from the perspective of oversight of legality.

Responsibility of the public authorities

Section 22 of the Constitution requires the public authorities to guarantee "the observance of basic rights and liberties and human rights". In my view, this obligation on the public authorities is especially accentuated in the arrangement of guardianship services, because these services are concerned with protecting the legal security and other fundamental rights of persons who are incapable of doing so themselves.

The biggest problem besetting public guardianship services is the excessive number of wards that each guardian has to take care of. This means that the ward's rights and interests can not in practice be given adequate individual attention. For this reason I have recommended to the Ministry of the Interior and the Ministry of Justice that they give consideration to whether the ratio of wards to a public guardian should be statutorily regulated or in what other way the criteria for adequate provision of public guardianship services could be enshrined in legislation.

Under the ongoing reorganisation of the municipal and services structure, a transfer of responsibility for arranging and funding the services provided under the Guardianship Services Act from the municipal to the state authorities is envisaged. This reform would eliminate the situation, which is problematic from the perspective of equality that the adequacy of public guardianship services varies from one municipality to another. On the other hand, the State's responsibility for funding is not yet in and of itself a guarantee of adequate services, as the resource problems suffered by the district administrative courts' guardianship functions demonstrate.

At the Office of the Ombudsman, we have been trying to pay closer attention to guardianship matters by, for example, making these matters a separate category and assigning responsibility for them to a senior legal officer. The measures taken have enabled us to obtain a better overall picture of problems relating to guardianship and put us in a better position to monitor them. In addition, inspection and familiarisation visits have been made to municipal guardianship offices and district administrative courts.

Guardianship deserves more attention on the part of the public authorities than it is currently receiving. Each and every one of us may need it at some or other stage in our life.

JUKKA LINDSTEDT

THE EXPANDING POWERS OF THE AUTHORITIES

Jukka Lindstedt's duties include attending to cases concerning the police, public prosecutors, Defence Forces, transport, immigration, and language legislation.

Citizens' concern about insecurity comes up regularly in various contexts. For example, in a questionnaire-based survey conducted in autumn 2005, crime was named as one of the questions most urgently in need of a solution in Finland, albeit still a lot lesser problem than, say, unemployment. The overwhelming majority of the Finnish respondents took the view that decisions relating to combating crime and especially terrorism should be left primarily to the EU. In another survey in Finland in autumn 2005, half of the respondents agreed with the statement: "No forceful measures are too tough when eradicating terrorism".

It is certainly important to combat crime and terrorism through both national and international action. As a consequence of internationalisation, the security situation in other countries must be taken more and more into consideration in Finland. However, there is also a flipside to the matter. A stricter criminal policy and national and international anti-terrorism measures are often problematic from the perspective of fundamental and human rights.

Changes in criminal policy

According to a frequently presented assessment, criminal policy has become stricter in Finland in recent years. This has manifested itself in the form of expanded criminalisations, tougher penal scales, a growing prison population and increased police powers.

A development of this kind also affects the Ombudsman's work. Overseeing the conditions in which prisoners are kept is one of the Ombudsman's central tasks. In oversight of the police, in turn, coercive measures come up a lot. Each year the Ombudsman receives reports from the authorities on the use of secret coercive and intelligence gathering measures, such as those involving telecommunications and undercover operations. The Ombudsman also pays special attention in the course of inspection visits and otherwise to the secret means employed by the police. Through complaints, more traditional coercive measures and means of investigation, in turn, are often referred to the Ombudsman for appraisal.

There are many reasons in the background of the tighter criminal policy. Although there has been no marked change in the Finnish crime situation as a whole, there has been an increase in drug offences and crime is more organised than it was in the past. Citizens' need for security also seems to have increased. The fact that the news media's interest in covering crime has grown is likewise a significant factor. New penal provisions are being enacted also because so-called community legal goods (values and interests seen as needing protection) have become more important. Criminal law no longer protects

only traditional legal values like health and property; instead, there is a desire to use criminal law to combat also such things as destruction of the environment and discrimination on the basis of birth or gender.

Internationalisation is having a central influence on the matter. In criminal law, threats are no longer examined only from the domestic point of view, but also at least from an EU perspective and often from an even broader one. There is a desire to harmonise different countries' penal provisions. At least in the EU, the starting point for harmonisation seems to be that countries with a milder criminal policy will have to tighten their rules. International cooperation between police and other agencies likewise requires harmonisation of the means available to the authorities.

Because of international cooperation, attention must be paid in Finland also to the kinds of crimes that are hardly ever committed here. Measures can also be taken with the aim of ensuring that they do not become more widespread here in the future, either. One such central focus of international attention in recent years has been terrorism. Combating it has been a subject of cooperation at the United Nations, in the Council of Europe and in the European Union. The anti-terrorism measures being taken by the United States are the most important issue in politics as a whole.

Anti-terrorism measures in Finland

In Finland, the Council of State (Government) confirmed an internal security programme in September 2004. With respect to combating terrorism, the programme refers to international cooperation and the need to influence the factors that give rise to terrorism. The importance of preventive work and a high level of national preparedness to counter terrorism are stressed. The general assessment is that Finland does not face a direct threat of terrorism, but the possibility of terrorist attacks can not, however, be entirely ruled out. Terrorism and measures to combat it were also a subject of attention in the Government report on security and defence policy, likewise published in 2004.

Anti-terrorism measures in Finland have been fairly moderate, but yet not unproblematic. A new chapter dealing with terrorist offences has been added to the Penal Code. It was difficult in places to reconcile the new provisions with established formulations in our criminal law. The coercive and investigative instruments available to the police have been broadened to apply also to terrorism. Under an amendment made to the Police Act last year, the means of intelligence gathering available to the police were broadened. Important from the point of view of principle was that monitoring telecommunications became possible already for preventive purposes. This expansion of powers applied mainly to combating terrorism.

The system for preventing and investigating money laundering has been broadened to include also the prevention and investigation of financing terrorism. The new Frontier Guard Act that entered into force in 2005 provides for the authorities guarding the country's borders to assist the police in combating terrorism. Quite a lot of debate was prompted by a legislative amendment, which likewise entered into force last year, concerning the provision of executive assistance by the Defence Forces. The original bill, which concerned the provision by the Defence Forces to the police of executive assistance in combating terrorism, was explicated by the Eduskunta before its passage. The explications were certainly necessary, because the use of military force can mean intervening in the fundamental rights of uninvolved parties, even the right to protection of life.

It is good that the necessary legislative amendments have been made and drafted in peaceful conditions, without a linkage to any current event in Finland. The terrorist acts perpetrated in the United States in autumn 2001 and the resulting demands for measures presented in various quarters certainly caused a degree of confusion in the machinery of administration in Finland. So-called powder letters also gave the authorities a lot of work. However, there were no significant excesses on the part of the authorities in Finland in the aftermath of the terror strike.

Official measures might have been different with regard to strictness and drafting standard if a terror strike with Finland as its target had been involved.

It may not be possible in a crisis situation to give legislative drafting the time and personnel resources needed for a good end result. When legislative amendments are made in an inflamed atmosphere, the legal remedies available to the individual may be jeopardised. Finland's most recent experience of this was during our conflicts with the Soviet Union in 1939–1944.

Combating terrorism, human rights and legal remedies

Problems caused for human rights by anti-terrorism measures have had to be deliberated as close to us as Sweden. Swedes have been held at the Guantánamo prison camp and the Abu Ghraib prison. Swedish nationals' funds have been frozen due to suspicions of terrorism. In a decision issued in March 2005 the Swedish Ombudsman expressed extremely grave criticism of his country's Security Police for their actions – or rather inaction – in a situation where two Egyptians suspected of terrorism were transported by the Americans from Sweden to Egypt.

The measures required by international organisations and, on the other hand, actions carried out unilaterally by some states can affect also Finland and Finns. Because of international anti-terrorism cooperation, Finland must implement measures that have been decided on in international organisations, irrespective of the shortcomings and problematic points that remain features of them. For example, when a system for freezing funds belonging to suspected terrorists was being expeditiously created at the UN in autumn 2001, there was a departure from presumption of innocence. Something else that was left unsafeguarded was the opportunity of those whose names had been placed on a "black list", and whose assets can be frozen, to appeal against this.

A central fundamental right that combating terrorism seems to have jeopardised is privacy. Efforts are being made to increase surveillance of telecommunications and, for example, details of air travellers are a focus of the authorities' interest. Here too the pressure for more effective monitoring is international.

Even if serious legal security problems associated with combating terrorism were not to arise in Finland, anti-terrorism measures can have at least indirect effects on fundamental and human rights as well as on legal remedies in this country too. They can be described as follows:

The "war" against terrorism as it is being waged by many countries has had a detrimental effect from the perspective of international law – although hopefully only temporarily so. In the gravest cases, many international human rights, such as the right to have the legality of deprivation of liberty reviewed and even the prohibition on torture, have been violated in the "war". The fact that the situation has remained like this for several years and no rectification has taken place weakens the credibility of the international legal system and lowers the threshold to further violations.

The real purpose of some of the measures being implemented in the name of the campaign against terrorism is different. One could speak of abuse of the word "terrorism". At its most serious, this amounts to, for example, stifling efforts to achieve independence, continuing occupation or oppressing one's own citizens while invoking the war against terrorism as justification. There are international examples of this.

A milder form of "abuse" is when the concept of terrorism is broadened to include also the kinds of crimes to which it does not actually seem to apply in the light of the definition in the Penal Code. Calls for this to be done have been heard in Finland from time to time, although not from the police.

This kind of mixing of concepts is not alien on the EU level, either. As a part of the so-called terrorism package, to which a political commitment was speedily made in September 2001, provisions allowing for the surrender by one Member State to another of crime perpetrators – the so-called European Arrest Warrant – were adopted by the EU. In different circumstances the implementation of such an extensive project would have taken longer and been more difficult. Now the project was carried through swiftly as a part of the terrorism package, although what was involved did not even have particularly much to do with combating terrorism.

The provision concerning penalties and coercive measures associated with combating terrorism can indirectly contribute to a toughening of demands for stricter penalty scales. It may also be that terrorism is used as one argument if new demands for wider powers are made by the police. Indeed, the features that are common to efforts to combat organised crime, on the one hand, and terrorism, on the other, have been cited in the public discourse in recent times. Broader powers would presumably include secret means of surveillance and intelligence gathering, towards which there has been a marked shift in police work in recent years in other respects as well.

Many secret means, such as the planned right of a police officer participating in an undercover operation to commit a crime, are problematic already in principle. With a drift towards secrecy in police activities, oversight of their legality is also becoming more difficult. Persons against whom secret measures are directed have hardly any possibility of complaining about them. However, the Ombudsman also has other ways of monitoring them.

It has also been observed in practice that, in spite of scrupulous regulation, problems of application and expansion needs are associated with the new powers that the police have been given. Constant technical development is creating extra pressure to broaden powers.

Broader powers given to authorities tend to become permanent. Even if the situation with regard to terrorism in the world were to ease, the special anti-terrorism powers introduced in various countries would hardly be dismantled. The argument that it is precisely thanks to them that the threat of terrorism has receded can always be invoked as proof of their necessity. Therefore careful consideration is called for when official powers are being broadened. The measures introduced in Finland have been moderate and also international measures now seem more considered that, for example in 2001.

Nevertheless, how a broadening of official powers affects fundamental and human rights should be carefully followed.

The Ombudsman institution in 2005

THE INSTITUTION, ITS STATE AND CHALLENGES FACING IT

Tasks and division of labour

The Parliamentary Ombudsman is the highest overseer of legality elected by the Eduskunta. He or she is tasked with overseeing the discharge of public duties and implementation of fundamental and human rights in the process. The purpose is *inter alia* to ensure that various administrative sectors' own systems of legal remedies and internal oversight mechanisms function appropriately. There is also the aim of giving the Eduskunta the opportunity to evaluate, on the basis of the Ombudsman's observations, the administration of justice and the way in which administration in general functions.

Courts of law and other authorities are subject to the Ombudsman's oversight. In addition to authorities and public servants, other persons and bodies performing public tasks are subject to the Ombudsman's oversight. By contrast, the Ombudsman does not examine the Eduskunta's legislative work nor the actions of Representatives, nor the official actions of the Chancellor of Justice of the Council of State (Government). Under the Constitution, it is the Ombudsman who decides to bring a prosecution against a judge.

The Ombudsman is independent and acts outside of the traditional separation of public power into three branches. The Constitution contains the general provisions concerning his or her election, powers and tasks and more detailed regulations concerning his or her activities are set forth in the Parliamentary Ombudsman Act. The regulations are annexed to this report (Annex 2).

In addition to the Ombudsman, the Eduskunta also elects two Deputy-Ombudsmen. Their term of office is four years. The Ombudsman determines the division of labour between them. The Deputy-Ombudsmen decide independently on the matters assigned to them and with the same powers as the Ombudsman.

Ombudsman Paunio deals with matters that concern questions of principle, the Government and other higher organs of state as well as *inter alia* social welfare, health care and social security more generally as well as children's rights. The matters with which Deputy-Ombudsman Jääskeläinen deals include those relating to courts, the prison service, environmental administration and local government as well as taxation. Deputy-Ombudsman Lindstedt, in turn, is responsible for a range of matters relating to the police, the public prosecution service, the Defence Forces and education as well as foreigners and language matters.

Forms of work

The Ombudsman oversees legality mainly by investigating complaints and can also decide on his or her own initiative to investigate other deficiencies and shortcomings that become evident.

The constitutional provisions concerning fundamental rights were revised in Finland in 1995. In conjunction with this reform, the Ombudsman was given the statutory task of overseeing implementation of fundamental and human rights. The intention with this was to emphasise that fundamental and human rights guide the actions of officials and authorities. Fundamental and human rights do indeed play an important role in the Ombudsman's oversight of

legality. They come up when individual cases are being dealt with, but also when inspections and investigations on the Ombudsman's own initiative are being planned.

The Ombudsman is required by law to conduct inspections of offices and institutions. There is a special obligation to oversee the treatment of inmates of prisons and closed institutions and also of conscripts in military units. Under the division of labour between the Chancellor of Justice and the Ombudsman, investigation of complaints relating to also these matters is entrusted to the Ombudsman. In practice inspections take place at other institutions as well, especially those in the social welfare and health care sectors. Inspections feature centrally in the Ombudsman's work.

The Ombudsman's special tasks also include overseeing the use of so-called coercive measures affecting telecommunications – surveillance and monitoring of telecommunications as well as technical eavesdropping. A court decision is generally a condition precedent for the use of these coercive measures and they can be used primarily when investigating serious crimes. The use of coercive measures affecting telecommunications involves an intervention in several constitutionally guaranteed fundamental rights, such as privacy, confidential communications and domestic peace.

The law requires the Ministry of the Interior, the Customs and the Ministry of Defence to report to the Ombudsman each year on the use of coercive measures affecting telecommunications. The law also gives the police the right, subject to certain conditions, to conduct undercover operations to combat serious and organised crime. In undercover operations the police obtain information about criminal activities by, for example, infiltrating a criminal group. The Ministry of the Interior must report annually to the Ombudsman on the use of undercover operations.

In recent years, in response to an express wish of the Eduskunta, the Ombudsman has attached special importance also to oversight of children's rights.

Fundamental and human rights as an area of emphasis

The work of the Parliamentary Ombudsman began in the early days of February 86 years ago. Oversight of legality has grown and changed in many ways in the intervening period. The emphasis in it has become that of guiding good administrative practice and setting demands with respect to it. The role of prosecutor has receded into the background and the role of guiding and developing official actions has assumed greater prominence.

Activities were on a small scale in the early decades. Appraising the actions of judges and other officials in the light of the laws concerning mis- and malfeasance featured centrally. Expansion of the scope of tasks performed by the public authorities, especially in the 1960s and 1970s, meant strong growth in the numbers of tasks and complaints. Since administrative practice largely remained unregulated, the positions adopted by the Ombudsman in those days were of considerable importance in the development of appropriate administrative practice.

Privatisation of public administrative functions led in 1991 to an expansion of the scope of the Ombudsman's oversight to encompass not only the authorities and public servants that it had earlier exclusively included, but also employees of public bodies and persons performing public tasks.

Examination of citizens' rights in the light of international human rights conventions began in the late 1980s. The decisions issued in those days concerned persons who had been deprived of liberty, and foreigners. After the European Convention on Human Rights had come into force in Finland in 1990, the importance of human rights grew markedly also in our oversight of legality.

In conjunction with a revision of the fundamental rights provisions of our Constitution in 1995, the Ombudsman was assigned the task of overseeing implementation of fundamental and human rights. This has shifted the perspective from the duties of the

authorities to implementation of people's rights. Since the provisions were revised, fundamental and human rights have come up in nearly all of the cases dealt with by the Ombudsman. Evaluating implementation of fundamental rights has meant above all striking a balance in principle between rights that run counter to each other and paying attention to aspects that promote the implementation of fundamental rights. In her evaluations, the Ombudsman has stressed the importance of legal interpretations that are amenable to fundamental rights.

In the period since the fundamental rights provisions were revised, also economic, social and educational rights have, seen from the legal perspective, been elevated to a status on a par with that of other fundamental and human rights. The right to indispensable subsistence and care as well as the right to adequate social welfare and health services have often come up for evaluation in recent years.

The emphasis on fundamental rights has been reflected also in other ways in the orientation of the Ombudsman's activities. The view has been that the Ombudsman's duties include not only oversight of fundamental and human rights, but also their active promotion. One of the practices adopted in association with this is that of having discussions with key nongovernmental organisations.

Questions that are sensitive from the perspective of fundamental rights and the significance of which is broader than an individual case have been brought up in the course of inspections or when matters have been investigated on the Ombudsman's own initiative. For example, in the past two years the measures taken by the authorities to investigate and prevent instances of domestic violence against children as well as to take care of children have been extensively examined both in the course of inspections and otherwise. On 7 February 2006 the Ombudsman gave the Eduskunta a special report on this theme. Headed "Children, domestic violence and the responsibilities of the authorities", it is Annex 3 to this report.

Cooperation between Ombudsmen in the EU member states, the countries of the Baltic Sea Region and other parts of Europe has increased strongly. On the international level the activities of the Ombudsman have been seen as a valuable guarantee of respect for human rights and the institution has, in its various forms, spread widely in the world. In addition to mutual cooperation between Ombudsmen, the role that the Ombudsman in Finland plays in monitoring implementation of international human rights conventions has assumed greater weight than in the past.

Not all of these functions and new forms of work appear in the statistics, which include written complaints, investigations on my own initiative, inspections and other communications from citizens. These statistics for last year are annexed to this report (Annex 1). The forms of work through which, in addition to the central functions reflected in these statistics, the Ombudsman strives to promote fundamental and human rights are highlighted in the review of 2005 presented below.

Work situation and its challenges

The Ombudsman's key task is still that of dealing with and interpreting complaints made by citizens. This is how the matter is stated in the Act:

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.

Accordingly, the Ombudsman has a duty to investigate all complaints on the basis of which there appear to be grounds to suspect that an unlawful procedure has been followed or a duty neglected, irrespective of how minor the transgression might be. It must be taken into consideration that assessing whether there are grounds for suspicion of an unlawful procedure having been followed or a duty neglected can sometimes require a lot of investigation. This extensive duty to investigate means that the Ombudsman is left with only little discretion to emphasise oversight of legality from the perspective of fundamental and human rights in the way that would be desirable. The

Ombudsmen in several other countries enjoy greater discretion in this respect.

The number of complaints has been growing strongly since the early years of the 1990s. Growth has been constant and clear, but its rate has varied. The number of complaints has doubled in the past 13 years. It has increased by a third in the past two years.

The revision of the fundamental rights provisions in the Constitution has likewise helped add a new perspective and emphasis to our work of overseeing legality. This change and the concurrent strong growth in the number of complaints led in the later years of the 1990s to a substantial lengthening of the times taken to deal with complaints. These challenges have been responded to by increasing the number of legal officers and other staff, developing work methods and making strong inputs into training. The promotion of wellbeing at work at the Office of the Parliamentary Ombudsman has also been made a focus of systematic effort.

The primary goal has been to reduce long processing times, but without compromising on the quality of the work and the demands of overseeing fundamental and human rights. We have been able to achieve moderate success in this, but our possibilities of adding further efficiency to our work with the present resources are limited. If the number of complaints continues to grow, consideration will have to be given to increasing the Ombudsman's discretionary powers to decide whether or not to investigate complaints. However, this would require an amendment to the Act.

Substitute for a Deputy-Ombudsman

On 14 October 2005 the Eduskunta approved an amendment of both the Constitution and the Parliamentary Ombudsman Act to empower the Ombudsman to choose, if necessary and having first elicited the opinion of the Constitutional Law Committee, a substitute for a Deputy-Ombudsman for a maximum term of four years. The approval of the Eduskunta that assembles after the next elections is a condition precedent for entry into force of the constitutional amendment.

ACTIVITIES IN 2005

Complaints and other oversight-of-legality matters

Complaints, investigations on my own initiative, submissions and opinions, hearings arranged by bodies like various Eduskunta committees as well as other written communications are counted as belonging to the oversight-of-legality category. These other written communications mainly comprise enquiries or letters from citizens with complaints that are evidently unfounded, do not fall within the Ombudsman's remit or are non-specific in content. These are not recorded as complaints; instead, the lawyers at the Office of the Ombudsman whose duty it is to advise members of the public reply to them immediately with directions and advice.

A total of 3,829 new oversight-of-legality matters were received by the Ombudsman in 2005. This was about 14% more than in the previous year. The number of actual complaint matters totalled 3,352 in 2005, which was also about 14% up on the previous year. The number of matters investigated on my own initiative was 49. Requests for submissions or to attend hearings totalled 43. All in all, 5,576 oversight-of-legality cases had to be dealt with in 2005 (5,033 the previous year). 1,747 matters carried over from earlier years likewise had to be dealt with (1,686 in 2004).

No significant changes appear to have happened in the nature of complaints. There has been a further increase in the number of complaints concerning social welfare and health care. The same applies to complaints concerning the police. Growth in the number of complaints has continued to be relatively evenly distributed among the various categories of complaints.

Oversight-of-legality matters	2005	2004
Complaints	3,352	2,950
Taken up on own initiative	49	52
Submissions and hearings	43	28
Other written communications	385	317
Total	3,829	3,347

Decisions

Decisions were reached in a total of 3,491 oversight-of-legality matters during the year under review. Of these, 3,008 were actual complaint cases. Decisions were reached in slightly fewer complaints than the number received, but nevertheless 4% more than in the previous year. Decisions were reached in 52 cases investigated on my own initiative, and the total number of submissions and attendances at hearings was 48. A total of 383 replies to other communications were given.

Oversight-of-legality matters	2005	2004
Complaints	3,008	2,889
Taken up on own initiative	52	54
Submissions and hearings	48	29
Other written communications	383	314
Total	3,491	3,286

Some complaints are of such a character that the Ombudsman cannot investigate them. These include matters that do not fall within my remit, that are still pending with the competent authorities or which are over five years old. A total of 709 such cases, or about 20% of all complaints in relation to which decisions were issued (19% the previous year), were not investigated in 2005. Other cases are categorised in the statistics as investigated cases.

In some cases there is no reason to suspect that the alleged unlawful procedure or neglect of duty has in fact taken place. Decisions of this kind totalled 1,205 in 2005, or about 35% of all cases in which decisions were reached (32% the previous year). Investigation of complaints can also lead to the alleged unlawfulness or negligence not being identified or to the conclusion that there is not enough proof to support the allegation. There were 629 of these decisions last year, representing about 18% of all cases in which decisions were reached (22% the previous year).

The decisions that lead to measures on the part of the Ombudsman are the most important category. These measures are a prosecution for mis- or malfeasance, a reprimand, the issuing of an opinion for future guidance or a proposal. In addition, it is possible that a matter can be rectified while it is being investigated.

A prosecution for mis- or malfeasance is the severest sanction. However, in cases where the subject of oversight has followed an unlawful procedure or neglected to perform a duty, the Ombudsman can decide not to bring a prosecution if it is reasonable to assume that a reprimand will suffice. The Ombudsman can express an opinion as to what procedure would have been lawful, or draw the attention of the subject of oversight to the requirements of good administrative practice or to aspects that promote the implementation of fundamental and human rights. An opinion expressed can have the character of a rebuke or be intended for future guidance.

In addition, the Ombudsman can recommend the rectification of an error that has been made or that a shortcoming be redressed or draw the attention of the Government or other body responsible for legislative drafting to deficiencies that have been observed in legal provisions or regulations. Sometimes an authority can on its own initiative rectify an error that it has made already when the Ombudsman has intervened with a request for an explanation.

The number of decisions leading to measures totalled 513 in 2005, which is nearly 17% of all decisions (and about 22% of complaints investigated). No prosecutions were ordered. 40 reprimands were

issued and 429 opinions expressed. Of these, 209 were rebukes and 220 intended for future guidance. Remedies were effected in 28 cases while they were still being investigated. Decisions categorisable as recommendations totalled 16, but also decisions included expressions of opinion relating to development of administration. It is also possible for one decision to involve several measures. (See Annex 2)

The average time taken to deal with oversight-of-legality matters was 6.1 months at the end of the year. It had been 7.6 months a year earlier.

Biggest categories of cases

During the year under review, as in earlier years, the biggest category of cases in which decisions were reached concerned social security, 661 in all. Of these, 334 related to social welfare and 327 to social insurance. The next biggest categories of decisions were in cases concerning the police (518), health care (289), courts (249) and the prison service (239). Other large categories of cases were work-related matters (125), municipal affairs (105), taxation (102), enforcement (96) and education (91). A clear change in categories of matters has taken place in that the numbers of decisions concerning social security and the police have grown considerably. The number of decisions relating to health care has likewise increased somewhat.

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 them are treated. There is also a legal obligation to inspect units of the Defence Forces and monitor the treatment of conscripts.

Inspections are also conducted in other institutions, such as reform schools, psychiatric hospitals, institutions for the mentally handicapped, etc. Inmates of these 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 76 locations during the year under review (81 the previous year).

Service to the public

Since 2001, two on-duty legal officers at the Office of the Ombudsman have had the task of advising and guiding members of the public who wish to make complaints and replying to communications that are not registered as complaints. Examples of the latter include enquiries and a variety of matters that are general or non-specific in character. Nearly 2,500 telephone calls from clients were answered and nearly 200 clients made personal visits.

The Registry at the Office of the Ombudsman receives complaints and replies to enquiries about them, in addition to responding to requests for documents. Last year, the Registry received about 4,300 telephone calls. Personal calls by clients and requests for documents totalled about 800. The records clerk mainly provides researchers with services.

Communications

The purpose of communications is to make the public more familiar with the Ombudsman, increase the effectiveness of her work as well as to monitor the implementation of fundamental and human rights in the performance of public duties.

Promoting and defending the fundamental and human rights of citizens is a basic task of the Ombudsman.

For this reason, we have attached special importance to making it as easy as possible for people to turn to the Ombudsman when they feel they have reason to complain. A printed brochure intended for complainants is available in Finnish, Swedish, Sámi, English, German, French, Estonian and Russian. The brochure is also posted on the web site in these languages as well as in Finnish and Swedish sign language versions. A complaint can be sent in by post or fax, or by filling in and e-mailing the electronic form on the Internet.

The Ombudsman gives the Eduskunta an annual report on her activities and observations concerning the state of administration of justice and any deficiencies she had identified in legislation.

With international cooperation in mind, an English-language brochure presenting the Finnish Ombudsman institution was completed last year. It was later published in Finnish and Swedish as well.

In addition to traditional channels, the Internet has become an increasingly important communication medium. The Ombudsman's web site has information in Finnish, Swedish and English on the tasks and activities of the office. Instructions on how to make a complaint are also provided in Sámi, German, French, Estonian and Russian as well as Finnish and Swedish sign language.

Those of the Ombudsman's and Deputy-Ombudsmen's decisions that are of special legal or general interest are published on our web site. Last year, nearly 200 decisions were posted on the site, which is about one in three of all decisions that involved measures. Bulletins are posted on the Internet in Finnish and Swedish, as are shorter notices, intended for the media, of decisions. Publications, such as annual reports and brochures, are likewise posted on the Internet. The Ombudsman's web pages in English are at the address www.ombudsman.fi/english.

The Office

The Office of the Ombudsman is in the new Eduskunta annex building.

The staff totalled 54 at the end of 2005. They were the Secretary General, five legal advisers and twenty-four legal officers, two lawyers with advisory functions as well as an information officer, two investigating officers, four notaries, a records clerk, two filing clerks and nine office secretaries.

EVENTS DURING THE YEAR

Finnish Ombudsman institution 85 years old

Last year was the 85th anniversary of the appointment of Finland's first Parliamentary Ombudsman. To mark the jubilee, the Office of the Ombudsman arranged an invitation seminar on the theme *Oversight of legality after the fundamental rights reform*. This was a reference to the 1995 revision of the fundamental rights provisions in the Finnish Constitution, as part of which the Ombudsman's task as an overseer of fundamental and human rights was constitutionally enshrined.

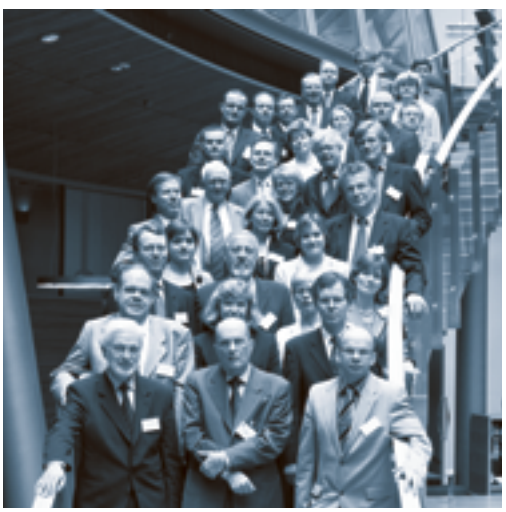
Discussion at the seminar centred around protection of human rights and their future as well as future challenges facing oversight of legality in our own national monitoring of fundamental and human rights. The invitees included legislators, authorities overseeing implementation of citizens' fundamental and human rights, representatives of NGOs, researchers and media persons.

The first keynote speaker at the seminar was President of the Republic Tarja Halonen. Her theme was *Protecting rights in a globalising world*. The other keynote speakers were Professor of International Law Martti Koskenniemi, the former European and Finnish Ombudsman Jacob Söderman, Director-General Jorma Karjalainen from the Ministry of Finance and the Chair of the Finnish Human Rights Federation Maija Sakslin.

Overseers of legality from Baltic Sea Region meet in Helsinki

Overseers of legality from countries in the Baltic Sea Region gathered in Helsinki for a joint seminar on 6–7.6.2005 at the invitation of Ombudsman Riitta-Leena Paunio and Chancellor of Justice Paavo Nikula. The participants included the Swedish Ombudsmen Mats Melin and Kerstin André as well as Chancellor of Justice Göran Lambertz. Representing Estonia was Chancellor of Justice Allar Jõks, Denmark Hans Gammeltoft-Hansen and Lithuania Ombudsman Albina Radzeviciute. Overseers of legality from Latvia, Norway, Poland and Germany as well as from the Office of the European Ombudsman were also present.

The themes for the seminar were oversight of prisons and other closed institutions, good administration in the EU as well as social rights in psychiatric care. The seminar was opened by the Speaker of the Eduskunta Paavo Lipponen. The Chancellor of Justice of Estonia made a keynote speech on oversight of prisons and other closed institutions. The Swedish Ombudsman Kerstin André dealt in her speech with social rights in especially psychiatric care. The former European Ombudsman Jacob Söderman devoted his speech to good administration as a fundamental right. Ombudsman Paunio reported on the activities of the International Ombudsman Institute (IOI).



International meetings

Contacts with Ombudsmen and comparable oversight bodies in various countries have been lively. Last year, as in earlier years, the Ombudsman, the Deputy-Ombudsmen and several other members of the Office staff participated in international seminars.

During the year under review Ombudsman Paunio and Deputy-Ombudsman Rautio attended the celebrations marking the 50th anniversary of the Danish Ombudsman institution in Copenhagen on 31.3–1.4.2005 and a Round Table Meeting of Ombudsmen arranged by the Council of Europe in conjunction with it.

Deputy-Ombudsman Jääskeläinen and Legal Officer Pasi Pölönen attended a conference arranged to mark the 10th anniversary of the Lithuanian Ombudsman institution in Vilnius on 14–15.4.2005. The theme of the seminar was the Ombudsman as a champion of good administration.

Ombudsman Paunio and Legal Adviser Riitta Länsisyrjä attended the fifth seminar for national Ombudsmen from EU countries in the Hague on 11–13.9.2005. The 10th anniversary of the European Ombudsman Institution was celebrated in conjunction with the seminar.

The Directors of the European Region of the International Ombudsman Institution (IOI) met, at the invitation of Ombudsman Paunio, at her office in Helsinki on 9.5.2005. Present were Ombudsman Peter Kostelka from Austria, Ombudsman Tom Frawley from Northern Ireland and Ombudsman Matjaž Hanžek from Slovenia in addition to Ombudsman Paunio. On 10.9.2005 Ombudsman Paunio attended a meeting of IOI European Region Directors in the Hague. Other gatherings that she attended included an IOI Board meeting in Antigua & Barbuda on 5–12.11.2005.

Visits

The liveliness of international contacts and interest in specifically the Nordic Ombudsman institution were also reflected in the large number of foreign visitors to the Office last year.

The visitors included the Ethiopian Ombudsman Abai Tekle, the Secretary of State from the French Ministry of Justice Mme Nicole Guedj, the Deputy Prosecutor-General, Supreme People's Procuratorate of China Mr. Wang Zhen Chuan, the Ethiopian Deputy Human Rights Commissioner Mrs. Bisrat, the President of the Hungarian Supreme Court Zoltán Lomnic, Dr Justine Hunter from the Institute for Democracy in Namibia as well as representatives from the office of the Council of Europe Commissioner for Human Rights.

Visitors with a special interest in combating corruption were the Korean Anti-Corruption Committee, the Director of the anti-corruption office of the Chinese Communist Party's Discipline Inspection Commission Zhang Youmin, the Director of the Kenya Anti-Corruption Commission Justice Aaron Ringera and an Afghan delegation visiting the Eduskunta.

Other visitors were Cate Sumner from the International Development Law Organisation, a delegation from the Chinese Ministry of Information Industry, a group of Vietnamese parliamentarians as well as two lawyers, Andres Aru and Mari Amos, from the Office of the Estonian Chancellor of Justice, who also accompanied Ombudsman Paunio on an inspection visit to the Päijät-Häme Hospital.

The Ombudsman continued her meetings with key Finnish NGOs. The aim with these discussions is to hear the organisations' views on the functioning of public administration and any problems relating to fundamental and human rights of which they have become aware.

Other Finnish visitors included representatives of various administrative sectors and students. In addition, the Eduskunta's Constitutional Law Committee visits the Office of the Ombudsman each year.

Presentations

Ombudsman Paunio, Deputy-Ombudsman Rautio and Deputy-Ombudsman Jääskeläinen as well as Secretary General Mäkinen and members of the Office staff gave over 30 presentations or lectures at seminars arranged by various authorities and other events in 2005. One of the main themes was the fundamental and human rights perspective in various sectors of the Ombudsman's oversight of legality.

Central sectors of oversight of legality

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.

The number of new court-related complaints received in 2005 was about 250. Complaints often concerned delay in dealing with cases in courts. The delays were mostly due to 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.

THE PROSECUTION SERVICE

Prosecution-related matters are a category of oversight of legality with public prosecutors as the focus. Some complaints relating to courts and the police have also included a request for an investigation of the procedures that a prosecutor has followed.

The prosecution service comprises the Office of the Prosecutor General and 64 local prosecution units. The tasks of the Prosecutor General include general direction and development of the work done by public prosecutors and oversight of their actions. He also has the right to issue general instructions and guidelines for prosecutors.

Decisions on 62 complaints concerning prosecutors were made during the year under review. Most complaints concerning prosecutors related to consideration of charges, and especially its outcome, but there have also been complaints about procedures followed, attitudes to requests for additional investigations, delay in reaching decisions and the reasoning presented in support of them.

The Ombudsman and the Prosecutor General have tried to avoid overlapping oversight of prosecutors and investigating the same matters. The practice of transferring to the Prosecutor General those so-called appeal-type complaints concerning consideration of charges that have been made to the Ombudsman but relate to cases in which the Ombudsman does not have the right to bring a prosecution was continued during the year under review. The Prosecutor General can then, within the constraints of his powers, conduct a new consideration of charges, something that the Ombudsman has no possibility of doing.

All the Ombudsman can do in a case of this nature is appraise the legality of the public prosecutor's action. The view has been taken that transferring these consideration-of-charges-related complaints accords with the complainant's overall interests. During the year under review 12 complaints were transferred to the Prosecutor General.

POLICE

Complaints concerning the police are one of the biggest categories. During the year under review 504 complaints relating to police actions were resolved, substantially more than in the previous year (424). 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 24% of the decisions made during the year under review led to measures being taken. In ten 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 police-related 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-Ombudsmen *Rautio* and *Lindstedt* inspected the Ministry of the Interior's Police Department and three small/medium police stations. Also inspected was the National Bureau of Investigation, which is a national unit of the police. Inspection of this unit concentrated on inter alia undercover operations, coercive measures affecting telecommunications and internal oversight. In addition, some units of the National Bureau of Investigation and of the National Traffic Police as well as a number of premises where persons are kept in custody by the police were also inspected.

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.

INVESTIGATION OF A CASE CONCERNING AGGRAVATED ESPIONAGE

A person complained to the Ombudsman concerning a criminal investigation of himself by the Security Police and also requested an examination of whether the authorities had acted legally in providing information concerning suspicion of a crime in such a way that the information spread also into the public domain.

In the view of the Ombudsman, the Security Police did not act illegally in the criminal investigation concerning the complainant. The threshold for initiating a criminal investigation into a suspected case of aggravated espionage was clearly exceeded. By contrast, at no stage were there strong grounds supporting the suspicion focused at specifically the complainant. In the preliminary investigation stage, however, the law does not require strong suspicions in order for a person to be interviewed as a suspect. In the view of the Ombudsman, the Security Police did not disregard the complainant's legal security nor unduly emphasise the interest of solving the crime when it interrogated him on suspicion of aggravated espionage and referred the case concerning him to the prosecution service.

However, the Ombudsman recommended to the Government that the preconditions which must be met in order for a person to be placed in the position of an accused be regulated in law.

The Ombudsman considers it a grave matter that the public authorities did not succeed in protecting the complainant from premature and stigmatising publicity. The law would have required *a priori* that the disclosure that he was the subject of a criminal investigation be kept secret, and under the Act on the Openness of Government Activities, it should not have become public knowledge in the way it did while the criminal investigation was still ongoing.

The Ombudsman asked the National Bureau of Investigation (a national unit of the police) to conduct a criminal investigation to establish how information concerning suspicion of a crime had been leaked. However, this failed to be elicited. On the basis of facts that emerged in the course of the criminal investigation, the Ombudsman took the view that the person (a chief inspector of the Security Police now retired) suspected of having been in breach of his duty to keep official secrets, had not committed a criminal offence. At no stage had the chief inspector been suspected of leaking the matter to the media.

Disclosing information concerning suspicion of a crime is legal in some cases. According to the law, information can be released even if doing so would harm the accused, provided there is a compelling reason, as specified in the Act on the Openness of Government Activities, for releasing it. The permissibility of each individual release of information must be appraised independently. Information can then be divulged to another authority or even a private person, even though it must still be kept secret from other instances – such as news media. The Criminal Investigations Act contains separate provisions on the release of information into the public domain, but these were not applicable in this case.

The Security Police had given information on the matter to President of the Republic Tarja Halonen, her predecessor Martti Ahtisaari, several ministers and a number of officials. The Ombudsman found that in these respects the Security Police had acted legally in divulging information.

Information was also given to the then chair of the opposition Centre Party, Esko Aho. The decision to do so was taken, on the initiative of the head of the Security Police, by the then Prime Minister Paavo Lipponen and Ministry of the Interior Ville Itälä.

In the opinion of the Ombudsman, they did not in so acting exceed their discretionary powers as ministers when they concluded that there was a compelling reason to inform Mr. Aho even though it could be assessed that this would be detrimental to the complainant.

In the perception of the Ombudsman, considerations relating to ensuring the smooth functioning of the political system can be regarded as one compelling reason, although on the other hand divulging information concerning a suspicion of crime to parties other than those bound by a duty to keep it secret, the gravity of the suspected crime and the accentuated sensitivity of information concerning it are questions that require serious deliberation.

The Ombudsman's investigation revealed nothing to indicate that there was any connection between Mr. Aho having been informed of the suspected crime and the matter becoming public.

In addition, information relating to the investigation requested by the Ombudsman and which should have been kept secret was prematurely made public. Leaks of this kind have been observed also on other occasions. Something that also the police have criticised in conjunction with oversight of legality is that in cases that for one reason or another interest the public the media can quite quickly obtain information on the content of a notification of a crime if this information is stored in the police information system without special measures being taken to restrict access to it.

Indeed, the Ombudsman took the view that there is a need to examine what measures can be taken to prevent the illegal dissemination of information which must be kept secret. She also recommended to the Government that the secrecy provision of the Police Act be explicated.

Case number 1585/4/03

POSTPONEMENT OF SEIZURE

The police in a town in eastern Finland stretched their powers in investigating a narcotics crime when they failed to seize drugs and a shotgun found during searches of a house. The police also failed to inform the dwelling's occupant of the searches, although by law they should have done so. Deputy-Ombudsman Lindstedt issued reprimands to four policemen for having followed an unlawful procedure.

The police had repeatedly searched a private dwelling at night. On the first occasion that they searched the dwelling, they found a shotgun, cartridges and Subutex tablets. However, for investigative reasons they did not seize them, but instead only photographed them. On the second occasion the shotgun and the tablets were still in the dwelling, but on the third occasion the tablets had disappeared and on the fourth occasion the shotgun was gone as well. All that remained was half a Subutex tablet.

Deputy-Ombudsman Lindstedt pointed out that at the time of the events the law did not recognise the procedure that the police had employed, i.e. delaying seizure for investigative reasons. In fact, however, police practices have become, especially in the investigation of drug crimes, such that a criminal investigation is not initiated separately with respect to every smaller batch; instead, the aim is to concentrate on finding larger quantities.

In the view of the Deputy-Ombudsman, there has been an awareness of this practice and of its problematic nature in the light of legislation in the police force all the way up to the highest command levels. Although there have been grounds for the fear that the practice could gradually become increasingly questionable and even illegal, neither the senior command echelons of the police nor the Ministry of the Interior have undertaken measures to stop it nor regarded it as necessary to bring about legislation.

Thus police officers working in the field have had to do their own policymaking in unclear situations, in which tactical considerations may be an enticement to go further and further. In general, too, decisions in the field have to be made quickly in acute situations. Then it is especially important that the parameters within which the method is employed are precisely defined in legislation. The Deputy-Ombudsman communicated this view to the Ministry of Justice and the Ministry of the Interior.

Case number 1166/4/04

PRISONS

The number of complaints from prisoners has remained on an exceptionally high level for several years. During the year under review the Ombudsman received 235 complaints. As recently as the late 1990s the annual total had been only half as large.

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-Ombudsmen inspected 12 closed prisons, one open prison department and two labour camps. 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.

A central feature of inspections is that prisoners are given the opportunity to have a personal conversation with the Deputy-Ombudsman. A total of 159 prisoners (116 in 2004) 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.

Observations made in the course of on-site inspections led to seven cases being taken up for examination on the Deputy-Ombudsmen's own initiative.

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 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 well-founded 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.

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

Deputy Ombudsman Jääskeläinen had already in earlier years drawn attention to a shortage of doctors in the Defence Forces. In a decision that he issued during the year under review, he informed the Defence Staff of his opinion that the Defence Forces had taken inadequate steps to redress the shortage of doctors, a situation of which they had long been aware. He asked the Defence Staff to inform him of what measures his decision would lead to.

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.

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-Ombudsmen *Rautio* and *Lindstedt* issued decisions in 47 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.

A typical foreigners' complaint that can not 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.

COMPLIANCE BY THE DIRECTORATE OF IMMIGRATION WITH A RULING OF AN ADMINISTRATIVE COURT

Deputy-Ombudsman Jukka Lindstedt issued a reprimand to the Directorate of Immigration for delaying a decision on an asylum application in spite of the fact that the Helsinki Administrative Court had clearly established that the applicants were refugees and entitled to asylum. The Directorate of Immigration still wanted to obtain additional information on the matter and postponed a decision until this had been done. As a consequence, the asylum applicants had to wait nearly six months for the Directorate's decision.

The Directorate had in 2002 rejected asylum applications made by a family. The decision was appealed to the Helsinki Administrative Court, which a year later overturned it and referred the matter back to the Directorate for reconsideration. Acting on behalf of the asylum applicants, a lawyer from the Refugee Advice Centre complained to the Ombudsman about the delay in dealing with the matter.

Deputy-Ombudsman Lindstedt pointed out that the Directorate of Immigration does not have the power to refrain from complying with a ruling by an administrative court in order to obtain additional information. In a country governed under the rule of law, an administrative authority must comply with court decisions that have attained legal finality and an administrative authority's own perception of the correctness or not of a decision is irrelevant.

Case number 1434/4/04

SOCIAL SECURITY

Section 19 of the Constitution requires the public authorities to guarantee 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 Ombudsman dealt with numerous complaints concerning delay in processing applications for income support. She stated in her decisions on these complaints (e.g. case numbers 1941/2/05 and 3498/4/04) 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.

In cases where it is not necessary to obtain additional information in order to make a decision, the application should, in the Ombudsman's view, be processed and also a decision on it made usually within one week. If additional information is needed, it should be requested or obtained within a week.

The Ombudsman emphasised, however, that what is at issue is the starting point from which it can be assessed in each individual case whether processing had been done without delay. It is not a matter of a statutory deadline that, if not reached, would unambiguously mean the authority being found to have acted unlawfully. What is of key relevance in processing applications is that no one is left without the essential support they need. Thus in urgent cases, processing without delay can mean dealing with the matter immediately. Although all applications must be processed without delay, a social welfare authority has discretionary power to assess the degree of urgency with which livelihood support is needed in an individual case.

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.

As in earlier years, several complaints concerning services for the handicapped related to the transport services provided with the aim of giving severely handicapped persons greater opportunities for mobility, the fees charged for these services as well as appropriation-linked grants for buying a car and various items of accessory equipment.

There were several complaints relating to collective transport services for severely handicapped persons and to trips being combined, but nevertheless fewer than in earlier years. Likewise as in earlier years, the Ombudsman pointed out in her decisions that a municipality can arrange transport services for severely handicapped persons also in the form of, for example, collective transport or by using service lines and hub points. However, the individual needs and possibilities of the person receiving the service must be taken into consideration when providing transport. Thus the way in which a transport service is arranged must not factually prevent the recipient from using the transport services to which he or she is entitled in a suitable vehicle nor limit his or her opportunity to do so (e.g. 636/4/05).

Only five complaints during the year related to day-care services, Three of them concerned staffing levels at day-care centres, one the procedure that a State Provincial Office had followed in overseeing the legality of the group sizes involved in family day care arranged by a municipality and one a charge made for day care.

Some complaints concerned the inadequacy of home services for the elderly. However, the reports in these cases did not indicate any instances of negligence. A couple of complaints concerned the provision of home services for families with children. All in all, there were very few complaints relating to the adequacy or quality of services provided to homes or of residential services.

A few complaints concerned the procedure that a State Provincial Office had followed in its capacity as an overseer of and licensing authority for private social services.

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.

Several complaints with a bearing on the expanded duty of municipalities to arrange dental care (case numbers 2193/4/03 Järvenpää, 77/4/04 Hollola and Lahti and 1529/4/04 Porvoo). The Ombudsman emphasised in her decisions that since 1.12.2002 a municipality has had a duty to arrange dental care for the residents of the municipality in such a way that care is given to all, taking the need for, urgency of and effectiveness of care into consideration. The provisions of the Constitution require that the expanded statutory obligations relating to dental care be implemented by, if necessary, increasing resources. A municipality must appropriate sufficient funds in its budget to cover both urgent and non-urgent dental care.

As in earlier years, questions related to patients' rights to obtain information concerning their treatment and to the implementation of treatment with their content featured prominently in complaints.

Questions relating to entries in patient records and data concerning patients being released to others came up a lot during the year under review. It was found in several cases that the entries made in patient records had been defective. A point made in decisions was that sufficient, appropriate and correct medical records clarify and strengthen the legal security of both patients and medical staff, in addition to promoting the development of a trusting treatment relationship. It was emphasised in the decisions that the regulations issued by the Ministry of Social Affairs and Health must be observed when drafting and preserving patient records.

On visits to psychiatric hospitals the Ombudsman especially oversees the conditions in which patients involuntarily receiving treatment are kept and the treatment they receive. This is done by having discussions with the hospital management, patient's representatives, staff and patients, by studying documents as well as by inspecting closed wards and their isolation rooms.

A feature given special attention during these visits last year was the fulfilment of the treatment guarantee in the sector of psychiatric treatment for children and adolescents as well as restrictions on the right of self-determination and other fundamental rights of psychiatric patients. The rights of also other patients, including their opportunities for outdoor exercise, were likewise examined during inspections.

During her inspection visits the Ombudsman drew attention to the key task which the State Provincial Offices have in relation to overseeing limitation of the fundamental rights of patients involuntarily receiving psychiatric treatment. She emphasised that a psychiatric hospital must have written and sufficiently detailed guidelines setting forth how restrictions of the right of self-determination, in the meaning of Chapter 4 a of the Mental Health Act, are to be implemented and that the specific regulations for the various departments of a psychiatric hospital must be in accordance with law. She also drew the attention of hospitals to the fact that the conditions precedent which the law demands for isolation and restraint differ from each other.

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 began 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.

On 30.9.2005, the UN Children's Rights Committee, which monitors implementation of the Convention on the Rights of the Child, issued its recommendations arising from Finland's third periodic report. The Committee drew attention to inter alia the compilation of statistical data concerning children, the long times taken to resolve child custody disputes as well as the destructive impacts of domestic violence from children's point of view. The Committee also drew attention to the large number of children taken into care as well as to the quality of the substitute care provided by child care institutions and the importance of preserving contact between a child and its parents despite its having been taken into care.

Already in 2003, on the Ombudsman's initiative, a study of the measures taken by the authorities to prevent domestic violence against children, provide children with care and investigate cases had been begun. During the year under review, processing this matter was the biggest task in the children's rights category. The reports obtained were evaluated, complemented, an overall factual assessment made and conclusions formulated.

The Ombudsman decided to provide the Eduskunta with a special report outlining her observations and conclusions in this matter. The report was completed in early 2006 and presented to a Deputy Speaker of the Eduskunta on 7.2.2006. An English summary of the report is Annex 3 to this Annual Report. It is also posted on the Ombudsman's web site (www.ombudsman.fi/english).

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.

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms states that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The Constitution of Finland, in turn, guarantees everyone the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

Assessed on the basis of the Ombudsman's experience of oversight of legality, these demands are not always fulfilled in the best possible way where social insurance is concerned. In the perception of the Ombudsman, the administration of justice and the appeals system for security of livelihood have failed to keep pace with the development work through which both general and administrative courts and the way in which they administer justice have been restructured in recent decades, although the system has in recent years been developed on the basis of the recommendations made by a committee that examined the appeals process relating to livelihood support.

One of the special features of the security of livelihood system is that it has to deal with hundreds of thousands of cases. Over 10,000 of them are referred to the Insurance Court each year. Since it is especially important in matters concerning security of livelihood that court proceedings take place without undue delay, the requirement that these proceedings be conducted expeditiously can not be relaxed on the basis of these special features.

A decision in a security of livelihood matter does not usually take long on the first-instance level. Nor have appeal boards, with the exception of inspection boards, taken long to reach decisions. By contrast, the times taken to deal with cases in the Insurance Court are so long that, in the view of the Ombudsman, they constitute a problem of legal security. During the year under review, the time taken for a case to be dealt with by an inspection board increased to over 9 months and the time taken by the Insurance Court was over 13 months. In the view of the

Ombudsman, the right to a fair trial is not being implemented in the way the Constitution requires. She has drawn attention to the fact that from the applicant's point of view, what is involved in security of livelihood is the totality of processing the matter, which begins when the application is made and ends when the final instance of appeal has made a decision. It can take as much as several years for processing to be completed. In the Ombudsman's opinion, the State's responsibility for implementation of fundamental rights must be assessed with the overall duration of processing as the starting point.

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. There were also complaints relating to determination of social security for Finnish citizens resident abroad and persons moving to Finland.

The Ombudsman can not usually intervene in the content of a decision concerning a benefit. Consequently, it often has to be noted that an authority has reached its decision in the case on the basis of its discretionary powers and the complainant can only be advised to use the normal appeals procedures. For these reasons, the Ombudsman's decisions often relate to the procedures that authorities and courts have followed. The features criticised in these decisions include the slowness of procedures, the scantiness of reasons presented to explain decisions, neglect of obligations to provide advice and information as well as other shortcomings relating to legal remedies.

Long processing times have featured prominently in complaints received by the Ombudsman, for which reason she has drawn attention in her decisions to the importance of expeditious processing.

The decisions issued by the Ombudsman during the year under review included one (2585/2/04) concerning the times required by the Helsinki district of the Social Insurance Institution to process cases. She had investigated this on her own initiative, having observed in the course of investigating complaints and on visits that since the beginning of the century processing periods in the district had been lengthening in a way that could at times jeopardise the legal security of persons applying for benefits.

The Social Insurance Institution explained the reasons for the longer processing periods as being an increase in the volume of work, major operational and technical changes, especially the adoption of an electronic documents management system as well as a shortage of medical experts working for the Social Insurance Institution.

In her decision, the Ombudsman emphasised the status of the Social Insurance Institution as a provider of the basic subsistence guaranteed by Section 19.2 of the Constitution and examined the expeditiousness of its applications processing from the perspective of benefit applicants. In the view of the Ombudsman, the decisions issued by the Social Insurance Institution in relation to benefit applications are often of great importance from the applicants' point of view, because what is frequently involved in these cases is the granting of a benefit either on the basis of an illness, defect or injury that reduces a person's state of health or some other special circumstance. The financial situation of persons applying for benefits is in danger of deteriorating in a social risk situation that they encounter.

For that reason the Ombudsman emphasised in her decision that she considers it especially important that the Social Insurance Institution's processing of applications for benefits relating to basic subsistence take place without undue delay in the meaning of Section 21.1 of the Constitution and Section 23.1 of the Administrative Procedure Act.

The Ombudsman took the view, based on the report supplied to her, that the lengthening of average processing periods for benefit applications that had been observed in the Helsinki district up to the

beginning of 2004 was due in part to the Social Insurance Institution's negligence of its duty to process applications without undue delay.

However, the report received by the Ombudsman also revealed that an electronic system inaugurated by the Social Insurance Institution in 2004 had made it possible to prevent processing periods from lengthening further. By the first half of 2005 the number of applications transferred from Helsinki to other districts for processing had further increased and processing periods had begun reducing.

In the light of the favourable development of processing periods, the Ombudsman considered it a sufficient measure to inform the Social Insurance Institution of her opinion on the matter.

OTHER DECISIONS

PRIVATE SECURITY GUARDS AS EXERCISERS OF PUBLIC POWER

A journalist asked the Ombudsman to examine the legality of an instruction given to security guards working at railway stations, Metro stations and Helsinki-Vantaa Airport to demand a permit for photography or filming.

In his decision, Deputy-Ombudsman Jääskeläinen pointed out that the photography and filming done by the news media are included in the constitutionally guaranteed right of freedom of expression. Any restriction on freedom of expression, and thus also on photography and filming, must be founded in law.

The Deputy-Ombudsman's investigations at railway stations and Helsinki-Vantaa Airport did not reveal that any authority had acted unlawfully. By contrast, Helsinki City Transport had, invoking the Metro traffic by-laws, issued a guideline to the effect that a permit is required to photograph or film at Metro stations.

The Deputy-Ombudsman pointed out that the Metro traffic by-laws are not a norm that is based on an Act and in which restrictions could be placed on fundamental rights, such as the right to exercise freedom of expression. Thus Helsinki City Transport can not, on the basis of the Metro traffic by-laws, prohibit the activities of the media in ordinary photography or filming situations in the areas of the Metro open to the public or on platforms. There is no legal ground for such restrictions on photography or filming.

The problem to which the complainant referred seemed mainly to involve the activities of private security personnel.

The Ministry of the Interior stated in its report that the training given security guards nowadays includes familiarisation with, inter alia, the principal fundamental and human rights as well as the special powers that guards have. The report also stated that in individual instances of intervention in photography or filming situations it is understandable that in most cases guards act in the way their employers expect, especially since the regulations seem unclear.

In the view of the Deputy-Ombudsman, it is precisely this that underscores the importance of the professional competence demanded of security guards. When they exercise public power, they must be capable of independently considering the conditions precedent for using these powers, even if this were to mean in some situations that they can not act in the way their employers expect. The Deputy-Ombudsman further noted that guards are often employed by private bodies, which are beyond the scope of oversight of public power. Also this underscores the importance of independent responsibility on the part of security guards. To enable them to bear this responsibility, special attention must be paid to their professional competence and thus also to the training and instructions they are given.

The Deputy-Ombudsman expressed the view that it would be advisable to supplement and develop the *content of the training* with which security guards (both those with and those without police powers) are provided in such a way that there is a greater

emphasis than at present on the importance of fundamental rights and thus also on the importance of freedom of expression and the opportunities of the mass media to do their work. A variety of situations that are sensitive from the perspective of fundamental rights are part and parcel of security guards' work. Therefore it is important that they are properly equipped to handle and correctly assess these situations.

The Deputy-Ombudsman recommended to the Ministry of the Interior that attention be paid in the training, instruction and oversight of security guards to the aspects relating to implementation of freedom of expression and other fundamental rights dealt with in his decision. He also recommended to the Ministry that it consider referring his proposal to the Advisory Board for the Security Sector, established under the Private Security Services Act, for its deliberation. He asked the Ministry of the Interior to inform him of what measures his decision had led to.

The Deputy-Ombudsman also sent a copy of his decision to the Ministry of Transport and Communications and recommended that in its own sector it take the views supporting implementation of freedom of expression into consideration. He also drew the attention of Helsinki City Transport to the fact that photography or filming can not be prohibited in public areas of the Metro on the basis of the Metro traffic by-laws. He also sent a copy of the decision to Finavia (formerly the Civil Aviation Administration).

Case number 405/4/03

The Ministry of the Interior referred in its reply to a Government bill before the Eduskunta to amend the Private Security Services Act with the aim of improving the professional competence of security personnel and increasing the legal security of persons who are the focus of security measures. It also reported that basic training material for security guards was being updated and the content of training for instructors who train security personnel was being revised and that fundamental rights would be given special attention in training. Basic training for security guards would be further developed, inter alia by increasing the amount of basic training provided.

The Deputy Ombudsman's decision has also been deliberated by the Advisory Board for the Security Sector.

In addition, the Ministry of the Interior has sent the Deputy Ombudsman's decision to the institutes that arrange special vocational training for security guards. In its letter to the institutes the Ministry requested that in their training they pay special attention to implementation of freedom of expression and other fundamental rights.

CHARGING FOR TELEPHONE ADVICE AND OUTSOURCING THIS FUNCTION IS UNCONSTITUTIONAL

Deputy-Ombudsman Petri Jääskeläinen reprimanded the Vehicle Administration for charging a fee for its telephone advisory services and outsourcing the provision of advice relating to vehicle tax. The Deputy-Ombudsman investigated questions concerning phone advice on his own initiative.

Charging fees for telephone advice

He pointed out in his decision that the right to good administration, which is a fundamental right, includes the provision of advice free of charge. The Administrative Procedure Act also requires that advisory services be provided free. The Deputy-Ombudsman took the view that the Vehicle Administration's telephone advisory services did not meet the requirement that they be free of charge insofar as clients were being charged more than the normal phone call rate. A normal telephone call rate means the fee that a client pays when calling an ordinary telephone number from his or her own landline or mobile phone and the amount of which is in accordance with the connection contract.

The Vehicle Administration had made a service numbers agreement with a telecommunications company. Under the agreement, premium rates

were charged for calls to the Administration's service numbers. In addition to the ordinary call rate, the client paid a service fee of 8 eurocent per minute.

The Administration did not itself receive any part of the fee charged for calls; instead, the fee went to its contractual partner the telecommunications company. The Deputy-Ombudsman pointed out that it is irrelevant from the client's point of view whether it is an authority or some other party, such as a telecommunications company, that receives the fee. Whether or not a service is free of charge must be assessed from the client's point of view. Since the law stipulates that advice must be provided free of charge, the costs of providing the service must be borne by the authority rather than the client.

Outsourcing of advisory services relating to vehicle tax matters

It emerged in the course of the investigation into the for-a-fee character of the Vehicle Administration's telephone advisory services that the Administration had entrusted some of its advisory services concerning vehicle tax to a contractual partner, a private telecommunications company.

Under the Constitution, a public administrative task may be delegated to a body other than public authorities only by an Act or by virtue of an Act, if this is necessary for the appropriate performance of the task and if basic rights and liberties, legal remedies and other requirements of good administration are not endangered.

The Deputy-Ombudsman pointed out that the provision of the advice which the Administrative Procedure Act requires is a statutory duty that an authority must perform, and which is included in the principles of good administration. As such, it is also a public administrative task in the meaning of the Constitution and can be delegated to any body other than an authority only through an Act of the Eduskunta or by virtue of an Act.

The Vehicle Administration is not empowered under an Act to transfer responsibility for the provision of telephone advisory services, a task that it is statutorily required to perform, to a private company. Thus it had followed an unconstitutional procedure.

Deputy-Ombudsman Jääskeläinen informed the Vehicle Administration and the Ministry of Transport and Communications of his opinion. He requested that they inform him of what measures had resulted from his decision.

Case numbers 382/2/04 and 1806/2/05

The Vehicle Administration informed the Deputy-Ombudsman that it had made its telephone advisory services cost free. The Ministry of Transport and Communications, in turn, announced that legislation had been introduced in the Eduskunta to provide a statutory basis on which some of the Vehicle Administration's advisory services concerning vehicle tax could be entrusted to the care of a party other than an authority.

ANNEX 1

Statistical data on the Ombudsman's work

MATTERS UNDER CONSIDERATION IN 2005

Oversight-of-legality coses under consideration			*5,576*
Cases in initiated in 2005		3,829	
– complaints to the Ombudsman	3,326		
– complaints transferred from the Chancellor of Justice	26		
– taken up on the Ombudsman's own initiative	49		
– submissions and attendances at hearings	43		
– other written communications	385		
Cases held over from 2004		1,405	
Cases held over from 2003		341	
Cases held over from 2002		1	
Cases resolved			*3,491*
Complaints		3,008	
Taken up on the Ombudsman's own initiative		52	
Submissions and attendances at hearings		48	
Other written communications		383	
Cases held over to the following year			*2,104*
From 2005		1,612	
From 2004		492	
From 2003		–	
Other matters under consideration			*181*
Inspections [1]		76	
Administrative matters in the Office		105	

[1] Number of inspection days 45

OVERSIGHT OF PUBLIC AUTHORITIES IN 2005

Complaint cases			*3,008*
Social welfare authorities		652	
– social welfare	329		
– social insurance	323		
Police		505	
Healt authorities		286	
Courts		245	
– civil and criminal	217		
– special	1		
– administrative	27		
Prison authorities		235	
Labour authorities		123	
Local-goverment authorities		104	
Tax authorities		100	
Enforcement authorities		95	
Education authorities		90	
Environment authorities		80	
Prosecutors		62	
Agriculture and forestry		54	
Immigration authorities		47	
Transport and communications authorities		41	
Highest organs of state		35	
Military authorities		32	
Customs authorities		31	
Guardianship authorities		30	
Church authorities		11	
Private parties not subject to oversight		11	
Other subjects of oversight		139	
Taken up on the Ombudsman's own initiative			*52*
Police		13	
Social welfare authorities		10	
– social welfare	6		
– social insurance	4		
Military authorities		10	
Courts		4	
– civil and criminal	4		
Prison authorities		4	
Healt authorities		2	
Labour authorities		2	
Tax authorities		2	
Highest organs of state		1	
Local-goverment authorities		1	
Enforcement authorities		1	
Agriculture and forestry		1	
Education authorities		1	
Total number of decisions			*3,060*

MEASURES TAKEN BY THE OMBUDSMAN IN 2005

Complaints		*3,008*
Decisions leading to measures on the part of the Ombudsman	*471*	
– reprimands	39	
– opinions	398	
– recommendations	11	
– matters redressed in the course of investigation	23	
No action taken, because	*1,828*	
– no incorrect procedure found to have been followed	628	
– no grounds to suspect incorrect procedure	1,200	
Complaint not investigated, because	*709*	
– matter not within Ombudsman's remit	86	
– still pending before a competent authority or possibility of appeal still open	376	
– unspecified	82	
– transferred to Chancellor of Justice	7	
– transferred to Prosecutor-General	12	
– transferred to other authority	16	
– older than five years	49	
– inadmissible on other grounds	81	
Taken up on the Ombudsman's own initiative		*52*
– prosecution	–	
– reprimand	1	
– opinion	31	
– recommendation	5	
– matters redressed in the course of investigation	5	
– no illegal or incorrect procedure established	3	
– no grounds to suspect incorrect procedure	5	
– lapsed on other ground	1	
– still pending before a competent authority or possibility of appeal still open	1	

ANNEX 2

Constitutional provisions pertaining to Parliamentary Ombudsman of Finland

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

Section 38 – Parliamentary Ombudsman

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

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

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

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

Section 109 – Duties of the Parliamentary Ombudsman

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

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

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

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

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

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

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

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

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

If the Chancellor of Justice becomes aware that the lawfulness of a decision or measure taken by the Government, a Minister or the President of the Republic gives rise to a comment, the Chancellor

shall present the comment, with reasons, on the aforesaid decision or measure. If the comment is ignored, the Chancellor of Justice shall have the comment entered in the minutes of the Government and, where necessary, undertake other measures. The Ombudsman has the corresponding right to make a comment and to undertake measures.

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

Section 113 – Criminal liability of the President of the Republic

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

Section 114 – Prosecution of Ministers

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

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

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

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

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

Parliamentary Ombudsman Act

(197/2002)

CHAPTER 1
OVERSIGHT OF LEGALITY

Section 1 - Subjects of the Parliamentary Ombudsman's oversight

(1) For the purposes of this Act, subjects of oversight shall, in accordance with Section 109(1) of the Constitution of Finland, be defined as courts of law, other authorities, officials, employees of public bodies and also other parties performing public tasks.
(2) In addition, as provided for in Sections 112 and 113 of the Constitution, the Ombudsman shall oversee the legality of the decisions and actions of the Government, the Ministers and the President of the Republic. The provisions set forth below in relation to subjects apply in so far as appropriate also to the Government, the Ministers and the President of the Republic.

Section 2 - Complaint

(1) A complaint in a matter within the Ombudsman's remit may be filed by anyone who thinks a subject has acted unlawfully or neglected a duty in the performance of their task.
(2) The complaint shall be filed in writing. It shall contain the name and contact particulars of the complainant, as well as the necessary information on the matter to which the complaint relates.

Section 3 - Investigation of a complaint

(1) The Ombudsman shall investigate a complaint if the matter to which it relates falls within his or her remit and if there is reason to suspect that the subject has acted unlawfully or neglected a duty. Information shall be procured in the matter as deemed necessary by the Ombudsman.

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

Section 4 - Own initiative

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

Section 5 - Inspections

(1) The Ombudsman shall carry out the on-site inspections of public offices and institutions necessary to monitor matters within his or her remit. Specifically, the Ombudsman shall carry out inspections in prisons and other closed institutions to oversee the treatment of inmates, as well as in the various units of the Defence Forces and Finnish peacekeeping contingents to monitor the treatment of conscripts, other military personnel and peacekeepers.
(2) In the context of an inspection, the Ombudsman and his or her representatives have the right of access to all premises and information systems of the public office or institution, as well as the right to have confidential discussions with the personnel of the office or institution and the inmates there.

Section 6 - Executive assistance

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

Section 7 - Right of the Ombudsman to information

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

Section 8 - Ordering a police inquiry or a preliminary investigation

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

Section 9 - Hearing a subject

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

Section 10 - Reprimand and opinion

(1) If, in a matter within his or her remit, the Ombudsman concludes that a subject has acted unlawfully or neglected a duty, but considers that a criminal charge or disciplinary proceedings are nonetheless unwarranted in this case, the Ombudsman may issue a reprimand to the subject for future guidance.
(2) If necessary, the Ombudsman may express to the subject his or her opinion concerning what constitutes proper observance of the law, or draw the attention of the subject to the requirements of good administration or to considerations of fundamental and human rights.

Section 11 - Recommendation

(1) In a matter within the Ombudsman's remit, he or she may issue a recommendation to the competent authority that an error be redressed or a shortcoming rectified.
(2) In the performance of his or her duties, the Ombudsman may draw the attention of the Government or another body responsible for legislative drafting to defects in legislation or official regulations, as well as make recommendations concerning the development of these and the elimination of the defects.

CHAPTER 2
REPORT TO THE PARLIAMENT AND DECLARATION OF INTERESTS

Section 12 - Report

(1) The Ombudsman shall submit to the Parliament an annual report on his or her activities and the state of administration of justice, public administration and the performance of public tasks, as well as on defects observed in legislation, with special attention to implementation of fundamental and human rights.
(2) The Ombudsman may also submit a special report to the Parliament on a matter he or she deems to be of importance.
(3) In connection with the submission of reports, the Ombudsman may make recommendations to the Parliament concerning the elimination of defects in legislation. If a defect relates to a matter under deliberation in the Parliament, the Ombudsman may also otherwise communicate his or her observations to the relevant body within the Parliament.

Section 13 - Declaration of interests

(1) A person elected to the position of Ombudsman or Deputy-Ombudsman shall without delay submit to the Parliament a declaration of business activities and assets and duties and other interests which may be of relevance in the evaluation of his or her activity as Ombudsman or Deputy-Ombudsman.
(2) During their term in office, the Ombudsman and a Deputy-Ombudsman shall without delay declare any changes to the information referred to in paragraph (1).

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

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

(1) The Ombudsman has sole competence to make decisions in all matters falling within his or her remit under the law. Having heard the opinions of the Deputy-Ombudsmen, the Ombudsman shall also decide on the allocation of duties among the Ombudsman and the Deputy-Ombudsmen.
(2) The Deputy-Ombudsmen have the same competence as the Ombudsman to consider and decide on those oversight-of-legality matters that the Ombudsman has allocated to them or that they have taken up on their own initiative.
(3) If a Deputy-Ombudsman deems that in a matter under his or her consideration there is reason to issue a reprimand for a decision or action of the Government, a Minister or the President of the Republic, or to bring a charge against the President or a Justice of the Supreme Court or the Supreme Administrative Court, he or she shall refer the matter to the Ombudsman for a decision.

Section 15 - Decision-making by the Ombudsman

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

Section 16 - Substitution

(1) If the Ombudsman dies in office or resigns, and the Parliament has not elected a successor, his or her duties shall be performed by the senior Deputy-Ombudsman.
(2) The senior Deputy-Ombudsman shall perform the duties of the Ombudsman also when the latter is recused or otherwise prevented from attending to his or her duties, as provided for in greater detail in the Rules of Procedure of the Office of the Parliamentary Ombudsman.
(3) When a Deputy-Ombudsman is recused or otherwise prevented from attending to his or her duties, these shall be performed by the Ombudsman or the other Deputy-Ombudsman as provided for in greater detail in the Rules of Procedure of the Office.

Section 17 - Other duties and leave of absence

(1) During their term of service, the Ombudsman and the Deputy-Ombudsmen shall not hold other public offices. In addition, they shall not have public or private duties that may compromise the credibility of their impartiality as overseers of legality or otherwise hamper the appropriate performance of their duties as Ombudsman or Deputy-Ombudsman.
(2) If a person elected as Ombudsman or Deputy-Ombudsman is a state official, he or she shall be granted a leave of absence for the duration of his or her term as Ombudsman or Deputy-Ombudsman.

Section 18 - Remuneration

(1) The Ombudsman and the Deputy-Ombudsmen shall be remunerated for their service. The Ombudsman's remuneration shall be determined on the same basis as the salary of the Chancellor of Justice of the Government and that of the Deputy-Ombudsmen on the same basis as the salary of the Deputy Chancellor of Justice.
(2) If a person elected as Ombudsman or Deputy-Ombudsman is in a public or private employment relationship, he or she shall forgo the remuneration from that employment relationship for the duration of their term. For the duration of their term, they shall also forgo any other perquisites of an employment relationship or other office to which they have been elected or appointed and which could compromise the credibility of their impartiality as overseers of legality.

Section 19 - Annual vacation

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

CHAPTER 4
OFFICE OF THE PARLIAMENTARY OMBUDSMAN AND DETAILED PROVISIONS

Section 20 - Office of the Parliamentary Ombudsman

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

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

(1) The positions in the Office of the Parliamentary Ombudsman and the special qualifications for those positions are set forth in the Staff Regulations of the Parliamentary Ombudsman.
(2) The Rules of Procedure of the Office of the Parliamentary Ombudsman contain further provisions on the allocation of duties and substitution among the Ombudsman and the Deputy-Ombudsmen, on the duties of the office staff and on codetermination.
(3) The Ombudsman, having heard the opinions of the Deputy-Ombudsmen, approves the Rules of Procedure.

CHAPTER 5
ENTRY INTO FORCE AND TRANSITIONAL PROVISION

Section 22 - Entry into force

This Act enters into force on 1 April 2002.

Section 23 - Transitional provision

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

children, domestic violence and the responsibilities of the authorities

a special report
to the Eduskunta
by the **Ombudsman**

children, domestic violence and the responsibilities of the authorities

a special report to the Eduskunta by the Ombudsman

Foreword

Section 12 of the Parliamentary Ombudsman Act states that, in addition to the regular annual report, "The Ombudsman may also submit a special report to the Parliament on a matter he or she deems to be of importance."

For only the second time since the submission of a special report to the Eduskunta, the parliament of Finland, became possible fifteen years ago, Ombudsman Riitta-Leena Paunio exercised this right on 7.2.2006. The report she submitted was on the theme *Children, domestic violence and the responsibilities of the authorities.*

The main points in the special report are outlined in this summary.

Helsinki, 31 January 2006

Riitta-Leena Paunio
Parliamentary Ombudsman

Children, domestic violence and the responsibilities of the authorities

The child's fundamental and human right to security as the starting point

Families and others responsible for the care of children have the primary right and duty to ensure the security of the child. If there is violence in a child's home, the child is in an especially vulnerable position. Domestic violence causes insecurity in children and is also a threat to their physical and psychological wellbeing.

The point of departure in the special report is the child's fundamental and human right to security and integrity. The Constitution of Finland obliges the authorities to work proactively to ensure that this right is implemented. The same obligation is also enshrined in the UN Convention on the Rights of the Child. The concrete measures that signatory states should take to protect children from violence and abuse are stipulated in greater detail in Article 19 of the Convention than in the Constitution of Finland. The Committee on the Rights of the Child, which monitors implementation of the Convention, has on several occasions drawn attention to the large numbers of cases of children being subjected to physical and sexual abuse in their homes in Finland. The Committee has urged Finland to take additional measures in these cases.

What domestic violence means to a child and what is being done in Finland to reduce it

A report made to the Ombudsman by the Ministry of the Interior reveals that in 2004 the police had to send patrols in response to about 16,000 incidents attributable to domestic violence. However, research in Finland and abroad indicates that there are grounds for the assumption that a lot of violence in Finnish homes with children is of a kind that does not come to the notice of the authorities. What is known with certainty is that between June 2002 and the end of 2003 eleven children under 15 were killed in Finland. The killer in ten cases was either the child's own mother or father, the mother in six cases and the father in four. One child was among the victims when a bomb exploded in a shopping centre.

There are several estimates of the extent of domestic violence and different opinions on their reliability have been expressed. However, the research most often quoted is a study based on interviews with Finnish women in 1998. Based on the results of this study, it was estimated that nearly 17% of all children under 18, or 190,000 in all, had had to witness violence against their mother. Of these children, 10% had themselves been victims of violence.

Violence experienced in the home during childhood is believed to reflect itself as criminal, aggressive and anti-social behaviour. The effects that violence is believed to have on children include fear and depression, low self-esteem, shame and later a propensity to suicide. Merely witnessing violence at home is regarded as a very difficult experience for a child.

The phrase "domestic violence" itself (or "family violence" as it is also called) has been criticised on the ground that it blurs the responsibility of the perpetrator and assigns the guilt for violence more to the family community as a whole. The reason the word perheväkivalta (literally family violence) is used in the special report is that with it we can refer to all violence occurring within the family. Violence committed in a child's home is a grave threat to his or her wellbeing even when the child itself is not subjected to violence or abuse.

The current Programme for Government includes a national plan to reduce violence. With respect to violence within the family, implementation of the plan is the responsibility of the Ministry of Social Affairs and Health, whose operational plan covers the period 2004–2007. The goals of the programme include preventing domestic violence and improving the position of victims. In 2001 the Ministry of the Interior drafted an operational plan for the Police with a view to preventing domestic violence.

The Ombudsman's initiative and the study resulting from it

In a commentary published in the early part of 2003 under the heading "Are there grave violations of fundamental and human rights in our country?", Ombudsman Riitta-Leena Paunio identified domestic violence against women, children and the aged as one serious violation of human and fundamental rights. She stressed the importance of initiative, alertness and courage on the part of the authorities in preventing domestic violence and helping victims.

The same year, the Ombudsman's on-site inspections of municipal social welfare services began including an examination of the authorities' capability to intervene in instances of domestic violence. The aspects to which attention was paid during inspections included cooperation between authorities to investigate, deal with and prevent domestic violence against children. The subject of helping children in domestic violence situations was also brought up during inspections of operational units in the health care system and especially on visits to psychiatric hospitals. The inspections were continued in 2004 and at the same time the issues to be studied were appraised in collaboration with Deputy Ombudsman Ilkka Rautio. Oversight of the legality of actions on the part of the police and schools were included in his remit.

Based on the inspections, the Ombudsman deemed it necessary to obtain a broader study, with the special focus on how well employees of various authorities meet their obligation to report the social welfare authorities that children are in need of protection when they come across domestic violence in their work. These reports are called here child welfare reports. The obligation to make them is based on Section 40 of the Child Welfare Act. Other matters that needed study were what kinds of measures were undertaken by the social welfare authorities on foot of information received as well as whether legal or other obstacles to cooperation between the authorities existed.

Information was obtained from the social welfare and health departments of the Provincial State Offices, which studied the situation in their areas on the basis of the Ombudsman's questions. The reports on health care arrived in late 2004 and early 2005 and the social welfare report in June 2005. Information was requested later from the Ministry of the Interior's Police Department and the National Board of Education. The Ombudsman also discussed the matter with the Director of the family affairs unit of the Ecclesiastical Board of the Evangelical Lutheran Church of Finland.

The information that the various studies yielded was compiled and evaluated at the Office of the Ombudsman in the course of autumn 2005.

The Ombudsman's observations on actions by the authorities

A summary of observations, based on the study, of the actions that the authorities take in situations of domestic violence is presented below.

1. The Ombudsman observed that there are considerable differences on the national level between the numbers of child welfare reports made by authorities belonging to various sectors. Employees of the social welfare and health care authorities, the police, the school authorities and also employees of church parishes are obliged to make these reports. The study revealed that the police are nowadays making clearly more child welfare reports than earlier, especially if a social worker is affiliated to a police station. Considerably fewer reports are made by, for example, health care units. The number of child welfare reports received from schools is also low, although an increase in this respect has been observed. The study revealed that the number of reports received from children's day-care centres varies. The social welfare authorities believe that church employees rarely make child welfare reports.

2. A further obstacle to intervention in instances of domestic violence as soon as a child welfare report is received is the fact that in many places the municipality has not arranged for any actu-

al social welfare staff to be on duty to receive reports. This shortcoming will probably have been redressed by 2007, when a comprehensive network of on-duty centres will be in place.

3. It emerged that if help outside the home is needed for a child in the evenings or at weekends, arranging it can be difficult, especially in rural areas. In a sparsely populated area, the study revealed, a home for the elderly or the ward at a municipal health centre can be the only place where a child can be accommodated on, for example, a Saturday evening. In the view of the Ombudsman, the Child Welfare Act requires that in these situations the child be provided with care in accordance with his or her best interests. This obligation in the Act implements the child's fundamental right to indispensable subsistence and care that is enshrined in Section 19.1 of the Constitution. If under the provisions of the Act there is no justification for separating a child and a parent from each other, the Child Welfare Act allows for them to be helped together in a suitable way. The need for preventive child welfare measures may increase if the number of child welfare reports grows. All child welfare measures must ensure that the child is given timely help.

4. When a case of domestic violence is being investigated, suspicions that the child has been subjected to physical assault or sexual abuse may arise. Social workers must then decide whether to report the matter to the police. The social welfare authorities are not obliged to report suspicions to the police. However, they have the right in certain cases to provide the police with information on their own initiative. The studies revealed that informing the police is felt to be a difficult thing to do. The police have publicly expressed criticism of the social welfare authorities for the fact that too few reports are made.

5. The difficulty of making child welfare reports and reports to the police is obviously due partially to the fact that when the authorities are making the reports they appraise questions that do not belong to their usual sphere of competence, but instead are part of another authority's remit. The study showed that reports are easier to make when there are clear procedural guidelines and close cooperation between authorities.

6. Sexual abuse is one of the forms of violence to which a child can be subjected. When a case of sexual abuse of a child is being investigated, a forensic psychiatric examination is often unavoidable. To ensure the legal security and care of the child and his or her parents, this examination must be performed expeditiously. According to the information received by the Ombudsman, there are big differences between the various parts of the country in the times taken to conduct examinations. In the light of this information, investigations into sexual abuse of children are delayed in some of the operational units where they are conducted.

7. The Ombudsman had observed in the course of her oversight of legality that the guarantee of psychiatric treatment for children had not everywhere been implemented in the way required in the five years that it had been in effect. She raised the matter because she believed that in all probability the children on the waiting list for treatment included also victims of domestic violence. She found this shortcoming alarming.

8. The reports reveal that statistics on, for example, child welfare reports made, the measures to which the reports have led, or other data relating to domestic violence against children, are not kept. The Ombudsman recognised that compiling statistics is of secondary importance compared with ensuring that the child gets the help he or she needs. She took the view, however, that by systematically compiling data on such matters as those mentioned above a more reliable overall picture than we now have of factors affecting a child's security will be obtained.

Shortcomings observed by the Ombudsman in legislation relating to making child welfare reports

The Ombudsman found several shortcomings in the legislation relating to making child welfare reports and reports to the police.

She took the view that the wording in which the conditions precedent for making a child welfare report are stipulated in the Child Welfare Act is such that persons other than those with professional expertise in child welfare do not find it easy to decide on their basis when they are obliged to make a report. She called for a clarification of the regulation.

The Ombudsman also took the view that there were inclarities and deficiencies in the legislation concerning the relationship between making a child welfare report and the duty of confidentiality. The established view in the Finnish legal system is that a child welfare report must be made irrespective of the duty of confidentiality. However, this is not separately stated in the regulation concerning the obligation to make a report. Nonetheless, the assumption is that an official making a child welfare report would be aware of this interpretation. A further difficulty is that various sectors of administration have their own specific legislation concerning confidentiality on the part of authorities that are obliged to make reports and this legislation does not always clearly indicate when justification for making information available in the report exists.

A very central problem relates to professional health care personnel, for whom the duty of confidentiality is a very important obligation attaching to their occupation. The provisions concerning the duty of confidentiality by which they are bound do not allow for exceptions that would make it possible for them to

make a child welfare report. Thus there is an assumption that health care officials are aware of the above-mentioned established interpretation. The same problem applies also to comprehensive school staff and those church workers who are not bound by the secrecy of the confessional.

In the view of the Ombudsman, the interpretation that a child welfare report must be made in spite of the duty of confidentiality should be expressed more clearly than at present in legislation. That is also for the reason that a report made to the social welfare authorities generally contains data that are secret because they belong to the family's private life. Making a report would thus constitute an infringement of the fundamental and human right to protection of private life. This is justified because, in the view of the Ombudsman, the child's fundamental and human right to security and integrity, being the more important, can justify intervention. However, she also took the view that the conditions precedent for intervention should, in accordance with established practice regarding restriction of fundamental rights, be stipulated with clearly defined parameters in legislation.

There is also a special question relating to the position of family counsellors. Family counselling is regulated by the Marriage Act, but counsellors are tasked with helping all families in conflict situations irrespective of whether or not the parents are married to each other. The current legislation is generally regarded as meaning that a family counsellor is not obliged to make a child welfare report. This is associated with the counsellor's so-called heightened duty of confidentiality. The Ombudsman pointed out that the interpretation in question cannot be arrived at on the basis of the current Act. She took the view that the question of family counsellors' obligation to make reports should be resolved by making explicit provision for it in legislation. She added that she herself favoured an obligation to report, especially with a view to domestic violence situations.

Deficiencies in legislation concerning reports to the police by the social welfare authorities

As mentioned earlier, the social welfare authorities have been criticised in police circles for failing in domestic violence situations to report suspicions that crimes have been committed. The Ombudsman expressed the view in her report that the legislation on the basis of which the social welfare authorities are entitled to make a report to the police is unduly complicated and not conducive to suspicions of crimes being reported. Only the conditions precedent which must be met in order for a social welfare authority to have the right to provide the police with confidential information on their own initiative are reg-

ulated by the Act. The Ombudsman took the view that from the perspective of implementation of the child's legal security it would be important that the police investigate whether a suspected crime had been committed and decide on any further measures. Therefore legislation should contribute to bringing this about and the legislation concerning the reports to the police by the social welfare authorities should be clarified. She also recommended that the possibility of the social welfare authorities having a statutory obligation to report suspicions of violence against or sexual abuse of children to the police in some circumstances be given consideration.

Conclusions

The Ombudsman took the view that a child has a right to integrity and security in all circumstances. The authorities have a special obligation to act to ensure that this right is implemented, without forgetting the right of both the child and adults close to him or her to protection of their family life.

She presented the following conclusions in her special report:

- The legislation concerning child welfare reports must be clarified.

- The sets of regulations concerning the obligation of authorities representing different sectors of administration to observe confidentiality must be brought into line with the obligation to make child welfare reports.

- The social welfare authorities' right to report a suspicion that a child has been a victim of a crime of violence or sexual abuse to the police must be clarified. A further matter that deserves consideration is whether the social welfare authorities should be given a statutory obligation to inform the police, in certain situations, of a suspicion that a child has been a victim of criminal violence or sexual abuse.

- A child has the right to receive, as a matter of urgency, the indispensable subsistence and good care it needs also when this has to be provided outside the home because of domestic violence. It must be possible to help the child and its parent together, for example in a local refuge, unless their separation is justified on the basis of the Act. The other support measures that the child needs and which are provided for in the Child Welfare Act must be provided in a timely fashion.

- A child has the right to expert investigation of a suspicion that it has been a victim of sexual abuse and to the relevant examinations being conducted expeditiously, if necessary at a unit specialising in such examinations.

- A child has the right to receive psychiatric examination and treatment within a statutory period.

- Data relating to the integrity and security of the child should be systematically compiled and recorded as statistics so as to ensure that a more reliable picture of the position regarding the security of children is available.

To conclude, the Ombudsman also drew the legislators' attention to the fact that an overall picture of how the security of children is being implemented in Finland is not nowadays being formed within the area of competence of any individual ministry or agency. She expressed the view that the creation of such an overall picture would help promote the child's fundamental right to security.

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