



PARLIAMENTARY OMBUDSMAN OF FINLAND

PARLIAMENTARY OMBUDSMAN  
OF FINLAND

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## To the reader

The Constitution (Section 109.2) requires the Parliamentary Ombudsman to submit an annual report to the Eduskunta, the parliament of Finland. This must include observations on the state of the administration of justice and any shortcomings in legislation. Under the Parliamentary Ombudsman Act (Section 12.1), the annual report must include also a review of the situation regarding the performance of public administration and the discharge of public tasks as well as especially of implementation of fundamental and human rights.

The undersigned *Petri Jääskeläinen*, Doctor of Laws and LL.M. with Court Training, served as Parliamentary Ombudsman throughout the year under review 2014. My term of office is from 1.1.2014 to 31.12.2017. Those who have served as Deputy-Ombudsmen are Doctor of Laws *Jussi Pajujoja* (from 1.10.2013 to 30.9.2017) and Licentiate in Laws *Maija Sakslin* (from 1.4.2014 to 31.3.2018).

I am on leave of absence from my post as a state prosecutor with the Office of the Prosecutor General for the duration of my term, Dr. Pajujoja is on leave of absence from his post as a deputy head of department at the Ministry of Justice and Ms. Sakslin from her post as a senior researcher with the Social Insurance Institution.

Doctor of Laws, Principal Legal Adviser *Pasi Pölönen* was selected to serve as the Substitute for a Deputy-Ombudsman for the period 15.12.2011–14.12.2015. He performed the tasks of a Deputy-Ombudsman for a total of 59 work days during the year under review.

The annual report consists of general comments by the office-holders, a review of activities and a section devoted to the implementation of fundamental and human rights. It additionally contains statistical data and an outline of the main relevant provisions of the Constitution and the Parliamentary Ombudsman Act. The annual report is published in both of Finland's official languages, Finnish and Swedish.

The original annual report is almost 400 pages long. This brief summary in English has been prepared for the benefit of foreign readers. The longest section of the original report, a review of oversight of legality and decisions by the Ombudsman by sector of administration, has been omitted from it.

I hope the summary will provide the reader with an overview of the Parliamentary Ombudsman's work in 2014.

Helsinki 2.4.2015

*Petri Jääskeläinen*  
Parliamentary Ombudsman of Finland



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## Photos

The pictures in the page spreads feature items from Aimo Katajamäki's sculptures series Wood People (2006), which is in the entrance foyer of the Little Parliament annex building. Photos Anssi Kähärä / Werklig Oy

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# 1 General comments



Parliamentary Ombudsman  
Mr. Petri Jääskeläinen

## Parliamentary Ombudsman celebrates 95<sup>th</sup> anniversary



In the year under review, it had been 95 years since the institution of ombudsman was established in Finland with the Constitution of 1919. The Office of the Parliamentary Ombudsman has continued the tradition of always celebrating its anniversary at the beginning of February the following year. This is because Finland's first Ombudsman received the very first complaint on 11 February, 1920. This tradition of linking the institution's anniversary to the arrival of the first letter from a citizen is an excellent reflection of the nature of the organisation: the Ombudsman is for citizens – for the people.

The first complaint that came in was from a Jaeger warrant officer on remand in the prison in Vyborg (now in Russia) who said that the court hearing of his case had been delayed. In many ways the complaint was typical of those the Ombudsman deals with even today. First of all, it concerned a remand prisoner. One of the special tasks of the Ombudsman is the oversight of the conditions and treatment of those deprived of their liberty. Secondly, it concerned court procedures. In the international context, it is rare for

the competence of the Ombudsman to extend to monitoring court procedures, and this appears to be almost unique to Finland and Sweden. Thirdly, the complaint was about a delay in the hearing of a case. A delay in a court hearing and in the handling of cases in general is even now one of the most common reasons for complaints.

Although an individual complaint today may be more or less the same as one 95 years ago, the work of the Ombudsman has developed in many ways over the years. We can be proud of what the institution of ombudsman is today. I have heard it said that the Finnish ombudsman institution is the best in the world. I would agree. But why is that exactly? There are many reasons, some of which are structural and some functional. I would like to make a few points.

### The Institution is the world's second oldest

Compared with other countries, we have the advantage that the Finnish ombudsman institution is the world's second oldest. The first was established in Sweden in 1809, the third in Denmark

in 1955 (so exactly 60 years ago), then in Norway and New Zealand in 1962, and only after that did the institution spread all over the world. At present there are ombudsman institutions in existence in at least 140 countries.

Our ombudsman tradition in Finland is almost as old as our independence. For this reason, the institution is deeply rooted in Finnish society. People know that they can rely on the Ombudsman. This is one of the basic requirements of the Ombudsman's role. The Ombudsman would not be able in any way to identify all the problems and shortcomings reaching his or her attention in the form of complaints merely by acting alone. Indeed, I have said that the Ombudsman has more than five million agents all over Finland to report back on any problems they notice.

On the other hand, the fact that the institution is so old and deep-rooted, the authorities know that they may have to explain their actions to the Ombudsman. This guards against unlawful procedures and neglect of responsibilities, and it encourages the authorities to act with care. Moreover, the authorities are used to the idea that the Ombudsman's opinions and recommendations should be properly acknowledged. Furthermore, that is what happens in practice. This gains strength from the fact that the Ombudsman enjoys the prestige that is associated with Parliament, the highest organ of the state. Today, however, the Ombudsman cannot simply rely on status or prestige: each day the institution must show that it deserves the trust that is vital for it to function well. This means, in particular, that it has to be able to issue well-argued decisions and statements.

### The Ombudsman's competence is extensive

One factor for success is the fact that, in Finland, the Ombudsman's competence has been made very extensive, both in terms of those the institution oversees and its powers.

The Ombudsman has the competence to oversee all public administrative bodies: only Parliament itself and Members of Parliament in the

exercise of their parliamentary mandate lie outside the Ombudsman's competence. In many countries, the highest executive powers – the President, ministers and ministries – fall outside the Ombudsman's remit, as do the defence forces and security authorities, even though it is important to extend the oversight of legality associated with Parliament, the highest organ of the state, to all executive powers.

It is almost an unique phenomenon internationally to confer on the Ombudsman the power to oversee the courts, but in Finland it is, I think, the right solution even today, owing to the independent role of the institution of ombudsman, its very well established status, given how long it has been in existence, and the prestige it enjoys as a parliamentary organisation. But the Ombudsman must in turn respect the independence of the courts, and court monitoring mainly focuses on procedural guarantees of legal protection in the form of fundamental and human rights. And, in my opinion, monitoring of this sort is very well suited to the role of Ombudsman in Finland.

All more important these days is the fact that all private actors performing a public task also fall within the Ombudsman's remit. When, for example, a local authority (municipality) outsources the social welfare and health care services entrusted to it to private bodies, these private organisations fall within the Ombudsman's scrutiny. That is not the case in all countries. In the other Nordic countries, for example, the Ombudsman's competence is basically defined with reference to the official organisation and not the type of task. If the discharge of a task is transferred to a party outside the official organisation, it no longer falls within the Ombudsman's competence. This is a highly significant difference from the point of view of the viability of the Ombudsman's work, both in principle and in practice.

Compared globally, the Ombudsman's powers in Finland are exceptionally extensive. The Ombudsman's unrestricted right of access to information is essential in the examination of normal complaints, but especially when it concerns matters like the investigation into CIA rendition



flights, for example. In Finland, the Ombudsman has the powers of a prosecutor in matters that fall within its competence, something which is rare on the international level. Although the right to bring charges is exercised rarely, its very existence is important as a matter of principle, and in some situations it can be very important in practice too. The Ombudsman's right to make legislative and other proposals is of enormous significance for the protection of fundamental and human rights. The Ombudsman can also engage in direct interaction with Parliament both in connection with debates over Ombudsman's reports and in other situations where he or she has perceived flaws in legislation.

### The institution is continually developing

The Finnish Ombudsman institution has been able to develop in accordance with the demands of time. For this we can thank both Parliament and my predecessors.

The Ombudsman has traditionally been an overseer of legality, whose task has been concerned very much with monitoring the obligations of the authorities and expressing criticism. The Ombudsman continues to be an overseer of legality, but has also become a defender of fundamental rights. Under that heading, I include the promotion of the rights of the individual, guidance with regard to the work of the authorities, and the development of the state of justice, to allow fundamental and human rights to be implemented as satisfactorily as possible.

Several of my predecessors have been pioneers in the way fundamental and human rights are conceived. The most dramatic change in the law was in the reform of fundamental rights in 1995. It was then that a new provision was added to the Constitution: "In the performance of his or her duties, the Ombudsman monitors the implementation of basic rights and liberties and human rights."

There are several other references in the law to Ombudsman's fundamental and human rights mandate. The Parliamentary Ombudsman Act

states that the Ombudsman can, among other things, draw the attention of a subject of oversight to the requirements of good administration or to considerations of the implementation of fundamental and human rights. Under the same Act, the Ombudsman must devote special attention to the implementation of fundamental and human rights in his annual report. This point is also expressed in the provision on the investigation of the complaint revised in 2011. The provision decrees that the Ombudsman shall take the measures arising from a complaint he or she deems necessary from the perspective of (1) compliance with the law, (2) protection under the law or (3) the implementation of fundamental and human rights. The provision represents the very essence of the Ombudsman's work at the present time.

This extension of the Ombudsman's task and perspective is reflected in all the work that the institution carries out. For example, the investigation of complaints no longer entails only an assessment of whether an authority has acted contrary to the law or neglected its responsibilities. Nowadays, in all cases, the Ombudsman assesses also whether the authority could have promoted the implementation of fundamental and human rights more satisfactorily by acting in some other way. I would say that over half of the Ombudsman's decisions on measures to be taken consists of guidance, either exclusively or alongside criticism.

The various recommendations that the Ombudsman makes show very clearly that the institution's work nowadays is much more than just the oversight of legality after the event. There are four types of recommendations. Firstly, a recommendation may be made to redress an error or rectify a shortcoming. Secondly, it may be to improve certain legal provisions, statutes, regulations or official guidelines. Thirdly, a recommendation may concern compensation for an infringement of a fundamental or human right or for an unlawful or wrongful conduct. Fourthly, the Ombudsman may make a proposal to resolve a matter in a way that is amicable to both authority and complainant.

To my knowledge, there is no other ombudsman institution where the implementation and promotion of fundamental and human rights has such a robust role as in Finland, both in terms of legislation and in practice. The other Nordic countries, for example, are very much behind us in this area.

### Some of the latest developments

Over the past five years, very much has happened with the ombudsman institution. It is worth noting that all the reforms and developments mainly relate to the Ombudsman's role as a defender of fundamental rights, not to its traditional role as an overseer of legality.

As far as the Ombudsman's fundamental and human rights mandate is concerned, the establishment of the Human Rights Centre and its Human Rights Delegation at the Office of the Ombudsman in 2012 was a natural and relevant reform. This reform went ahead because the Ombudsman did not alone meet all the criteria set for human rights institutions in the Paris Principles adopted by the UN in 1993.

In December 2014, the Finnish National Human Rights Institution, consisting of the Ombudsman, the Human Rights Centre and its Delegation, was granted A status, which indicates the highest possible standard. This means that our institution fully complies with the Paris Principles. A status is considered highly significant in the UN and, in more general terms, in international cooperation. It also has legal relevance, because an institution with A status has, *inter alia*, the right to take the floor in sessions of the UN Human Rights Council.

At the same time, the provisions on the handling of complaints in the Parliamentary Ombudsman Act were reformed, giving the Ombudsman greater powers of discretion in the investigation of complaints. Now resources can be allocated to matters where the Ombudsman can help, where the Ombudsman needs to express a criticism or where there is a need for his or her guidance or recommendations. Partly due to this

reform the Office of the Ombudsman achieved a long-term objective at the end of 2013: there was not one complaint pending that was more than one year old. The last time this happened was 20 years ago. The reform has also meant that it has been possible to increase the number of on-site inspections. In 2012 there were a record 147 inspections.

The ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which had been in preparation for quite some time, was eventually completed in 2014. Since 7 November 2014, the Ombudsman has acted as the National Preventive Mechanism, inspecting places where those deprived of their liberty are kept. They need not just be prisoners: they might also be children placed in care or residential units, elderly people, psychiatric patients, foreigners or those with intellectual disabilities. The role of the NPM is another new step forward in the Ombudsman's increasingly diverse work description and range of resources. The new features of the Ombudsman's functions, especially the use of external experts, will bring added value to the monitoring of the treatment of those deprived of their liberty, which has long been a responsibility of the Ombudsman. The role of the NPM differs from that associated with traditional inspections. The idea is to prevent poor treatment using non-judicial means, based on regular visits to places of detention.

The next step in this development is already on the horizon: Parliament has approved laws aimed at the ratification of the UN Convention on the Rights of Persons with Disabilities. Finland's National Human Rights Institution will function as the structure referred to in the Convention, whose task will be to promote, protect and monitor its implementation. This task is eminently suited to Finland's National Human Rights Institution. If the rights of persons with disabilities are to be effectively implemented, there must be an opportunity to investigate individual cases and conduct inspections, which are among the tasks of the Ombudsman. Secondly, the task en-

tails human rights education and training as well as human rights research and information which belong to the duties of the Human Rights Centre. These may influence people's attitudes and awareness of the rights of the disabled. Thirdly, there will be a need for cooperation between fundamental and human rights actors and for the involvement of disabled people. The Human Rights Delegation provides an excellent forum for this.

### Future development needs

Finland has two supreme overseers of legality: the Parliamentary Ombudsman and the Chancellor of Justice, both of whom have equal powers under the Constitution. However, the division of responsibilities between them can be enacted by means of conventional legislation without narrowing each person's powers to oversee legality. Under the Act on the division of their duties, the Chancellor of Justice is under no obligation to monitor compliance with the law in matters relating to people deprived of their liberty, for example. The Chancellor of Justice must refer such matters to the Ombudsman, unless there are special reasons for deeming it appropriate to resolve the matter him/herself.

The role of National Preventive Mechanism given the Ombudsman under OPCAT did not cause any need to change the division of responsibilities between the Ombudsman and the Chancellor of Justice, because matters concerning people deprived of their liberty were already the responsibility of the Ombudsman under the Act referred to. However, the special task connected with the rights of persons with disabilities highlights the need to develop the division of responsibilities between the Ombudsman and the Chancellor of Justice.

Since the promotion and supervision of the rights of persons with disabilities are to be the special function of the Ombudsman based on the international agreement, it would be highly inappropriate if the Chancellor of Justice were to deal with matters that fell within that responsibility. Moreover, with this new responsibility, the Office

of the Ombudsman will increase its expertise in the area of the rights of persons with disabilities that the Office of the Chancellor of Justice does not necessarily possess.

In my view, there are weighty reasons favouring a more extensive division of labour between the Ombudsman and the Chancellor of Justice so that the tasks would overlap as little as possible. One key reason relates to the fact that the tasks of the Ombudsman and the Chancellor of Justice have undergone differentiation and specialisation. The developments in the role of the Ombudsman in the way I have described them do not apply in all respects to that of the Chancellor of Justice, whose duties are largely concerned with supervision of the government. As the Ombudsman and the Chancellor of Justice handle similar matters with equal competence, their outcome and the measures associated with them should be similar, regardless of which institution has dealt with the case. The more differentiation and specialisation there is, the greater the danger that that will not be the case in practice. There is no great risk of different outcomes in the traditional oversight of legality. But there might well be differences in measures aimed at promoting the rights of the individual, providing an authority in a given area of administration with guidance, or the development of the state of justice.

We can try to avoid the problems and dangers arising from the overlapping tasks through certain procedures and reciprocal communication and cooperation. However, the time devoted to such steps would be additional to that normally spent in the discharge of tasks. A system that features overlap between the two supreme overseers of legality is not the most efficient or appropriate from the perspective of the citizens or society.



Deputy-Ombudsman  
Mr. Jussi Pajuja

## Advancing ICT use poses a challenge for the public sector



Finland ranked very highly in a recently published comparison titled Digibarometer 2015. In an overall comparison, Finland came second after Denmark out of 22 countries. The other countries in the top five were Norway, Sweden and the Netherlands.

The Digibarometer evaluates the extent of ICT use, and the rankings are based on 36 variables. Three main sectors, the corporate, the civic and the public sector, are evaluated separately.

The most significant improvement in Finland was registered in the corporate sector. In the public sector, on the other hand, no similar advancement was recorded. The greatest challenges are the application of ICT in the public sector and civic capabilities in ICT use, in which Finland remains at an average level among the countries included in the comparison. The report sets the target at complete digitisation of the public sector. However, the fact that no-one in the Finnish government currently seems to have a clear idea of how we should progress with digitalisation is considered a shortcoming.

### Schools in a key role

The foundation for civic competence in ICT use is laid at school. The electronic matriculation examination, which is being introduced in the autumn of next year, will be a big stride forward. The pilot subjects will be German, geography and philosophy. The target has been set at all examinations being taken electronically by 2019. The electronic exam in mathematics will be the last one to come onstream.

I have monitored the implementation of the electronic matriculation examination by inspections at the Matriculation Examination Board, the Ministry of Education and Culture, and the National Board of Education. I have also discussed the issue with representatives of the Trade Union in Education. Instruction in information and communication technology has also been one of the permanent themes of inspections carried out in schools.

The early indications are that the electronic matriculation examination will be a major challenge. Unlike most reforms, this one is not pro-

gressing by degrees from bottom up, by starting from the first grade of basic education and proceeding gradually towards the general upper secondary school. Instead, this reform is being carried out from top to bottom, by implementing an electronic matriculation examination. Its success requires modifications in teaching methods not only in the upper secondary school, but in the basic education as well.

In the course of school inspections, I have observed great disparities in ICT competences and resources at all levels: between municipalities, in different schools of the same municipality, and between various teachers of an individual school. For example, if a school announces that it has a special emphasis on ICT, this does not mean that all the teachers in that school are involved in or have capabilities for providing instruction that relies on electronic methods and devices.

When charting best practices, a pedagogical support person assisting teachers and students emerges as a good idea. The support person would be tasked to make sure that the teachers and the students know how to use the devices and to provide advice on the best ways of delivering instruction that applies ICT.

The schools' arrangements for ICT instruction in themselves often signal an outdated way of thinking. Previously, instruction in ICT was provided in so-called computer classrooms. Part of the reason for this was that digital devices were expensive and needed to be protected. The flip side of the coin was that ICT remained an isolated island in the instruction that could not be integrated in all learning, as the devices could not be used in the other classrooms. Today, the mass production of ICT devices, their ubiquitousness and their lower prices enable a new way of thinking in this respect.

Inspection results have indicated that our ideas of children and young people's standards of ICT competence are partly misleading. While they are well versed in the use of information technology for entertainment purposes, their other ICT skills cannot be taken for granted. When visiting a school with emphasis on ICT,

we asked how many of the students had mastered blind typing. The answer was, most had not. To a further question of how those who did use the system had picked it up, the students answered that they had learnt it online. At least in this school, blind typing was not part of the syllabus.

Major differences can also be seen in basic attitudes. In some schools, students learn coding and have the most up-to-date devices at their disposal, whereas in others, smartphones and other ICT devices are deemed a threat and a disruption, and attempts are made to control them by means of elaborate rules and strict discipline.

The question of whether pupils can be asked to bring their own smartphones or other digital devices to school and use them for instruction purposes is a dilemma in its own right. The opinion of the supreme overseers of legality on this issue is that using such devices is possible. A precondition, however, is that if some of the students do not have devices of their own, in free basic education the education provider must make the devices required in the instruction available to everyone free of charge.

All in all, the use of digital technology is not only a question of arrangements, but of rights as well. A key factor is the equal availability of digital instruction, which goes back to resources. The municipalities should invest in technological devices and ICT instruction in schools, but in this respect, equality is a distant dream, as the resources and priorities of the municipalities vary greatly.

A need for support regarding user rights has also emerged in school inspections. In the context of using digital technology teachers have, for example, called for clear instructions concerning copyrights. Teachers have often felt that they are left alone to struggle with the complex questions of rights in the digital world, both when they use online material and publish the students' work online.

In other words, while implementing the electronic matriculation examination is a big challenge, extending digitalisation to all education is an immense task. It will unavoidably require investments, result in structural modifications and

also demand personal inputs from all those who are operating in the educational sector. On the other hand, the result could be a more versatile school that uses novel learning methods and severs the bonds of time, place and buildings.

### How could ICT use in the public sector be improved?

The Digibarometer indicates that the biggest challenge, which Finland is facing, is ICT application in the public sector. In a comparison of public service productivity, for example, we are behind the leaders. This indicator measures the impacts of ICT in such areas as faster access to services, reduction in the number of errors and improved transparency.

In recent times, public sector information system projects have made headlines, in particular because of major failures. In the Annual Report 2010, I discussed the preparation of the VALDA system. This information system was to be completed by the time the Regional State Administrative Agencies and the Centres for Economic Development, Transport and the Environment were launched. The information system did not become operational at that time or later, and the project was finally abandoned.

On the other hand, some information systems have been deployed successfully. In the Annual Report 2013, I dealt with the operation of the Social Insurance Institution (Kela). It is obvious that Kela has managed to both expand the use of its online services and to develop its own information systems without serious service interruptions or delays in deployment.

In the sectors that I personally supervise, particular problems with information systems currently occur in the labour administration and in the development of the police administration's VITJA system. While the problems with the services of the labour administration and Employment and Economic Development Offices are discussed in a specific section, the next sector provides a short review of the police VITJA project.

### Why was the most important information system project of the police delayed?

The Parliamentary Audit Committee found in its report of 2011 that the duration of trials in Finland is overly long. In order to shorten the total duration of a trial, which also includes the pre-trial investigation and consideration of charges, information system problems should be tackled. The problems stem from outdated systems that have reached the end of their life span, and from incompatibility between the systems of different authorities.

The Audit Committee's instructions were thus clear. The aim was to have a single information system shared by the entire criminal process where information would only need to be entered once. This way, transfers of information could be speeded up, the duration of trials shortened, the transparency of the process increased and legal protection improved. In order to reach this aim, the Audit Committee required that the ministries responsible for the project, or the Ministry of the Interior and the Ministry of Justice, work seamlessly together.

The VITJA project of the police was to be completed by the beginning of 2014, which also marked the introduction of the reformed Police Act, Criminal Investigations Act and Coercive Measures Act. The new system was to replace the key information system of the police (PATJA); police officers spend up to 20–30% of their working time using this system.

The schedule of the VITJA project fell through, however, even if exceptional amounts of resources were allocated to it. For example, more than 250 people took part in preparing its information technical specifications in the peak period. As the project contract with the information system supplier was terminated in June 2014, only the first phase of the system, or the register of descriptions, had been deployed in early 2014.

Significant financial and time losses have been incurred because of the delays in the project. When assessing the situation, the Audit Committee stated that even though the contract was ter-

minated, several years and millions of euros were lost in the project without achieving the targeted benefits of efficiency.

One reason for this failure was that the VITJA project expanded too much and in too many directions. Thus, its implementation became impossible. The system was to incorporate all police information systems, which can be counted in their dozens. When the project contract was terminated, the project was also divided into smaller and more manageable parts.

Another problem was that the seamless cooperation between the ministries responsible for the project required by the Audit Committee was not achieved. The VITJA project was paired with the AIPA project of the Ministry of Justice. The aim of AIPA was to create a coherent system where the prosecutor's offices and public courts could handle all of their work phases in administration of justice electronically, from the time a case becomes pending until it is resolved and archived.

However, the AIPA project has also been beset by delays. More difficulties have been caused by the fact that both ministries went their separate ways in the bidding processes. Instead of obtaining synergy benefits from a joint bidding process,

it will now be necessary to tackle compatibility and communication issues between information systems built on different platforms.

What gives particular cause for concern in terms of oversight of legality is that the problems related to rights and information security were not adequately anticipated in the preparation of the VITJA project. For example, the logging system for controlling data use, which incurs major costs, was apparently not included in the original project plan to the required extent. Similar problems were associated with data access rights and the life span management of data. What remains unclear is, among other things, how the archiving of data and removal of outdated data in the system should be arranged.

For these reasons, I have requested a separate report from the Ministry of the Interior on how the VITJA project will progress during 2015 and how the problems that have emerged in the context of rights and information security are to be solved. The need for monitoring is more pronounced as information systems become implemented, the increasing norms applicable to information technology, and the dispersed legislation on police registers seem to have little common ground.

Deputy-Ombudsman  
Ms. Maija Sakslin

## The EU, the European Convention on Human Rights and fundamental rights



### The EU's Accession to the ECHR

In December 2014, the Court of Justice of the European Union issued an important opinion. It ruled that the draft agreement on EU accession to the European Convention on Human Rights (ECHR) is not compatible with EU law. The Court held that it was unacceptable that, according to the accession agreement, the EU should be compared to a state that is a party to the ECHR and that its role should be identical to that of a state. This would compromise the autonomy of EU law and would affect adversely the jurisdiction of the Court of Justice.

The European Union has been criticised for its inadequate protection of fundamental and human rights. Accession to the ECHR is seen as an important step towards closing the gap in European fundamental rights protection. The issue that has been considered to be particularly problematic is the fact that an individual may not submit an application concerning the actions of the EU to the European Court of Human Rights, but an appeal may be lodged with the Court of Human Rights concerning the actions of a single EU Member

State. Accession would improve the protection of rights, because individuals and groups could refer the actions of EU institutions to external control of the European Court of Human Rights. This possibility has been regarded as all the more important as Member States have transferred ever more competence to the EU.

Accession to the ECHR would have a symbolic value, but also legal significance in the accomplishment of comprehensive and consistent protection of human rights. It might improve the way in which rights are taken into account in the work of all EU institutions. It is thought that accession would guarantee the consistent protection of rights, enhance the EU's legitimacy and credibility in its external relations.

According to the Court of Justice, with accession, the Convention would be binding on the EU institutions and Member States and would therefore form an essential part of the EU law, which would be applied in the Court of Justice.

The notion that the ECHR should form part of EU law is an old one. Even when the European Community was established, there was talk of incorporating rights safeguarded under the Con-

vention on Human Rights in the Treaty. Furthermore, accession to the Convention was proposed when the European Union was being established. All 28 Member States of the Union are members of the Council of Europe and are therefore also parties to the ECHR. There are also 19 other member states of the Council of Europe that are parties to the Convention.

Negotiations on the accession agreement lasted almost three years. The European Commission and almost all the Member States that had expressed their opinion in the Court of Justice took the view that the accession agreement was compatible with EU law. The adverse opinion stated by the Court of Justice means that accession to the ECHR will only be possible if the accession agreement is amended or the EU treaties are revised. In terms of promoting human and fundamental rights, this is thought to be most unfortunate.

### External monitoring of the EU

Accession to the ECHR would mean that the monitoring arrangements of the Convention would be applied to the EU and its institutions. The EU would be subject to external monitoring by the European Court of Human Rights. The interpretations of the ECHR made by the European Court of Human Rights would be binding on the EU and all its institutions, but the interpretations by the Court of Justice would not be binding on the Court of Human Rights. According to the Court of Justice of the EU, this would be an unacceptable state of affairs, with regard to the interpretation of EU law or the EU Charter of Fundamental Rights. The Court of Justice also objects that, although ECHR reserves the power to lay down a higher level of protection of rights, the accession agreement does not ensure that the level of protection of rights under the EU Charter of Fundamental Rights and the primacy, unity and effectiveness of EU law are not compromised.

The ECHR requires those states that are party to it to ensure that the other states also respect human rights. According to the Court of Justice, this obligation is problematic, because EU law is

based on values that are shared by the Member States and obliges them to maintain mutual trust. The obligation to check that the other Member States have acted in compliance with fundamental rights is liable to upset the underlying balance of the EU and undermine the autonomy of EU law.

The Court of Justice also expressed concern regarding the practice whereby the highest courts in the Member States could ask the European Court of Human Rights for advice on the interpretation of the Convention on Human Rights. This could restrict the independence of the EU's preliminary ruling procedure and weaken its effectiveness.

The Treaty of Lisbon strengthened the EU's fundamental rights dimension. Not only did the Treaty of Lisbon oblige the EU to accede to the ECHR, but the EU Charter of Fundamental Rights also became legally binding. Under the Charter, in so far it contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights shall be the same as those laid down by the said Convention. The Union may, however, provide more extensive protection of rights. The Convention thus has special significance for EU law.

A key question is who is responsible for any infringement of human rights. Is a Member State responsible for the actions of a national legislator, the administration or a court, or is an infringement the responsibility of the Union, because the Member State is acting on its behalf and with its support?

In the *Bosphorus* judgment, the European Court of Human rights found that, as the EU had not acceded to the Convention on Human Rights, a Member State is not responsible for any alleged infringement of the Convention as long as the protection of human rights afforded by the EU corresponds to that provided by the Convention. It is not possible to submit an application to the Court of Human Rights if a Member State implements EU law, remains in its framework, and has no discretion in the implementation of EU law.

In Finland, both the Government and Parliament have held the view that the EU's accession to the Convention on Human Rights is impor-



tant to implement the rights of the individual and to enhance the significance of fundamental and human rights.

### The EU's fundamental rights dimension

In the opinion of the Court of Justice attention was mainly drawn to relations between the European courts and cooperation between them, as well as the EU's involvement in the monitoring of the ECHR. Less attention was given to the matter of whether the EU's accession to the ECHR would improve the protection of rights within the EU.

The EU has a relatively high level of protection of fundamental and human rights. Respect for fundamental rights under the EU Charter constitutes a basis for the legality of its work. In some respects, the EU Charter and the Court of Justice have conferred protection for rights that is more far-reaching than the ECHR or the Court of Human Rights provide, something the Court of Human Rights itself has stated. The importance of the EU Charter in the drafting of EU legislation and the case-law of the Court of Justice has become far more evident in recent years.

The Court of Justice has a major role in safeguarding fundamental and human rights. In 2014, the Court gave 190 decisions relating to the EU Charter of Fundamental rights in which it provided courts in Member States with guidance in such matters as when the Charter should be applied, on the obligation to interpret secondary legislation with reference to the Charter, and on the content of rights, such as good governance. Observing this, the Parliament in Finland has deemed it important that cases relating to fundamental rights pending at the Court of Justice are actively analysed and that Finland submits observations to the court. Parliament has also expressed the wish that the Union had more effective tools to intervene in the human rights infringements of the Member States.

While the EU's accession to the ECHR is delayed, the differences and differentiation in the level of the protection of rights may well increase, as will the concern that the EU and its Member

States could ignore their obligations in the absence of control of the Court of Human Rights.

In Finland the Parliament is in favour of strengthening the mandate and scope of activities of the EU Agency for Fundamental Rights (FRA) as part of the move to strengthen the fundamental rights dimension and boost the development of the rule of law, as FRA has proposed. FRA's work should extend to all EU activity and all the fundamental rights in the Charter. FRA should also be tightly linked to the prior assessment of fundamental rights impact of EU proposals for legislative acts, and it should be able to issue own-initiative opinions on legislative proposals.

The EU's importance as a fundamental and human rights actor has grown, and EU law has a significant impact on the implementation of rights at national level. This is why Parliament has called for the norms of EU fundamental rights to play a much greater role in the work of the authorities and courts at national level and for a greater awareness of the content of the rights and principles safeguarded under the Charter and of how to apply them. Overseers of legality, other supervisory authorities, courts and other human rights actors have a key role to implement this goal.

The Ombudsman has an important role to play in the promotion and monitoring of the implementation of rights protected under the Charter of Fundamental Rights. In the discharge of duties, the Ombudsman can do various things to promote the awareness of EU's fundamental rights.

The importance of the case-law of the Court of Justice of the European Union in shaping the European fundamental rights concept will also increase in the future. For that reason, it is important that Finland continues its active efforts to influence the interpretations of the Court. I also think it is worth considering whether it is justifiable for the Ombudsman to have a role in evaluating the relevance of fundamental rights questions pending at the EU Court of Justice in the light of the practice of overseeing legality and the Finnish fundamental rights tradition.



## 2 The Ombudsman institution in 2014





## 2.1

### Review of the institution

The year 2014 was the Finnish Ombudsman institution's 95<sup>th</sup> year of operation. The Parliamentary Ombudsman began his work in 1920, making Finland the second country in the world to adopt the institution. The Ombudsman institution originated in Sweden, where the office of Parliamentary Ombudsman was established in 1809. After Finland, next country to adopt the institution was Denmark in 1955, followed by Norway in 1962.

The International Ombudsman Institute, IOI, currently has about 170 members. However, some Ombudsmen are regional or local; Germany and Italy are examples of countries that do not have Parliamentary Ombudsman. The post of European Ombudsman was established in 1995.

The Ombudsman is the supreme overseer of legality elected by the Parliament of Finland (Eduskunta). He or she exercises oversight to ensure that those who perform public tasks comply with the law, fulfil their responsibilities and implement fundamental and human rights in their activities. The scope of the Ombudsman's oversight includes courts, authorities and public servants as well as other persons and bodies that perform public tasks. By contrast, private instances and individuals who are not entrusted with public tasks are not subject to the Ombudsman's oversight of legality. Nor may the Ombudsman investigate Parliament's legislative work, the activities of Members of Parliament or the official duties of the Chancellor of Justice.

The two supreme overseers of legality, the Ombudsman and the Chancellor of Justice, have virtually identical powers. The only exception is the oversight of advocates, which falls exclusively within the scope of the Chancellor of Justice. Only the Ombudsman or the Chancellor of Justice can decide to bring legal proceedings against a judge for unlawful action in an official capacity.

In the division of labour between the Ombudsman and the Chancellor of Justice, however, responsibility for matters concerning prisons and other closed institutions where people are detained against their consent as well as for the deprivation of freedom as regulated by Coercive Measures Act has been entrusted to the Ombudsman. The Ombudsman is also responsible for matters concerning the Defence Forces, the Border Guard, crisis management personnel, the National Defence Training Association of Finland as well as courts martial.

The Ombudsman is independent and acts outside the traditional tripartite division of powers of state – legislative, executive, and judicial. The Ombudsman has the right to receive from authorities and others who perform a public service all the information he needs in order to perform his/her oversight of legality. The objective, among other things, is to ensure that various administrative sectors' own systems of legal remedies and internal oversight mechanisms operate appropriately.

The Ombudsman submits an annual report to the Parliament of Finland in which he evaluates, on the basis of his observations, the state of administration of the law and any shortcomings he has discovered in legislation.

The election, powers and tasks of the Ombudsman are regulated by the Constitution and the Parliamentary Ombudsman Act. These provisions are found in Annex 1 of the report.

In addition to the Parliamentary Ombudsman, Parliament elects two Deputy-Ombudsmen. All serve for four-year terms. The Ombudsman decides on the division of labour between the three. The Deputy-Ombudsmen decide on the matters entrusted to them independently and with the same powers as the Ombudsman.

According to the decision on division of responsibilities in effect until 31.3.2014, Parliamentary Ombudsman Jääskeläinen made decisions on cases involving questions of principle, the Council of State and other of the highest organs of state. In addition, his oversight included matters relating to courts and administration of justice, the treatment of prisoners, health care and linguistic issues. Deputy-Ombudsman Jussi Pajuoja assumed responsibility for matters relating to the police, the prosecution service, the Defence Forces, education, science and culture as well as labour affairs and unemployment security. Deputy-Ombudsman Maija Sakslin dealt with such matters as social welfare, children's rights, regional and local government as well as distraint and foreigners.

Under section 14(1) of the Parliamentary Ombudsman Act, Parliamentary Ombudsman Jääskeläinen made a new decision on the division of labour between the Ombudsman and Deputy-Ombudsmen. According to that decision, effec-

tive from 1.4.2014, Mr Jääskeläinen now assumed responsibility for matters connected with persons with disabilities, foreigners and covert intelligence gathering as well as the coordination of the tasks of the National Preventive Mechanism against Torture and reports relating to its work. Matters relating to the treatment of prisoners, the execution of punishment, and the correctional service were transferred to Deputy-Ombudsman Pajuoja. Deputy-Ombudsman Maija Sakslin took over responsibility for military affairs, defence, the Border Guard, the Church as well as transport and communications. Detailed division of labour is shown in Annex 2.

If a Deputy-Ombudsman is prevented from performing his or her task, the Ombudsman can invite the Substitute Deputy-Ombudsman to stand in. Principal Legal Adviser Pasi Pölönen served as substitute Deputy-Ombudsman for a total of 59 working days in 2014.

## 2.2

# The values and objectives of the Office of the Parliamentary Ombudsman

Oversight of legality has changed in many ways in Finland over time. The Ombudsman's role as a prosecutor has receded into the background, and the role of developing official activities has been accentuated. The Ombudsman sets demands for administrative procedure and guides the authorities towards good administration.

Today, the Ombudsman's tasks also include overseeing and actively promoting the implementation of fundamental and human rights. This has altered the perspective on the authorities' obligations related to implementing people's rights. Fundamental and human rights are prominent in virtually all the cases referred to the Ombudsman. Evaluation of implementation of fundamental rights means weighing against each other principles that tend in different directions and paying attention to aspects that promote implementation of fundamental rights. In his evaluations, the Ombudsman stresses the importance of a legal interpretation that is amenable to fundamental rights.

The establishment of the Finnish National Human Rights Institution supports and highlights the aims of the Ombudsman in the oversight and promotion of fundamental and human rights. This report contains a separate section 3 on fundamental and human rights.

The tasks statutorily assigned to the Ombudsman provide a foundation for determining what kinds of values and objectives can be set for both oversight of legality and the work of the Office in other respects as well. The key values of the Office of the Parliamentary Ombudsman were created from the perspectives of clients, authorities, Parliament, the personnel and management.

The following is a summary of the values and objectives of the Ombudsman's Office.

## The values and objectives of the Office of the Parliamentary Ombudsman

### Values

The key objectives are fairness, responsibility and closeness to people. They mean that fairness is promoted boldly and independently. Activities must in all respects be responsible, effective and of a high quality. The way in which the Office works is people-oriented and open.

### Objectives

The objective with the Ombudsman's activities is to perform all of the tasks assigned to him or her in legislation to the highest possible quality standard. This requires activities to be effective, expertise in relation to fundamental and human rights, timeliness, care and a client-oriented approach as well as constant development based on critical assessment of our own activities and external changes.

### Tasks

The Ombudsman's core task is to oversee and promote legality and implementation of fundamental and human rights. This is done on the basis of investigations arising from complaints or activities that are conducted on the Ombudsman's own initiative. Monitoring the conditions and treatment of persons in closed institutions and conscripts, inspections of official agencies and institutions, oversight of measures affecting telecommunications and other covert intelligence-gathering operations as well as matters of the responsibility borne by members of the Government and judges are special tasks.

### Emphases

The weight accorded to different tasks is determined a priori on the basis of the numbers of cases on hand at any given time and their nature. How activities are focused on oversight of fundamental

and human rights on our own initiative and the emphases in these activities as well as the main areas of concentration in special tasks and international cooperation are decided on the basis of the views of the Ombudsman and Deputy-Ombudsmen. The factors given special consideration in the allocation of resources are effectiveness, protection under the law and good administration as well as vulnerable groups of people.

### Operating principles

The aim in all activities is to ensure high quality, impartiality, openness, flexibility, expeditiousness and good services for clients.

### Operating principles in especially complaint cases

Among the things that quality means in complaint cases is that the time devoted to investigating an individual case is adjusted to management of the totality of oversight of legality and that the measures taken have an impact. In complaint cases, hearing the views of the interested parties, the correctness of the information and legal norms applied, ensuring that decisions are written in clear and concise language as well as presenting convincing reasons for decisions are important requirements. All complaint cases are dealt with within the maximum target period of one year, but in such a way that complaints which have been deemed to lend themselves to expeditious handling are dealt with within a separate shorter deadline set for them.

### The importance of achieving objectives

The foundation on which trust in the Ombudsman's work is built is the degree of success in achieving these objectives and what image our activities convey. Trust is a precondition for the Institution's existence and the impact it has.



## 2.3

# Modes of activity and areas of emphasis

Investigating complaints is the Ombudsman's central task and activity. The Ombudsman investigates those complaints that are within the scope of his oversight of legality and with respect to which there is reason to suspect an unlawful action or neglect of duty or if he takes the view that this is warranted for any other reason. Arising from a complaint made to him, the Ombudsman takes the measures that he deems warranted from the perspective of compliance with the law, protection under the law or implementation of fundamental and human rights. In addition to matters specified in complaints, the Ombudsman can also choose on his or her own initiative to investigate shortcomings that manifest themselves.

The Ombudsman is required by law to conduct inspections of official agencies and institutions. He has a special duty to oversee the treatment of persons detained in prisons or other closed institutions as well as the treatment of conscripts in garrisons. Inspections are also conducted in other institutions, especially those connected with social welfare and health care sector. One priority area for the Ombudsman is the oversight of implementation of children's rights.

From the beginning of 2014, the Ombudsman's remit concerning the special monitoring of covert intelligence gathering was extended. While previously the Ombudsman's special monitoring task only applied to some of the covert intelligence gathering resources used by authorities, on which the authorities had to report back to the Ombudsman, the reporting obligation now covers all covert intelligence gathering resources. Furthermore, with the change in the law, the increase in these resources will also extend the scope of supervision. Covert intelligence gathering is used by the police, Customs, the Border Guard and the Defence Forces.

Covert intelligence gathering involves interfering with several constitutionally guaranteed fundamental rights, such as privacy, confidentiality of communications and protection of domestic peace. Often the use of covert intelligence gathering requires the permission of a court of law, which in turn assures that it will be used lawfully, but the Ombudsman also plays an important role in ensuring that the investigative means used, and which are kept secret from the subject of investigation at the time, are monitored properly.

Fundamental and human rights come up in oversight of legality not only when individual cases are being investigated, but also in conjunction with, e. g., inspections and deciding the thrust of own-initiative investigations. Emphasising and promoting fundamental rights is also reflected otherwise in determining the thrust of the Ombudsman's activities. In connection with this, the Ombudsman has discussions with various bodies that include the main NGOs. On inspections and when investigating matters on his own initiative he takes up questions that are sensitive from the perspective of fundamental rights and have a broader significance than individual cases. In 2014, the special theme in oversight of fundamental and human rights was the rights of persons with disabilities. The content of the theme is outlined in part 3.6 of the section on fundamental and human rights.

### 2.3.1 Achieving the target period of one year

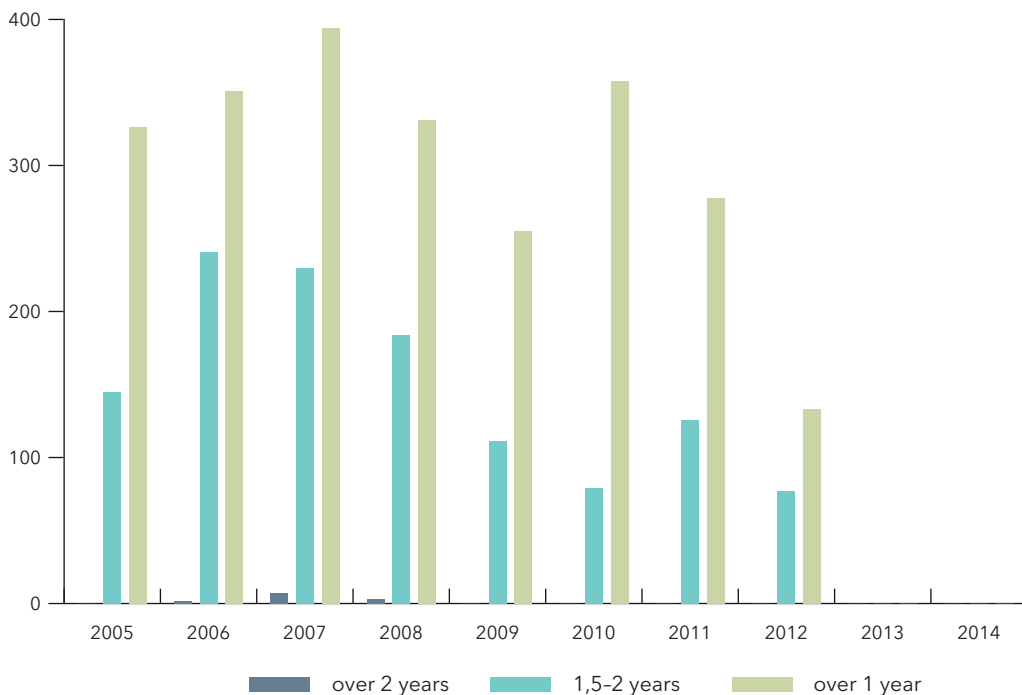
A reform of the Parliamentary Ombudsman Act, which entered into force in 2011, made the oversight of legality more effective by giving the Ombudsman greater discretionary powers and a wider range of operational alternatives as well as stressed the citizens' perspective. The period within which complaints can be made was reduced from five to two years. The Parliamentary Ombudsman was granted the possibility of referring a complaint to another competent authority. The amendment of the Act also enables the Parliamentary Ombudsman to invite a Substitute Deputy-Ombudsman to discharge his or her duties as and when required.

The legislative reform enabled a more appropriate targeting of resources to issues where the

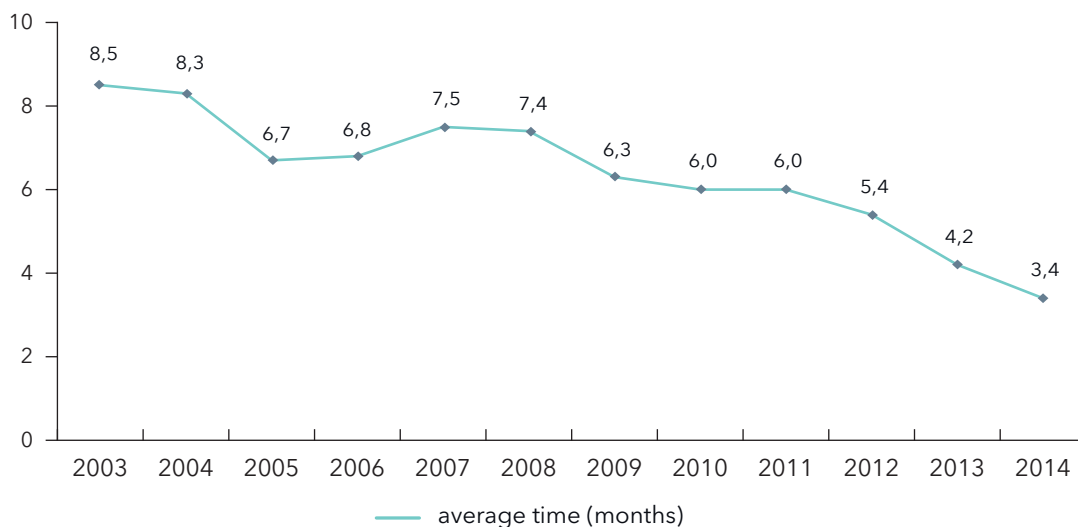
Parliamentary Ombudsman could help a complainant or take other measures. The aim is to help the complainant, if possible, by recommending that an error that has been made be rectified, or that compensation be paid for a violation of the complainant's rights.

Bringing the maximum processing time of complaints down to one year has been a long-term target of the Parliamentary Ombudsman. As the activities aiming to resolve complaints were made more effective, this target was achieved in 2013, despite a strong increase in the number of complaints. The target was also reached in 2014, and by the beginning of the following year there was not one complaint pending that was more than a year old.

The average time taken to deal with complaints was 3.4 months at the end of the year, whereas at the end of 2013 it had been 4.2 months.



*Complaints that had been pending over a year in 2005–2014*



*Average time taken to deal with complaints in 2003–2014*

### 2.3.2 Complaints and other oversight of legality matters

In 2014, the number of complaints received was 4,606. This is around 400 (9%) fewer than in 2013 (5,043). In the year under review, 4,757 complaints were resolved, 150 more than the number of those that were received.

In recent years, the number of complaints sent by letter, fax or delivered in person has been declining. Correspondingly, the number received via e-mail has substantially increased. In 2014, the vast majority (64%) arrived electronically.

Complaints received by the Ombudsman are recorded in their own subject category (category 4) in the register of the Office of the Parliamentary Ombudsman. Within about a week, the complainant is informed by letter that the complaint has been received. A notification that a complaint has arrived by email is sent immediately.

Some complaints are dealt with using a so-called accelerated procedure. In 2014, 864 (18%) of all complaints were dealt with in this way. The

purpose of the accelerated procedure is to separate the complaints that do not need further investigation already at the reception stage. The accelerated procedure is suitable in especially cases where there is manifestly no ground to suspect an error, the time limit has been exceeded, the matter is not within the Ombudsman's remit, the complaint is non-specific, the matter is pending elsewhere or what is involved is a repeat complaint in which no ground for a re-appraisal of the decision in the earlier complaint is evident. A notification letter about complaints that are being dealt with through the accelerated procedure is not sent to the complainant. If it emerges that a complaint is unsuitable for the accelerated procedure, it is returned to the ordinary complaints category, and the complainant is sent a notification letter from the Registry Office. In matters that are being dealt with through the accelerated procedure, a draft response is given within one week to the party deciding on the case. The complainant is sent a reply signed by the referendary taking care of the matter.

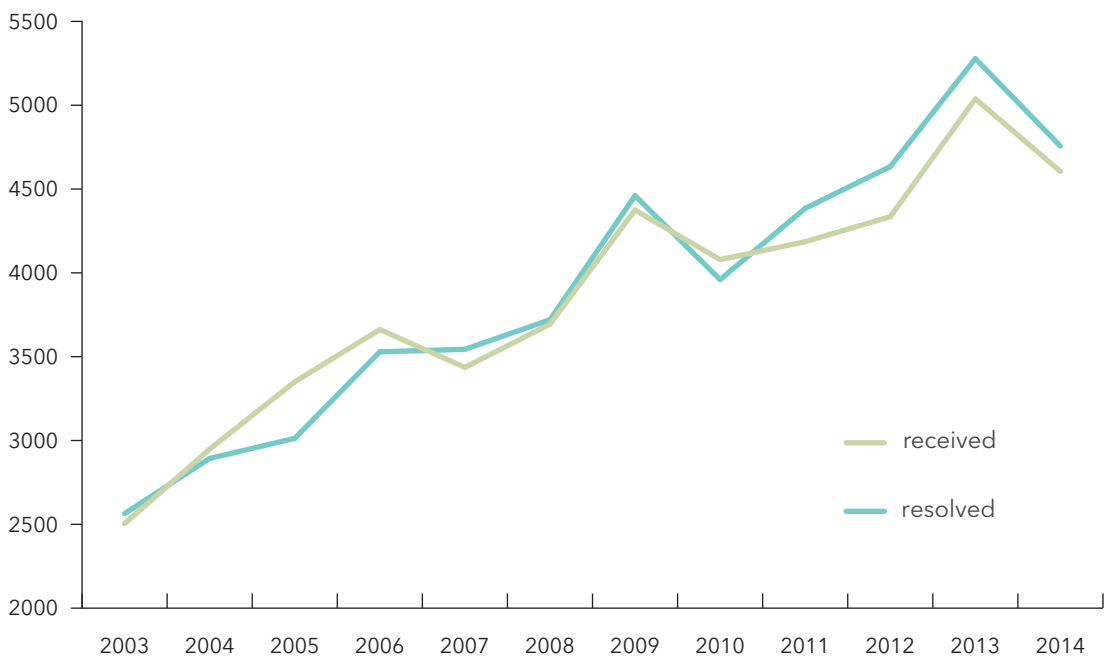


■ received ■ resolved	2013	2014
Complaints	4,975 5,284	4,558 4,757
Transferred from the Chancellor of Justice	68	48
Taken up on own initiative	67 74	60 58
Requests for submissions and attendances at hearing	80 71	84 87
Other written communications	316 336	292 294
Total	5,506 5,762	5,042 5,196

*Oversight-of-legality matters received and resolved in 2013–2014*

Letters of an enquiry nature received from citizens, clearly unfounded communications or that concern matters that are not within the Ombudsman’s remit or are non-specific in their contents are not dealt with as complaints. Instead, they are recorded in their own category of matters (Category 6 Other communications). However, they are counted as oversight of legality matters and forwarded from the Registry Office to the Substitute Deputy-Ombudsman or the Secretary General, who distributes them to the notaries and investigating officers. Anyone sending such a letter receives a reply, which is examined by the Substitute Deputy-Ombudsman or the Secretary General. In 2014, there were 292 such communications.

While anonymous letters are not processed as complaints, the need to investigate them on the Ombudsman’s own initiative is assessed.



*Complaints received and resolved in 2003–2014*

Letters received for information only are recorded but not replied to. However, the Substitute Deputy-Ombudsman or the Secretary General examines them. Communications sent using the feedback form on the Office website are dealt with in accordance with these principles. In 2014, almost 1,200 written communications that had arrived for information were received.

In addition, submissions and attendances at hearings in various committees of Parliament are counted belonging to oversight of legality.

In 2014, 79% of all the complaints that arrived related to the ten largest categories. Appendix 3 shows the numerical data for the 10 largest categories.

In 2014, a total of 58 matters that the Ombudsman had investigated on his own initiative were resolved. Of these, 38 (66%) led to measures on the part of the Ombudsman.

### 2.3.3 Measures

The most relevant decisions taken in the Ombudsman's work are those that lead to him taking measures. The measures are a prosecution for breach of official duty, a reprimand, the expression of an opinion and a recommendation. A matter can also lead to some other measure on the part of the Ombudsman, such as ordering a pre-trial investigation or bringing an earlier expression of opinion by the Ombudsman to the attention of an authority. In addition, a matter may be rectified while it is under investigation.

A prosecution for breach of official duty is the most severe sanction at the Ombudsman's disposal. However, if the Ombudsman takes the view that a reprimand will suffice, he may choose not to bring a prosecution even though the subject of oversight has acted unlawfully or neglected to fulfil his or her duty. He can also express an opinion as to what would have been a lawful procedure or draw the attention of the oversight subject to the principles of good administrative practice or aspect conducive to the implementation

of fundamental and human rights. An opinion expressed may be a rebuke in character or intended for guidance.

In addition, the Ombudsman may recommend rectification of an error that has occurred or draw the attention of the Government or other body responsible for legislative drafting to shortcomings that he has observed in legal provisions or regulations. Sometimes an authority may on its own initiative rectify an error it has made already at the stage when the Ombudsman has intervened with a request for a report.

Decisions and own initiatives that led to measures totalled 774 in 2014, which represented nearly 16% of all decisions. Complaints and own initiatives were investigated fully, *i.e.* by obtaining at least one report and/or statement in the matter, in 1,202 cases, or almost 25% of all cases. About 53% of these cases led to measures by the Ombudsman.

In about 47% of cases (2,281 in all), there was either no ground to suspect erroneous or unlawful behaviour or there was no reason for the Ombudsman to take measures. No erroneous action was found in 317 cases (slightly under 7%). The complaint was not investigated in about 31% of cases (1,486).

The most common reason for a complaint not being investigated was the fact that the matter was still pending in a competent authority. An overseer of legality does not usually intervene in a case that is being dealt with in an appeal instance or other authority. Matters pending with other authorities that were not investigated represented 12% (587) of all complaints in which decisions were issued. In addition, matters that do not fall within the Ombudsman's remit and, as a general rule, those over two years old were not investigated.

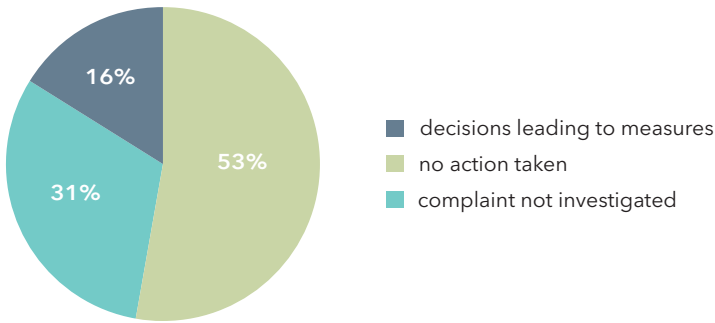
If complaints that were not investigated are excluded from the examination, the share of all investigated complaints which led to measures was 22%.

No prosecutions for breach of official duty were ordered during the year under review. 18 reprimands were issued and 579 opinions expressed.

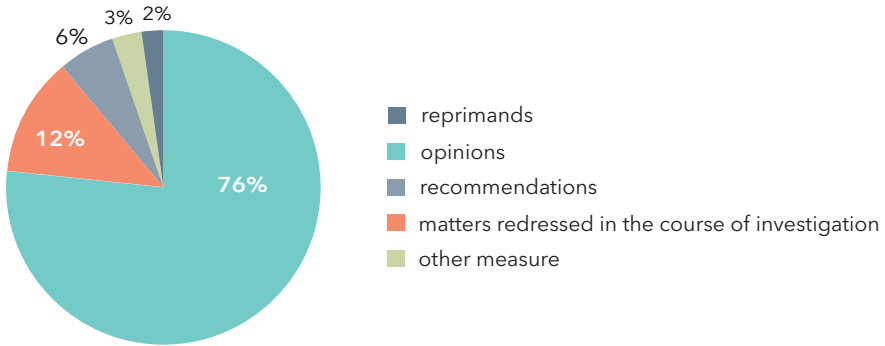
MEASURES TAKEN BY PUBLIC AUTHORITIES		Measure						Total	Total number of decisions	Percentages*
		Prosecution	Reprimand	Opinion	Recommendation	Rectification	Other measure			
Public authority	Social security		5	158	3	11	28	205	1 100	18,6
	- social welfare		5	128	2	9	28	172	744	
	- social insurance			30	1	2		33	356	
	Criminal sanctions		4	73	2	1	24	104	362	28,7
	Health care			74	5	2	18	99	560	17,7
	Police			84		4	4	92	708	13,0
	Labour administration		2	35				37	186	19,9
	Education		2	19	1	14		36	213	16,9
	Local government		2	13	2	1	6	24	171	14,0
	Transport and communications			10		6	5	21	131	16,0
	Environment			19				19	151	12,6
	Guardianship			9	1	3	6	19	112	17,0
	Customs			16	1	2		19	63	30,2
	Distraint		1	11	5		1	18	118	15,3
	Other subjects of oversight			15	1		2	18	148	12,2
	Defence		1	11	1	3	1	17	45	37,8
	Taxation			10	3	2	2	17	116	14,7
	Courts		1	7		1	3	12	242	5,0
	- civil and criminal		1	6		1	3	11	203	
	- special								1	
	- administrative			1				1	38	
	Agriculture and forestry			6			1	7	92	7,6
	Asylum and immigration			6				6	54	11,1
	Highest organs of state			1	1			2	81	2,5
	Prosecutors			1				1	86	1,2
	Church			1				1	22	4,5
	Public legal counsels								31	
Private parties not subject to oversight								23		
Total		18	579	26	50	101	774	4 815	16,1	

\* Percentage share of measures in decisions on complaints and own initiatives in a category of cases

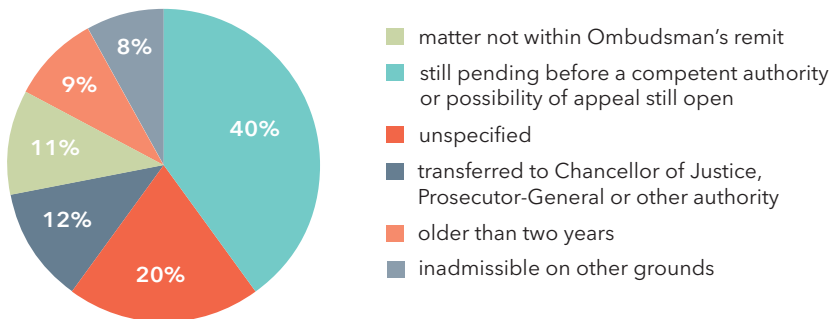
THE OMBUDSMAN INSTITUTION IN 2014  
 2.3 MODES OF ACTIVITY AND AREAS OF EMPHASIS



*All cases resolved in 2014*



*Decisions involving measures in 2014*



*Complaints not investigated in 2014*

Rectifications were made in 50 cases in the course of their investigation. Decisions classed as recommendations numbered 26, although stances on development of administration that in their nature constituted a recommendation were included in also other decisions. Other measures were recorded in 101 cases. In actual fact, the number of other measures is greater than the figure shown above, because only one measure is recorded in each case, even though several measures may have been taken.

Annex 3 gives the statistics on measures on the part of the Ombudsman.

#### 2.3.4 Inspections

Inspection visits to 111 places were made during the year under review. This is almost 25% more than in the previous year (89). Annex 4 gives a list of all inspections conducted. The inspections are described in more detail in connection with the various classifications.

Over half of the inspections were conducted under the leadership of the Ombudsman or the Deputy-Ombudsmen and the remainder by legal advisers. Of the inspections at closed institutions, 20 were unannounced or so-called surprise inspections.

Persons confined in closed institutions and conscripts are given the opportunity for a confidential conversation with the Ombudsman or his representative during an inspection visit. Other places where inspection visits take place include reform schools, institutions for the mentally handicapped as well as a social welfare and health care institutions.

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.

## 2.4

# The National Human Rights Institution of Finland

The Finnish National Human Rights Institution consists of the Ombudsman and the Human Rights Centre and its Delegation.

### 2.4.1 THE HUMAN RIGHTS INSTITUTION AWARDED A STATUS

The Human Rights Centre, together with its Delegation, was established in connection with the Ombudsman's Office with the aim of creating a structure which, together with the Ombudsman, meets the requirements of the Paris Principles, adopted by the United Nations General Assembly in 1993, as satisfactorily as possible. This process, which started in the early 2000s, achieved its objective in the year under review when the Finnish Human Rights Institution was awarded an A status.

National human rights institutions must apply to the UN International Coordinating Committee of National Human Rights Institutions (ICC) for accreditation. The accreditation status shows how well the institution in question meets the requirements under the Paris Principles. The highest rating, A status, indicates that the institution fully meets the requirements; a B status indicates some shortcomings; and a C status suggests the sort of defects that cannot allow the institution to be regarded as meeting requirements in any way. The accreditation status is reassessed every five years.

The Finnish National Human Rights Institution submitted its application for accreditation to the International Coordinating Committee in June 2014. The application consisted of 70 pages of text and the same number in appendices as well as the annual reports of the Ombudsman

and the Human Rights Centre. The application was considered by the ICC's Sub-Committee on Accreditation (SCA), which, in October 2014, recommended awarding A status to the Finnish National Human Rights Institution. The recommendation was endorsed as a final decision of the ICC on 29 December. The A status was granted for the period 2014–2019.

The granting of an A status may be accompanied by remarks and suggestions on how to improve the institution. The recommendation among other things stressed the need to safeguard the resources necessary to ensure that the tasks of the Finnish National Human Rights Institution are effectively discharged. The full text of the recommendation is provided in Appendix 5 to this report.

The A status not only has intrinsic and symbolic value but it also has legal relevance: a national institution with A status has the right to take the floor in the sessions of the UN Human Rights Council. The A status is considered highly significant in the UN and, in more general terms, in international cooperation. The Finnish Human Rights Institution has also joined the European Network of National Human Rights Institutions (ENNHRI).

### 2.4.2 THE HUMAN RIGHTS INSTITUTION'S OPERATIVE STRATEGY

The different sections of the Finnish National Human Rights Institution have their own functions and ways of working. In the year under review, the Institution's first joint long-term operative strategy was drawn up. It defined common objectives and specified the means by which

the Ombudsman and the Human Rights Centre would individually endeavour to accomplish them.

The strategy was considered by the Management Group at the Office, in a cooperation meeting, and by the Human Rights Delegation. The Ombudsman and the Director of the Human Rights Centre endorsed the strategy in June 2014, and it accompanied the application for accreditation. The strategy successfully depicts how the various tasks of the functionally independent yet inter-related sections of the Institution are mutually supportive with the aim of achieving common objectives.

The strategy outlined the following main objectives for the Institution:

1. General awareness, understanding and knowledge of fundamental and human rights is increased and respect for these rights is strengthened.
2. Shortcomings in the implementation of fundamental and human rights are recognised and addressed.
3. The implementation of fundamental and human rights is effectively guaranteed through national legislation and other norms as well as through their application in practice.
4. International human rights conventions and instruments should be ratified or adopted promptly and implemented effectively.
5. Rule of law is implemented.

## 2.5 New oversight duties

### Oversight of the UN Convention against Torture

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Optional Protocol and legislation to have the provisions within the sphere on legislation enter into force were adopted in spring 2013. As a result, under an amendment to the Parliamentary Ombudsman Act, the Parliamentary Ombudsman was named National Preventive Mechanism (NPM) under the Convention (new Chapter 1(a), sections 11(a) – (h)). The amendment to the Act took effect on 7 November 2014 (Government Decree 848/2014). The NPM's tasks are described in section 3.3 of this report.

### UN Convention on the Rights of Persons with Disabilities

On 3 March 2015, Parliament adopted an amendment to the Parliamentary Ombudsman Act, whereby the tasks under Article 33(2) of the Convention on the Rights of Persons with Disabilities of December 2006 would fall legally within the competence of the Ombudsman and the Human Rights Centre and its Delegation. The structure, which had to be independent, would have as its task the promotion, protection and monitoring of the Convention's implementation.

However, in its statement Parliament said that, before the final ratification of the Convention, there would have to be an assurance that the requirements for ratifying Article 14 of the Convention were in place in national legislation. The statement made reference to the proposal to Parliament for a law on strengthening the right of self-determination of social welfare clients and patients and ordering restrictive measures (HE 108/2014 vp). Because the time for the proposal's deliberations has lapsed, the changes to the Parliamentary Ombudsman Act will not take effect until a later date, with a Decree of the Government.



## 2.6

# Cooperation in Finland and internationally

### 2.6.1 EVENTS IN FINLAND

On 11 February 2014, Parliamentary Ombudsman Jääskeläinen attended a plenary session of Parliament to discuss the Ombudsman's report for 2012.

The Parliamentary Ombudsman's annual report for 2013 was presented to the Speaker of Parliament on 10 June 2014. The Ombudsman attended a preliminary debate on the report at a plenary session of Parliament on 18 June 2014.

Parliament's Constitutional Committee paid a visit to the Office on 11 February.

Several Finnish authorities and other guests visited the Office of the Ombudsman to discuss topical issues and the work of the Ombudsman. The Ombudsman, Deputy-Ombudsmen and members of the Office paid visits to familiarise themselves with the activities of other authorities, gave presentations and participated during the year in hearings, consultations and other events.

On 6 February, Parliamentary Ombudsman Jääskeläinen gave a presentation on the supervision of social welfare and health care at the fifth anniversary of the National Authority for Welfare and Health (Valvira) at the House of the Estates, in Helsinki. On 21 May, he gave a presentation on the rights of the disabled persons at a seminar of the Human Rights Centre, and on 11 September he spoke on the work of the Ombudsman to the directors-general of state agencies.

The Finnish Radio language programme *Aristoteleen kantapää* (Aristotle's heel) interviewed Mr Jääskeläinen on 1 October. The programme's title was 'The Ombudsman and the Finnish Language'. Parliamentary Ombudsman Jääskeläinen gave a presentation on Parliament's journalist programme on 7 October.

On 8 October, a seminar to celebrate 25 years of the Council of Europe Committee for the Prevention of Torture (CPT) was held in the Finnish Parliament Annex. At the seminar, the Ombudsman spoke about the supervision of the treat-

*Parliamentary Ombudsman Petri Jääskeläinen and Deputy-Ombudsmen Maija Sakslin and Jussi Pajuoja submitted the Ombudsman's reports for 2013 to Mr. Eero Heinäluoma, Speaker of the Parliament, on 10 June.*



ment of those who had been deprived of their liberty. On 9 December, he visited Åland in response to an invitation from the Provincial Government's Language Council and spoke about the monitoring of linguistic rights with reference to decisions taken by the Ombudsman.

Deputy-Ombudsman Pajuoja attended a debate by the National Board of Education on the oversight of legality in the field of education on 25 March.

Deputy-Ombudsman Maija Sakslin gave a number of presentations during the course of the year. On 28 August, she gave an introductory talk on the supervision of the fundamental right to a healthy environment at a seminar at the University of Tampere. On 2 September, she also spoke at a Welcome to the Faculty opening ceremony at the University of Helsinki's Faculty of Law, and on 17 September at a conference organised by the Defence Forces. On 22 September, she spoke at a training event in Turku organised on the subject of military law.

In addition, legal advisers from the Office made presentations at numerous different events, seminars and theme days.

### 2.6.2 INTERNATIONAL COOPERATION

In recent years, the Office of the Parliamentary Ombudsman has engaged in an increasing number of international activities. During the year, the Office received a number of visitors and delegations from other countries who came to familiarise themselves with the Ombudsman's activities. Some of these were working visits, during which the visitors were given a practically oriented introduction to the work and procedures of the Office as well as the administration, and they met employees working at the Office. One of the reasons for which the Finnish Parliamentary Ombudsman institution and its activities attract international interest is that the Finnish institution is the second oldest of its kind in the world.

### International visitors

Below is a list of individuals and delegations that visited the Office in the year under review.

- 26.3. Representatives of ombudsmen and human rights expert bodies in Central Asia
- 31.3. A South Korean regional administration delegation
- 18.8. Chinese Deputy Minister of Justice Mr Hao Chiyong and entourage
- 2.9. The South Korean Anti-Corruption & Civil Rights Commission, Deputy President Hong Seong Chill and entourage
- 4.9. Sofie From-Emmesberger, Finnish Ambassador to Kenya
- 16.9. Slovenian Ombudsman Ms Vlasta Nussdorfer and Deputy-Ombudsman Mr Jernej Rovsek
- 18.9. High-level experts in the legal field in Central Asian States (EU Rule of Law Platform).
- 23.9. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT 11-day fact-finding mission to Finland).
- 30.9. Representatives of the Namibia Parliament's Standing Committee on Constitutional and Legal Affairs, Chairperson Evelyn Nawases-Taeyelen
- 7.10. Mr Ha Cong Long, Deputy Chairman of People's Petition Committee, the Socialist Republic of Vietnam, and entourage
- 9.10. The NGO Penal Reform International (PRI)
- 10.10. Secretary General Agneta Lundberg from the Office of the Parliamentary Ombudsman of Sweden
- 22.10. Professor Sriracha Charoenpanij, Ombudsman of Thailand and Thai Ambassador to Finland, Mr Rachanant Thananant and entourage
- 28.-30.10. Latvian Ombudsman Juris Jansons and officials and personnel from the Lithuanian Ombudsman's Office (Nordic-Baltic Mobility Programme)

## Events outside Finland

The Parliamentary Ombudsman is a member of the European Network of Ombudsmen, the members of which exchange information on EU legislation and good practices at seminars and other gatherings as well as through a regular newsletter, an electronic discussion forum and daily electronic news services. Seminars intended for ombudsmen are organised every other year by the European Ombudsman together with a national or regional colleague. The liaison persons, who serve as the network's nodal points on the national level, meet in Strasbourg every other year. Principal Legal Adviser Riitta Länsisyrjä attended a meeting of the liaison persons' network on 28–29 April.

Deputy-Ombudsman Sakslin gave an address in Strasbourg at an event on 25–27 March on good practices associated with the implementation of human rights at local level at a sitting of the Congress of the Local and Regional Authorities of the Council of Europe; on 10–11 April at a meeting of the Fundamental Rights Platform in Vienna; on 28–29 April at the Conference on Hate Crime organised by the Greek Presidency of the Council of the EU in Thessaloniki; on 13–14 May at the European IDAHO Forum in Malta (The International Day Against Homophobia and Transphobia); on 11.–12.11. at the EU Fundamental Rights Conference in Rome; and on 27–29 November at the 'Sami – the People, their Culture and Languages' Council of Europe Conference in Inari, Finland. She also attended the Seminar of the European Court of Human Rights in Strasbourg on 31 January.

Deputy-Ombudsman Sakslin has been a member of the Management Board of the European Union Agency for Fundamental Rights (FRA) since 2010. In 2012, she was elected as chair of the Management Board. She took part in meetings of the Agency's institutions on 21 February, 22–23 May, 26 September and 11–12 December.

On 12–14 March, Parliamentary Ombudsman Jääskeläinen and Acting Director of the Human Rights Centre Kouros attended a meeting in Ge-

neva of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, ICC.

On 1 April, Parliamentary Ombudsman Jääskeläinen attended an event to celebrate the retirement of Arne Fliflet, Norway's long-standing Parliamentary Ombudsman. Mr Jääskeläinen presented him an ombudsman sculpture.

The biennial meeting of Nordic Ombudsmen was held in Ystad, Sweden, on 3–4 June. It was attended by Parliamentary Ombudsman Jääskeläinen, Deputy-Ombudsman Sakslin, Secretary General Romanov, Principal Legal Adviser and Substitute for a Deputy-Ombudsman Pasi Pölönen.

Parliamentary Ombudsman Jääskeläinen and Legal Adviser Iisa Suhonen attended a seminar organised by the Lithuanian Parliamentary Ombudsman in Vilnius on 11–13 June entitled 'Perspectives and Best Practices in the Implementation of the Optional Protocol to the Convention Against Torture', which dealt with the function of the NPM.

The European Conference of the European Ombudsman Institute hosted by the Estonian Parliamentary Ombudsman and entitled 'The Ombudsman's Role in a Democracy' was held in Tallinn 17–19 September. The conference was attended by Parliamentary Ombudsman Jääskeläinen, Deputy-Ombudsman Sakslin and several officials from the Office. Mr Jääskeläinen gave a presentation on the monitoring of covert intelligence gathering at the conference.

Deputy-Ombudsman Sakslin and Principal Legal Adviser Raino Marttunen attended the Sixth International Conference of the Ombudsman Institutions for the Armed Forces in Geneva 26–28 October. From 9 to 12 November Parliamentary Ombudsman Jääskeläinen and Deputy-Ombudsman Sakslin attended the Fundamental Rights Conference in Rome, whose theme was EU migration.

Senior Legal Adviser Jari Pirjola has been Finland's representative on the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment



*The Parliamentary Ombudsmen in the Nordic countries come together at a joint meeting every second year. In 2014, they met in early June in Ystad, Sweden. In the middle in the photo is Mr Arne Fliflet, previous Parliamentary Ombudsman of Norway.*

(CPT) since December 2011. The representative is elected for a four-year term. Mr Pirjola attended meetings of the Committee and participated in visits of the Committee seven times during the year. On 24 September, Mr Pirjola attended a joint meeting of the European Union Agency for Fundamental Rights, European authorities responsible for the issue of equality and the European Network of National Human Rights Institutions (ENNHRI). On the agenda were issues connected with asylum and immigration.

On 5 February, IT experts at the Office headed by Parliamentary Ombudsman Jääskeläinen were introduced to the case management system used by the Office of the Chancellor of Justice of Estonia.

Office officials attended numerous seminars and conferences abroad.

### 2.6.3 OMBUDSMAN SCULPTURE

In 2009, the Ombudsman commissioned a work from sculptor Hannu Sirén to celebrate the 90<sup>th</sup> anniversary of the establishment of the Parliamentary Ombudsman institution. It is a serially manufactured sculpture used in the same way as a medal.

The Parliamentary Ombudsman may award the sculpture to a Finnish or a foreign person, authority or an organisation for commendable work that promotes the rule of law and the implementation of fundamental and human rights. The silver sculpture is intended as an award for actions of extraordinary merit.

On 1 April 2014 Parliamentary Ombudsman Jääskeläinen awarded a silver ombudsman sculpture to Arne Fliflet, who had been Norway's Parliamentary Ombudsman for 24 years, as a token of recognition for his outstanding work both at home and in the international community.

## 2.7

# Service functions

### 2.7.1

#### SERVICES TO CLIENTS

We have tried to make it as easy as possible to turn to the Ombudsman. Information on the Ombudsman's tasks and instruction on how to make a complaint can be found on the website of the Office and from a leaflet entitled 'Can the Ombudsman help?'. A complaint can be sent by post, email or fax or by completing the online form. The Office provides clients with services by phone, on its own premises and by email.

Two on-duty lawyers at the Office are tasked with advising clients on how to make a complaint. The on-duty lawyers dealt with some 1,800 telephone calls, while about 140 people visited the Office in person.

The Registry at the Office receives and registers incoming complaints and replies to enquiries about them, in addition to responding to requests for documents. During the year, the Registry received around 2,500 calls. There were 290 visits from clients (the same number as in the previous year) and 660 requests for documents/information. The archives of the Office mainly provide researchers with services.

### 2.7.2

#### COMMUNICATIONS

In 2014, 15 press releases outlining decisions made by the Ombudsman and a brief of so-called network tip for 5 decisions were issued. The Office publishes information on the Ombudsman's decisions if they are of particular legal or general interest. The press releases are given in Finnish and Swedish, and they are also posted in English online.

The Office commissioned an analysis of its media visibility, which showed that the Ombudsman had been visible in the online media in 2014 in the context of 1,738 news items and articles. Most of the news coverage (95%) was neutral or favourable in tone.

A total of 168 anonymous decisions were posted online. Decisions posted online are those that are of legal or general interest.

The Ombudsman's website is in English at [www.ombudsman.fi/english](http://www.ombudsman.fi/english), in Finnish at [www.oikeusasiamies.fi](http://www.oikeusasiamies.fi) and in Swedish at [www.ombudsman.fi](http://www.ombudsman.fi). At the Office, information is provided by the Registry, the referendaries (legal advisers) and an Information Officer.

### 2.7.3

#### OFFICE AND ITS PERSONNEL

The Parliamentary Ombudsman's office, headed by the Ombudsman, is there to do the preparatory work on cases to be decided by him and to assist him in his other duties as well as to perform tasks that are the responsibility of the Human Rights Centre. The Office is located in the Parliament Annex at Arkadiankatu 3.

The Office comprises four sections, with the Ombudsman and the two Deputy-Ombudsmen each heading a section of their own. The administrative section, which is headed by the Secretary General, is responsible for general administration. The Human Rights Centre at the Ombudsman's Office is headed by the Director of the Human Rights Centre.

At the end of 2014, the regular staff totalled 59. There were three vacant posts, one of which was filled in February and one in March 2015. In addition to the Ombudsman and the Depu-



ty-Ombudsmen, the permanent staff at the office comprised the Secretary General, 10 principal legal advisers, 8 senior legal advisers, 11 legal advisers and 2 on-duty lawyers, and the Director of the Human Rights Centre and two experts employed there. The Office also had an Information Officer, 2 investigating officers, 4 notaries, an administrative secretary, a filing clerk, an assistant filing clerk, 3 departmental secretaries and 7 office secretaries. In addition, a total of twelve other persons worked in the Office for all or part of the year on fixed-term appointments. A list of the personnel is shown in Annex 6.

In accordance with its rules of procedure, the Office has a Management Group that includes the Ombudsman, the Deputy-Ombudsmen, the Secretary General, the Director of the Human Rights Centre and three staff representatives. Discussed at meetings of the Management Group are matters relating to personnel policy and the development of the Office. The Management Group met nine times. A cooperation meeting for the entire staff of the Office was held on four occasions in 2014.

The Office had permanent working groups in the areas of education, wellbeing at work, an equitable treatment and equality. The Office also has a team for evaluating how demanding tasks were, as required under the collective agreement for parliamentary officials. Temporary working groups included those appointed for a case and records management programme, online service project and a client service working group.

The case and records management programme was initiated in 2013 and the programme related tendering process resulted in the acquisition of the solution in December 2014. The aim of the case and records management programme is to implement an electronic case and document management solution to aid the Ombudsman's oversight of legality and other tasks and thereby adopt an electronic working environment and eventually electronic archiving. In the spring, the Office intranet updating project was also begun. The Intranet is a crucial part of the electronic working environment.

#### 2.7.4 OFFICE FINANCES

To finance the activities of the Office, it is given a budget appropriation each year. Rents, security services and a part of the costs of information management are paid by Parliament, and these expenditure items are therefore not included in the Ombudsman's annual budget.

The Office was given an appropriation of EUR 5,633,000 for 2014. Of this, EUR 5,512,000 was used, which was EUR 121,000 less than the estimated amount. The main reason for the underuse of the estimated appropriation was savings in the payroll costs, as for some months during the summer season and while the recruitment processes were in progress there were three vacant posts in the Office. Partly the appropriations were saved because the cost of acquiring the case management system was lower than expected.

The Human Rights Centre drew up its own action and financial plan and its own draft budget.







## 3 Fundamental and human rights



## 3.1

# The Ombudsman's fundamental and human rights mandate

The term “fundamental rights” refers to all of the rights that are guaranteed in the Constitution of Finland and all bodies that exercise public power are obliged to respect. The rights safeguarded by the European Union Charter of Fundamental Rights are binding on the Union and its Member States and their authorities when they are acting within the area of application of the Union's founding treaties. “Human rights”, in turn, means the kind of rights of a fundamental character that belong to all people and are safeguarded by international conventions that are binding on Finland under international law and have been transposed into domestic legislation. In Finland, national fundamental rights, European Union fundamental rights and international human rights complement each other to form a system of legal protection.

The Ombudsman in Finland has an exceptionally strong mandate in relation to fundamental and human rights. Section 109 of the Constitution requires the Ombudsman to exercise oversight to “ensure that 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.”

For example, this is provided for in the provision on the investigation of a complaint in the Parliamentary Ombudsman Act. Under Section 3 of the act, arising from a complaint made to him or her, the Ombudsman shall take the measures that he or she deems necessary from the perspective of compliance with the law, protection under the law or implementation of fundamental and human rights. Similarly, section 10 of the

Parliamentary Ombudsman Act states that the Ombudsman can, among other things, draw the attention of a subject of oversight to the requirements of good administration or to considerations of implementation of fundamental and human rights.

For a more extensive discussion of the Ombudsman's duty to promote the implementation of fundamental and human rights, see Parliamentary Ombudsman Jääskeläinen's article on this subject in the Annual Report for 2012 (pp. 12–17).

Oversight of compliance with the Charter of Fundamental Rights is the responsibility of the Ombudsman when an authority, official or other party performing a public task is applying Union law.

Both the Constitution and the Parliamentary Ombudsman Act state that the Ombudsman must give the Eduskunta an annual report on his activities as well as on the state of exercise of law, public administration and the performance of public tasks, in addition to which he must mention any flaws or shortcomings he has observed in legislation. In this context, special attention is drawn to implementation of fundamental and human rights.

In conjunction with a revision of the fundamental rights provisions in the Constitution, the Eduskunta's Constitutional Law Committee considered it to be in accordance with the spirit of the reform that a separate chapter dealing with implementation of fundamental and human rights and the Ombudsman's observations relating to them be included in the annual report. Annual reports have included a chapter of this kind since the revised fundamental rights provisions entered into force in 1995.

The fundamental and human rights section of the report has gradually grown longer and longer, which is a good illustration of the way the emphasis in the Ombudsman's work has shifted from overseeing the authorities' compliance with their duties and obligations towards promoting people's rights. In 1995 the Ombudsman had issued only a few decisions in which the fundamental and human rights dimension had been specifically deliberated and the fundamental and human rights section of the report was only a few pages long (see the Ombudsman's Annual Report for 1995 pp. 26–34). The section is nowadays the longest of those dealing with various groups of categories in the report, and implementation of fundamental and human rights is deliberated specifically in hundreds of decisions and in principle in every case.

Information concerning various human rights events and ratification of human rights conventions are no longer included in the Ombudsman's annual report, because these matters are dealt with in the Human Rights Centre's own annual report.

## 3.2

# Human Rights Centre

The Human Rights Centre, which was established in 2012, operates autonomously and independently, although administratively it is part of the Office of the Parliamentary Ombudsman. The duties of the Centre are laid down in the Parliamentary Ombudsman Act. The Ombudsman appoints the Director of the Centre for a four-year term, having first obtained a statement from the Constitutional Law Committee. The Human Rights Centre has a Human Rights Delegation, to which the Parliamentary Ombudsman appoints 20–40 members for a four-year term after consulting with the Director of the Centre. The Director of the Centre chairs the Delegation.

The Human Rights Centre and its Human Rights Delegation together with the Parliamentary Ombudsman constitute Finland's National Human Rights Institution. This Institution meets the criteria for a National Human Rights Institution (NHRI) defined in the so-called Paris Principles adopted by the UN General Assembly in 1993. They include formal, financial and administrative independence and autonomy, pluralism and as broad a mandate as possible to promote and protect human rights.

### 3.2.1

#### TASKS OF THE HUMAN RIGHTS CENTRE

The Human Rights Centre has an extensive mandate to promote human rights. According to the law, the tasks of the Centre are:

- Promoting information provision, training, education and research on fundamental and human rights.
- Drafting reports on the implementation of fundamental and human rights.

- Taking initiatives and giving statements for the promotion and implementation of fundamental and human rights
- Participating in European and international cooperation related to the promotion and implementation of fundamental and human rights.
- Performing other similar tasks associated with the promotion and implementation of fundamental and human rights

The Centre does not handle complaints or deal with other individual cases. However, the Centre received almost one hundred written enquiries from private individuals in 2014, which it duly responded to.

### 3.2.2

#### THE HUMAN RIGHTS DELEGATION

The Human Rights Delegation guarantees pluralism in the National Human Rights Institution. The mandate of the first 40-member Delegation appointed in 2012 runs from 1 April 2012 till 31 March 2016. The Delegation is composed of representatives of civil society, fundamental and human rights research as well as other bodies that participate in promoting and safeguarding these rights. The special ombudsmen and the Sámi Parliament of Finland are permanent members by virtue of law. The Delegation is chaired by the Director of the Centre.

According to the law, the duties of the Human Rights Delegation include

- to function as a national cooperative body for actors in the sector of fundamental and human rights



- to deal with matters of fundamental and human rights that are of far-reaching significance and principal importance, and
- to annually approve the action plan and annual report of the Human Rights Centre.

To organise its work, the Human Rights Delegation has selected a working committee and various sections among its members, to which outside experts have also been appointed. In 2014, sections on human rights education and training and monitoring the implementation of fundamental and human rights as well as a working group on the rights of persons with disabilities were working under the Delegation.

In 2014, the Delegation adopted a position in view of the preparation of the future Government Programme. In its position, the Human Rights Delegation proposes that the Government

- prepare an action plan on fundamental and human rights
- prepare a separate action plan on human rights education
- comprehensively evaluate and develop the national fundamental and human rights structures.

### 3.2.3 OPERATION OF THE HUMAN RIGHTS CENTRE IN 2014

In the action plan for 2014, fundamental and human rights education and training and the development of general monitoring were identified as priorities. The fulfilment of international human rights obligations was monitored especially on the basis of recommendations issued to Finland by treaty monitoring bodies.

In 2014, the Government prepared and the Parliament debated several pieces of legislation concerning the ratification of international human rights treaties. The Centre monitored this process and actively disseminated information on it. In the work of the Human Rights Centre and

its Delegation, particular attention was also paid to reforms of the Non-Discrimination Act and the Act on Equality between Women and Men.

### Information activities, publications and events

The Human Rights Centre actively distributes information through its website ([www.ihmis-oikeuskeskus.fi](http://www.ihmis-oikeuskeskus.fi)) and on Facebook. In addition to basic information about the Human Rights Centre and its Delegation, topical reports and positions are published on the website. The site also contains links to other fundamental and human rights actors, international organisations, and material and documents produced by these actors. In early 2014, a three-minute film titled “Mitä ihmisoikeudet ovat?” (What are human rights?) produced by the Human Rights Centre was released on the website.

In 2014, the Human Rights Centre produced a number of printed and electronic publications. The most important own publications were a report on human rights education and training in Finland and guidebooks titled “What are human rights?” and “What is human rights education?”, which were published in Finnish and Swedish. In addition, translations into Finnish and Swedish of the Guide on following up on UN human rights recommendations and a Finnish translation of the UN’s interpretive guide on the corporate responsibility to respect human rights were published.

Events are a key method of providing information and training related to current fundamental and human rights topics. The events organised by the Human Rights Centre have been popular, and feedback received on them has been good. The Centre frequently plans and implements events together with other human rights actors. Themes of events organised in 2014 included violence against women, women’s rights, Article 33 of the UN Convention on the Rights of Persons with Disabilities, human trafficking related to sexual abuse, and corporate social responsibility.

In addition, the 25th anniversary of the Convention on the Rights of the Child was celebrated. On 10 December 2014, which marked the UN's Human Rights Day, the Human Rights Centre together with the parliamentary human rights group organised an invitational event for Members of the Parliament and public servants at the Parliament. On the same day, an exhibition showcasing the work of the Human Rights Centre, which remained open until Christmas, was also launched in the Library of the Parliament. Additionally, the Human Rights Centre presented its work to visitor groups during the year.

### Education and training

In order to fulfil its mission of promoting fundamental and human rights education and training, the Human Rights Centre published a report on the implementation of human rights education and training in Finland in February 2014. This document was the first national report on the subject, and it was co-authored by a number of experts in various sectors of education and human rights education.

The report indicates that the underlying values and goal-setting of the Finnish education system lays a relatively good foundation for the implementation of fundamental and human rights education and training. However, legislation and political and administrative steering do not provide adequate guarantees for the systematic implementation of the education to ensure that it would reach every student and meet international standards. The implementation of human rights education and training is excessively dependent on the interest and activity of individual teachers, educators and education providers, and human rights are not always taught as norms of international law, which may result in a failure to understand their obliging nature. Significant shortcomings were noted in the areas of teacher education and in-service training for public servants and office holders in particular.

On the basis of the report's results, the Human Rights Delegation adopted in December 2013 seven general recommendations for promoting human rights education and training in Finland. The implementation of the recommendations was monitored and promoted in various ways in 2014. The Human Rights Centre and its Delegation advocate the inclusion of fundamental and human rights education in all education and training. They also require the Government to prepare a dedicated national action plan on fundamental and human rights. This action plan must contain general goals and objectives for individual sectors of education as well as measures to be taken and the parties responsible for their implementation, and define the content-related objectives, monitoring, and indicators of fundamental and human rights education and training.

The Human Rights Centre also provided fundamental and human rights education and training, mainly in the form of lectures delivered, for example, to public servants in various ministries and at NGO events. During the year, lectures were held at the Police University College and the University of Helsinki, among others. In spring 2014, the Human Rights Centre also organised a lunch-time information event on the UN's Guiding Principles on Business and Human Rights for members and civil servants of the Parliament.

### Initiatives, statements and positions

The tasks of the Human Rights Centre include taking initiatives and giving statements for the promotion and implementation of fundamental and human rights. According to the Government Bill on establishing the Human Rights Centre, the Centre may, for example, draw the attention of the Parliament and the Government, the local authorities, other parties discharging public duties or even private parties to a general problem or an individual issue in the field of fundamental and human rights, for example one concerning a particular population group. The Human Rights



Centre may also formulate a position on legislative proposals that play a key role for the realisation of fundamental and human rights.

In 2014, the Centre proposed that the Finnish Ministry for Foreign Affairs and the European Network of National Human Rights Institutions (ENNHRI) start promoting the inclusion of human rights education and training as a regular part in the Universal Periodic Review (UPR) of the UN Human Rights Council. The Human Rights Centre also proposed the inclusion of human rights education and training into the UPR process in a statement issued to the UN Office of the High Commissioner for Human Rights.

Additionally, the Human Rights Centre drew the attention of the Minister for Foreign Affairs to a UN recommendation according to which member states should consider creating a national mechanism for appointing members to the UN human rights treaty bodies. According to the Human Rights Centre's view, by developing the practices of appointing members to the UN human rights treaty bodies and, wherever possible, other human rights bodies, the Ministry for Foreign Affairs could not only put into practice the objective of openness set out in its Human Rights Strategy but also set a good example for other UN member states.

The Human Rights Centre gave a number of statements to ministries and parliamentary committees in 2014. The topics of these statements included the new Non-Discrimination Act, ratification of the UN Convention on the Rights of Persons with Disabilities, and the Government Report on Human Rights Policy. In its communication to the Government in late 2014, the Centre asked that the Government hasten to submit the Government Bill for the amendment of the Act on Legal Recognition of the Gender of Transsexuals to the Parliament. The Human Rights Centre also issued numerous statements to international organisations, including UN human rights and treaty bodies. The topics of these statements included the monitoring processes of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the

International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

A detailed list of the statements can be found in the Human Rights Centre's annual report.

### Cooperation with international and Finnish human rights actors

According to legislation, the Human Rights Centre should take part in European and international cooperation related to promoting and protecting fundamental and human rights. During the Centre's initial years of operation, creating good relationships with international networks and actors has played a key role. The most important cooperation bodies include networks of National Human Rights Institutions, especially the European Network of National Human Rights Institutions (ENNHRI), the UN Human Rights Council and treaty bodies, institutions of the Council of Europe, and the European Union Agency for Fundamental Rights. The Human Rights Centre usually represents Finland's National Human Rights Institution in this international cooperation.

In May 2014, the Centre organised a meeting of the ENNHRI's working group on persons with disabilities in Helsinki. A representative of the Human Rights Centre also took part in a training course jointly organised by the ENNHRI and the OSCE, a cooperation meeting of National Human Rights Institutions and the UN Committee on the Rights of Persons with Disabilities, and a seminar and meeting on the rights of older persons.

In Finland, the Human Rights Centre also works together with fundamental and human rights actors that are not represented in the Human Rights Delegation. Key government actors are the Government network of contact persons for fundamental and human rights, the Unit for Democracy, Language Affairs and Fundamental Rights at the Ministry of Justice, the human rights units of the Ministry of Foreign Affairs, and the Advisory Board on International Human Rights Affairs appointed by the Government.

The Centre also works together with various NGOs as well as experts and researchers in the field of fundamental and human rights.

As of February 2014, the Centre has periodically invited authorities engaging in fundamental and human rights monitoring to joint meetings aiming to improve cooperation and to exchange information and experiences. These actors include the Parliamentary Ombudsman and the Chancellor of Justice, the Ombudsman for Children, the Ombudsman for Equality, the Data Protection Ombudsman and the Ombudsman for Minorities.

In order to promote the implementation of fundamental and human rights education, the Human Rights Centre had talks in 2014 with actors such as the Ministry of Education and Culture, the Ministry for Foreign Affairs, the Ministry of Justice, the National Board of Education, the Association of Finnish Local and Regional Authorities, researchers in the field, and representatives of educational institutions.

covering the years 2012–2013 published its statement and ten recommendations on action plan implementation. The Human Rights Centre took part in the panel's work and in the preparation of its conclusions on plan implementation.

The Human Rights Centre has striven to promote the ratification and implementation of human rights treaties by taking part in working groups in expert capacity, giving opinions on draft documents relevant to ratification processes, and organising events focusing on the themes of the treaties. In 2014, the Human Rights Centre also offered expert support for the process of preparing the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD). The HRC and the disability working group appointed by the Human Rights Delegation were preparing for their part for assuming the monitoring duty in accordance with Article 33.2 of the Convention as suggested in the Government Bill. This is the first statutory duty that will be jointly assigned to Finland's National Human Rights Institution.

### Other duties

The duties of the Human Rights Centre also include other tasks related to promoting and implementing fundamental and human rights that are not directly set out in the legislation. According to the Government Bill, the most important one of these would be to follow independently that Finland complies with international human rights conventions, implements the recommendations and decisions given by international monitoring bodies and enforces the judgements by the European Court of Human Rights. As an example, the Centre drew attention in 2014 to the concluding observations to Finland issued by the UN Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights.

In January 2014, the so-called panel of human rights actors that took part in the preparation and monitoring of the Government's first National Action Plan on Fundamental and Human Rights

## 3.3

# National Preventive Mechanism against Torture

### 3.3.1 OPTIONAL PROTOCOL

On 7 November 2014, the Parliamentary Ombudsman became the National Preventive Mechanism (NPM) under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT, Optional Protocol to the Convention against Torture). The Human Rights Centre (HRC), at the Office of the Parliamentary Ombudsman, and its Human Rights delegation, fulfil the requirements laid down for the National Preventive Mechanism in the Optional Protocol, which makes reference to the so-called Paris Principles.

It is the task of the Preventive Mechanism to conduct inspections in places where people are or may be deprived of their liberty or may be held. The aim has been to make the scope of the Optional Protocol as broad as possible. Within its scope fall prisons, police departments and remand prisons, but also, for example, immigration units for foreigners, psychiatric hospitals, residential schools, child protection units and, under certain conditions, care homes and residential units for the elderly and those with intellectual disabilities. There are, in all, thousands of places that fall within its scope. In practice, the procedure may involve visits to care homes for elderly people with memory disorders, where the objective is to try and prevent them from being treated badly and their right to self-determination from being violated.

### 3.3.2 THE OMBUDSMAN'S ROLE AS NATIONAL PREVENTIVE MECHANISM

The Optional Protocol highlights the role of the NPM as being the prevention of torture and other prohibited treatment by means of the performance of regular inspections. The NPM has the competence to make recommendations to the authorities, for the purpose of improving the treatment and conditions of people who have been deprived of their liberty and preventing anything that is prohibited in the Convention against Torture. It must also be able to issue proposals, opinions and statements on current and planned legislation.

Under the Parliamentary Ombudsman Act, carrying out inspection in closed institutions and overseeing the treatment of their inmates used to be the specific task of the Ombudsman even before the Optional Protocol. However, the Optional Protocol brings with it new features and requirements with regard to inspections.

The competence of the Ombudsman in his/her capacity as NPM is somewhat broader in scope than with other forms of overseeing legality. The Ombudsman's competence under the Constitution only extends to private parties in cases where they discharge a public duty. The NPM's competence, meanwhile, also extends to private individual parties in charge of places where people deprived of their liberty are held or may be held by order of an authority, or at its request, or with its consent or endorsement. This definition may also be extended to include, for example, detention facilities for people who have been deprived of their liberty on board ship or on aircraft or other means of transport carry-

ing people deprived of their liberty in connection with certain public events and under the control and ownership of private parties.

What is completely new also is that the Ombudsman may call on experts to help discharge the role of NPM. The potential for utilising experts is perhaps the most significant added value factor that the Optional Protocol brings to the inspection work carried out by the Ombudsman. Although the Ombudsman did not have this option previously, inspections could nevertheless be conducted in collaboration with the Regional State Administrative Agency. During the inspection year, such jointly organised inspections were conducted by the police, and the social welfare and the health care services. Police detention facilities had already been inspected at the same time as the Occupational Health and Safety Authority, when the inspection theme was the impact of the refurbishment of facilities on those deprived of their freedom and on employees.

This summary contains data on all the findings from inspections that have been the responsibility of the NPM since 2014, even if the function of the Ombudsman as NPM only officially began in November 2014. It was possible to predict the nature of the role, as the reform has been in preparation for several years. The Ombudsman has increased the number of inspections and conducted more and more unannounced inspections. In 2014, the Ombudsman carried out a total of 107 inspections, around half of which were NPM operations. About one-third were unannounced. The purpose is in future to conduct inspections at 'inconvenient' times. During the inspection year, one home for children and young people was visited on a Sunday evening.

The work of the Ombudsman has also developed in its role, other than that as NPM, to become one that can provide guidance and do more to promote fundamental and human rights. The aim on inspection visits has been more frequently to provide guidance for the site being monitored to allow it to function satisfactorily and lawfully. It has been possible to provide the staff

at inspected premises with feedback on their findings during the inspection, and give guidance and make recommendations. At the same time, it has been possible to discuss amiably how the site could go about correcting the mistaken procedures that have been observed, for example. A memo or visit record will generally contain the findings from the inspection. If they have not been gone over during the inspection itself, it has been possible to ask the inspected site to report by a certain deadline what possible action it will take in response to the findings. If, during an inspection, something has arisen that needed investigating, the Ombudsman has taken up the investigation of the matter on his/her own initiative and the issue has not been dealt with further in the visit record.

International bodies thought it advisable to organise the work of the NPM so that it would have its own separate unit. The Office of the Parliamentary Ombudsman, however, has shown that it is more appropriate to integrate the tasks of the NPM with the work of the Office as a whole. Several administrative branches have offices that fall within the scope of the Optional Protocol. The places, the legislation that applies to them, and the groups of people who have been deprived of their liberty differ. For these reasons, too, the necessary expertise differs on inspection visits to various places. As any separate unit within the Office of the Ombudsman would in any case be very small, it would not be practical to assemble all the necessary expertise in such a unit. Participation in inspections and the other tasks of the Ombudsman, especially the handling of complaints, are activities that rely on one another for support. The information obtained and experience gained from inspections can be utilised in the handling of complaints, and vice versa. For this reason too, it is important that as many as possible of the Office personnel are also involved in the responsibilities of the NPM, and at least those that cover the positions that fall within the scope of the Optional Protocol, *i.e.*, in practice, the majority of the Office rapporteurs.

### 3.3.3 INSPECTIONS

#### Police Detention Facilities

The police detain people deprived of their liberty for several different reasons. Such people are mainly people who are intoxicated; the second largest group are those suspected of having committed an offence. To some extent people detained under the Aliens Act are kept in police prisons. People can be detained in this way from a few hours to several months, depending on the reason. There is a problem with lengthy detention times for remand prisoners, because police prisons are not suitably equipped for long stays.

On its visits to Finland, the European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has also focused attention, on its visits to Finland, on the detention in police custody of remand prisoners and foreigners. Issues relating to people being remanded in custody are now being looked into by a work group set up by the Ministry of Justice. The matters being examined are alternatives to being remanded in custody, the detention of remand prisoners and prisoner transportation. The detention of foreigners on police premises is likely to decline in scope in future, as, in October 2014, a new detention unit in Joutseno opened.

Those deprived of their freedom are held in police prisons, at least when they are being held for more than just a few hours. At present there are around 60 police prisons. In 2014, 11 police prisons were inspected around Finland. The inspections resulted in the following findings relating to the conditions in which detainees were kept or their treatment.

Some of the outdoor recreation areas of the police prisons were so enclosed and protected that there was no clear view to anything outside. For example, tobacco smoke remains in the air in these areas for quite some time. It is questionable as to whether being in such areas could be referred to as outdoor recreation at all.

In previous years, attention was given to the fact that use of the toilet was visible on a security camera, so there was no protection of privacy in evidence. Later there were guidelines on this from the National Police Board and technical solutions are to be adopted to deal with the problem, in the form of conversions and repairs. Should these not be immediately forthcoming, the camera image or angle will be adjusted to protect privacy. In different police prisons, the issue has only been addressed after an inspection from the Office of the Ombudsman.

One improvement in police prisons would be if the prison staff were to provide detainees with sufficient information on their rights without necessarily being told to. In general there needs to be more investment in staff training than there is at present.

There was also room for improvement in health care arrangements, and there were problems especially with obtaining medications, which was evident from inspections but also from the complaints that came in.

At the National Police Board, the Deputy-Ombudsman mentioned that the fact that there were differences in levels of staff training at police prisons was a problem. The Deputy-Ombudsman also said that the police needed to take account of the findings from visits by the CPT to Finland during the year of inspection in the way they supervised the legality of their activities.

#### Defence Forces Detention Facilities

In 2014, inspections were carried out of three garrisons, and the Finnish crisis management force in Lebanon (SKJL) was inspected. According to the statistics on crime and sanctions provided by Defence Command Finland in 2014, 259 personnel were apprehended and 15 held. In the past two years there have been no prisoners or detainees held on Defence Forces premises. During the inspection year, there was no evidence of any need to address problems relating to the treatment of detainees or the conditions in which they were being held.

### Customs Detention Facilities

An inspection carried out at Vaalimaa, on the border with Russia, involved a check of locked detention areas maintained by Finnish Customs and the Southeast Finland Border Guard District. As a result of the inspection, the Deputy-Ombudsman conducted a separate investigation of the reasons why people might be detained in these areas belonging to Customs and the Border Guard, and the procedures involved.

### Criminal Sanctions

In 2014, Finland had 26 prisons, 13 of which were conventional prisons (closed institutions) and 10 open institutions. There were also three closed prisons with an open prison section. In addition, there is the Psychiatric Hospital for prisoners and the Prison Hospital, which are part of the health care unit at the Criminal Sanctions Agency. The Prison Hospital in Hämeenlinna is Finland's only GP-managed somatic hospital for prisoners. The Psychiatric Hospital for prisoners is responsible for the emergency psychiatric medical care of prisoners for the whole country. It has units in Turku and Vantaa. During the inspection year, visits were made to two prisons, the Prison Hospital and one prison outpatient clinic. The number of inspections was influenced by changes to the division of labour at the Office of the Ombudsman and the inspection visit to Finland by the CPT, during which the CPT went to four separate prisons.

The Deputy-Ombudsman focused particular attention during the inspection year on the conditions and position of female prisoners.

At the prison in Kuopio, where the majority of prisoners are male, the range of activities and leisure options for prisoners in the women's section, which has places for 10 inmates, were found to be minimal. The Ombudsman is investigating, on his own initiative, the length of time that the prisoners spend in their cells. Attention was also given to the dreary state of the two prison yards,

which recalled conditions that were similar to the police prisons. The women's section took their outdoor exercises in these conditions. However, a tour of the facility revealed the existence of areas that could have served as places for outdoor activities. The Deputy-Ombudsman proposed that the prison should consider taking steps to improve the conditions and facilities for outdoor activities for women prisoners in particular.

Prior to the inspection of the prison in Hämeenlinna, 94 women prisoners had been told they would have an opportunity to discuss issues with those responsible for the oversight of legality. At the same time, they were asked (i.e. beforehand) to write down their experiences of problems with conditions and treatment or health care. There were responses from 10 female prisoners. During the inspection, two female inspectors from the Office interviewed female prisoners. The availability and quality of health care was one issue that was seen among the female prisoners as a problem. Female prisoner sections, including a section for mothers with children, still had cells without a toilet. Both the CPT and the Ombudsman have on several occasions called for the use of these 'bucket' cells to be terminated.

The issues raised by the women prisoners were gone over with the management during the inspection either at a general level or at a private level with the consent of the prisoner concerned. In this connection, the prison's attention was called once again to the fact that cells without toilets were still being used, and it was stressed that prisoners in cells such as these should always be able to use a toilet and that this had to be allowed with no delay. The prison's attention was called to the generally poor condition of the prison facilities. The management promised to look into the matters raised – such as the behaviour of prison employees and alleged collective punishments.

The final feedback also found that several prisoners had related their experience of being suspected of something that might impact on their reliability, on the basis of a tip-off or what staff had noticed about them. That in turn affects prisoner's treatment, rights, etc., such as place-



ment, leave and unsupervised meetings. However, prisoners are unable to acquire any information regarding such suspicions and cannot defend themselves. Consequently, prisoners do not have any legal remedy available to them in the same way as with a matter that would lead to disciplinary procedure.

Following the inspection, the prison was sent the Ombudsman's decisions, in which he had adopted a position on such situations and had expressed the view that prisoners should be consulted and the issue decided in the prisoner information system, e.g. with a mention of 'no penalty'. The prison governor informed the Deputy-Ombudsman of the steps he had taken in response to the inspection findings.

Discussions with prisoners and complaints they made revealed that calls from cells were not answered immediately. The Deputy-Ombudsman decided to investigate the functionality of the cell call system at the prison in Hämeenlinna and the arrangements in place for prisoners to go to the toilet.

Talks with women prisoners also made it evident that over-the-counter pain killers were no longer available to them in the prison departments. This might mean prisoners had to wait over a weekend to access help from the prison outpatient clinic to end their discomfort. The Deputy-Ombudsman was of the opinion that the fact that prisoners were unable to obtain relief quickly was indicative of poor treatment and against all the principles of normality. Another problem was the fact that prison officers judged the extent of the pain.

The Deputy-Ombudsman decided on his own initiative to investigate the practice of distributing non-prescription painkillers. The Deputy-Ombudsman was also concerned about the prisoners' stories of errors with medications. Avoidance of mistakes in medical treatment is mainly about patient safety. The Deputy-Ombudsman thought it necessary to continue investigating the matter on his own initiative.

On an inspection of the Prison Hospital, the hospital management said it was a problematic

issue that the hospital no longer had a ward for female patients with somatic symptoms, on account of which only emergency treatment was available to female patients there. Staff also mentioned how cold the cells were. The Deputy-Ombudsman advised them to contact the party that let the premises and said that the Ombudsman had several complaints pending that related to the temperature in the cells. Attention was drawn to the fact that the hospital should endeavour to eliminate the problems of free access and outdoor activities for prisoners in wheelchairs. The inspection also revealed that there were no female undergarments in the choice of inmate clothing and that the hospital had not provided maternity clothing, although there had been a need for it. The Deputy-Ombudsman asked for a report on the availability of maternity clothing for female prisoners from the Central Administration Unit at the Criminal Sanctions Agency. The Criminal Sanctions Agency said that it would be adding maternity trousers to the choice of inmate apparel in early 2015. The prison leisure wear blouse was considered to be suitable as a maternity blouse, and, if necessary, it could be available in larger sizes.

On the Deputy-Ombudsman's visit to the Central Administration Unit at the Criminal Sanctions Agency, the discussion included a mention of the visit by the CPT to Finland and the planned measures on the part of the Agency in response to the Committee's preliminary findings. The main problems were prisoners who lived in fear, 'bucket' cells, the detention of remand prisoners in police prisons and the organisation of health care for inmates. The new telephone system for prisoners was also discussed. It had made it easier to organise calls, but the feedback from prisoners received by the Office of the Ombudsman suggested that prisoners' calls were not being connected via the switchboard because of a block on call transfers. This affected, for example, prisoners' dealings with the authorities and when they called assistants, as the calls were cut off as soon as the switchboard transferred the call. The Criminal Sanctions Agency is to introduce hands-



free headphones, which prisoners can use to make calls from staff phones, for example to their trial counsels, regardless of the block on call transfers. Guidelines on this will be given to all prisoners at the start of 2015.

### Alien Affairs

On an inspection carried out previously of the Metsälä Detention Centre, it appeared that those who had been freed from the Centre and foreigners awaiting deportation were still being held, because the practical arrangements for departure from the country had not commenced in sufficient time. The Deputy-Ombudsman decided to investigate the matter and later stated that the confinement of foreigners for deportation could not be allowed to continue following the serving of a sentence for any reason that could have been resolved by the authorities while such people were serving their prison sentence.

The Parliamentary Ombudsman also conducted a pre-announced inspection of the Metsälä Detention Centre that year. These were the findings.

There was no physical examination of those returning to the detention unit following a failed deportation order. In the discussion, it was stated that such an examination would improve the legal position of both the returning detainee and the staff. The Parliamentary Ombudsman recommended that the Metsälä Detention Centre should conduct the necessary physical examinations of foreigners returned there.

It was unclear as to whether foreigners detained separately had access to legal protection, as the information obtained on the inspection suggested that the Helsinki District Court would not deal with legally based notifications of decisions to isolate detainees. The Parliamentary Ombudsman decided to investigate the matter on his own initiative.

On the inspection of the facilities, it was found that there was no protection in the unit's enclosed outdoor area, so when it was raining, a detainee either got wet or had to forego outdoor

activities. It is the Parliamentary Ombudsman's opinion that the space should either have a roof or a light shelter structure, or there should be a supply of raincoats to allow inmates to be outside even in bad weather.

### Social welfare

It may be unclear in the social welfare sector as to which units hold or may hold those who have been deprived of their liberty within the meaning of the Optional Protocol. Examples are residential units where people are not necessarily being held under lock and key and residents in any case do not consider themselves to be detainees – even though their movements might be monitored or have to be restricted, for example, owing to minimal personnel resources. The Optional Protocol states that people deprived of their liberty also refers to putting people in an institution where they are under surveillance, but which they cannot leave of their own free will.

The number of inspection sites in 2014 totalled 21, of which half involved inspections of units where those deprived of their freedom within the meaning of the Optional Protocol are or may be held. The sites are located all over Finland and the inspections were unannounced more frequently than had been the case before.

### *Residential and Care Units for the Elderly*

Inspections were carried out of units providing outsourced services run by both the authorities themselves and by private service providers. On the inspections, the aim was to try especially to assess how care units have preserved the dignity of the elderly in caring for them and how the institutions address the issue of the proper treatment of clients. An essential element here is the organisation of terminal care and the relief of pain. The following findings resulted from the inspections.

An inspection of the Rudolf dementia unit owned by the City of Helsinki (15 institution sites in all) drew attention to several matters:

- There were significant problems with the function of the alarm systems. The fact that they did not function properly caused difficulties for the care and effective access to help on the part of the elderly in many ways, considering in particular how big the unit is and the number of clients there are there.
- Forcing clients to continue to use nappies and the lack of proper toilet facilities was considered inhuman and undignified. The inspection site was asked to look into whether part of the reason for this was the fact that the toilet doors in the rooms were too narrow and how the situation might be put right. Furthermore, the outdoor activity options for the old people were thought inadequate.
- Terminal care had not been organised appropriately, inasmuch as it took place in rooms for two people. The number of staff was not regarded as sufficient, given the situations that arose. An elderly person's right to die with dignity needs to be considered carefully and the current state of affairs put right.

The City was asked to provide an explanation for all the shortcomings observed and an account of how they would be put right. Following the inspection, it came to light that an elderly person living in a flat in the the same building, which was being used for sheltered accommodation, (not the dementia unit), and who was not using the services, had been dead there for around four weeks. A report on this matter was also requested. The Deputy-Ombudsman asked the City if in future it could always provide a written report if there were similar cases of death in any of the City care homes. At the same time, the City was to try and discover the reason for them and see how the situation could have been avoided.

The residential Kotivaara dementia unit in the Järvi-Pohjanmaa cooperation area (nine institution sites) had been using boards at the side of the bed, 'hygiene' overalls and a geriatric chair to re-

strict inmates' movements. The inspection site's attention was drawn to the fact that measures to restrict the inmates' right to self-determination should be based on a medical evaluation and restrictive procedures should be carefully recorded. The need for restrictive procedures and their duration would also be regularly assessed.

The Kotoplassi Service Centre owned by the JIK Basic Service Enterprise Joint Municipal Board, which incorporates two dementia units (37 institution sites in all), was found to have serious problems with the function of the alarm system. This caused difficulties for the care and effective access to help on the part of the elderly, considering in particular how big the Centre is and the number of clients there are there. In this connection, night-time supervision also had to be regarded as minimal (only two nurses on night duty). The Board was asked to provide an explanation for the findings.

### *Units for children and young people*

On one visit, the Deputy-Ombudsman expressed a view as to when and how restrictive procedures should be applied in social welfare units where children and young people deprived of their liberty were being kept (the word 'child' will be used hereinafter to cover both categories):

- The need for, and use of, restrictive procedures must always be assessed on an individual basis, so that a child is only subjected to such measures if the purpose of the child's custody or the health or safety of the child or someone else makes it absolutely necessary. Of the measures available, the one that restricts the child's right to self-determination or other fundamental right the least at any time should be that chosen, and if more lenient steps can be taken, there should be no restrictions imposed at all.
- Restrictive procedures must be in reasonable and fair proportion to the objective set for their use. They should always be implement-

ed as discreetly as possible and in a way that respects the child's dignity and acknowledges his or her fundamental rights.

- If a restriction on freedom of movement actually simultaneously imposes a restriction on the child's ability to communicate, a decision relating to contact that can be appealed against must be taken on the matter.
- If a child is subjected to restrictive procedures, there must be individual grounds for their use in the law. They must be justified in the decision on the matter or records on them.
- They must be implemented discreetly in a way that respects the child's privacy and dignity. A personal inspection of a child does not entitle the member of staff to strip the child to be able to examine his or her body.
- Restrictive procedures may not be employed systematically as an educational remedy to be applied to all children placed in the institution. They may never be used as a punishment.

The state-run residential school Lagmansgården had a practice for calming children down where the child was taken to a room in which he or she might have to stay for from two hours to over 24 hours in the company of an adult. During the inspection, the legality of this procedure was discussed in a spirit of cooperation. In the monitoring of legality this practice was considered to be a type of isolation, which requires a separate decision to be taken. The matter was also thought over with the staff as to whether a pupil that had tried to run away could be held to prevent him or her from running off again and probably posing a risk to his or her safety and development. According to the Deputy-Ombudsman, restrictive procedures under the Child Welfare Act do not fundamentally apply to such a situation. The Deputy-Ombudsman encouraged child welfare institutions to focus attention on measures to prevent children from running away or failing to return from vacation, for example, by promoting care and attention on the part of the adults in the

institution, a positive atmosphere there, a regime whereby children were listened to about their concerns, and active family work.

An inspection of the same residential school revealed flaws in the treatment of children whose mother tongue was Swedish. It was necessary to ensure that these children were treated equally by having decisions on them taken on a form in the Swedish language. That had obviously not been the case, as there was no form in Swedish available. As this also concerned the management of state-run residential schools, a record of the inspection was sent to the Executive Director for State Residential Schools at the National Institute for Health and Welfare for action to be taken.

Furthermore, an inspection of the privately run Youth Psychiatric Residential Home in Puro incorporated a discussion about whether a child who had run away should be subjected to restrictive procedures under the Child Welfare Act. The Deputy-Ombudsman stated that the social welfare authorities had the right to decide on the whereabouts of a child that had been taken into care. However, the authorities have no right to interfere in a child's freedom of movement other than by means that are laid down in the Child Welfare Act. A social welfare authority must request executive assistance from the police to bring a child back to an institution. Captivity under the Child Welfare Act can only interfere with a child's physical integrity to calm the child down.

The findings from an inspection of the privately run youth home at Tiirakallio resulted in an own initiative by the Deputy-Ombudsman. The intention was to examine the extent to which children who have been placed there are adequately guaranteed an opportunity to meet the social worker personally responsible for their affairs or any other child welfare employee. She also decided to look into certain matters connected with the use of restrictive procedures and the treatment of children. The Deputy-Ombudsman pointed out generally that restrictions on communications and contact would also constitute a

procedure that restricted the child's right to contact his or her nearest relatives by telephone. The practices of an institution with respect to depriving clients of the use of a phone or other restrictions on the use of a phone might therefore require a special decision to be taken, which could be appealed against in an administrative court. Listening in to telephone calls, however, always requires a decision subject to appeal to be taken.

The findings from an inspection of the privately run child welfare institution, Hiekkarinne Service Centre, resulted in an own initiative of the Deputy-Ombudsman to examine the following matters in greater detail:

- The extent to which children who have been placed there are adequately guaranteed an opportunity to meet the social worker personally responsible for their affairs or any other child welfare employee.
- How it is ensured that the relevant parties are duly informed of decisions on restrictions and how the legality of restrictive procedures is monitored by the local authorities that place them.
- How decisions on special care and attention are made by the local authority and what it actually entails in the institution concerned.

### *Persons with disabilities*

Inspections of institutions for those with intellectual disabilities and other residential units involve a check of the conditions in which clients reside and their treatment, as well as the safeguarding of their fundamental rights. The use of a secure room is a last resort and before that option is taken up there must be an attempt to resolve the client's situation in a way that restricts his or her rights less. This issue had arisen in particular in the previous year on an inspection of the residential services of the Central Finland Disability Service Foundation. The Foundation was advised that the use of force was only possible if and when the safety of the client or someone else

made it absolutely necessary. There should be an adequate number of staff available and if staff go off site, it cannot be because a client is shut or locked up against his or her will in his/her room or a secure room.

On an inspection of the research and rehabilitation units at the Rinnekoti Foundation, attention was paid to the rights of disabled adults and children,

- especially when restrictive or protective measures were being applied
- to care practices
- in document records and other texts
- in the receipt of health care, including mental health services.

On the visit there was also discussion of models for resolving challenging situations. Two units featured the use of night-time overalls that clients could not get off themselves. The overalls prevent them from soiling the bed and eating their nappies. One unit made use of a protective shield, which serves to protect staff but also prevents clients with challenging behaviour from causing harm or damage.

The Parliamentary Ombudsman stressed the importance of realising that restrictive and protective measures are a last resort, of supporting the client's right of self-determination and of promoting that right in the production of institutional and residential services for the disabled.

The Foundation was also reminded that proper records must be kept of individual clients when restrictive procedures were being applied. Records of protective and precautionary measures should focus on a detailed description of what happened; for example, what led to the violent situation and the use of restrictive procedures. Detailed records are important for the legal protection of the client as well as the employee, and thus to allow the legality of restrictive procedures to be assessed later on. Records also do much to aid the work done to reduce the application of restrictive procedures in the work community.

## Health care

In 2014, an inspection was carried out of four health care units that held people who had been deprived of their freedom. They were all for adults who needed psychiatric care. The Office of the Ombudsman has performed an inspection at regular intervals at one or the other of the state-run mental hospitals: the last visit to Niuvanniemi Hospital was conducted in 2010 and to Vanha Vaasa Hospital in 2012. During the inspection year, there was no visit to Niuvanniemi Hospital, as the CPT visited the institution on its inspection tour of Finland. The inspections by the Ombudsman and the CPT paid particular attention to the practice of isolation and the right of access to information on the part of patients and close relatives.

As a result of the last visit to Niuvanniemi Hospital, the Parliamentary Ombudsman had decided to investigate the treatment of isolated patients at the hospital and their living conditions. The focus of a decision by the Parliamentary Ombudsman issued in 2014 was the following with regard to patients' living conditions and treatment during isolation:

- A meagrely equipped isolation room is not suited to a long-term stay, unless there are special reasons for such a procedure based on notions of safety.
- The use of buckets and other types of bedpan should be disposed of, unless required by considerations of safety.
- Patients must always be able to contact the staff by ringing a bell or in some other way.
- Patients should be able to take their meals somewhere other than in the isolation area.
- Patients should never be isolated when they are naked except in very exceptional circumstances, where they cannot be left alone even when they are wearing specially made clothes.
- There must be good arguments set forth in patient documents in the case of exceptional clothing options for patients – the Parliamentary Ombudsman asked the hospital to

consider supplementing its guidelines on restrictive procedures in this respect.

- The hospital must have the sort of clothing for male and female patients that those in isolation exhibiting self-destructive behaviour can wear safely.

The Parliamentary Ombudsman takes the view that keeping a patient in isolation in a psychiatric hospital was demeaning and has proposed that there should be compensation when patients have to relieve themselves on the floor or in a bucket in the isolation room. The Parliamentary Ombudsman has also made the following remarks:

- The humane treatment of a patient in care in a psychiatric hospital and good quality health care and medical treatment depend on patients kept in isolation always being able to go to the toilet. For this reason, such patients must be able to contact staff immediately and, indeed, should also be given the opportunity to go to the toilet without always having to ask. A bucket does not belong in an isolation room. Human treatment also extends to the use of appropriate clothing (the underpants and shirt were not appropriate) and it should be provided without the patient having specifically to ask for it.

The Parliamentary Ombudsman made the following observations and recommendations following an unannounced inspection of a closed ward at the Adult Psychiatric Hospital in Forssa (20 patient places).

- The hospital's own instructions suggest that patients are stripped to their underclothing when isolated. This is not appropriate. Patients must be provided with suitable, normal-type clothing unless there is a need in individual cases for them to wear other clothing, because of their self-destructive behaviour, for example.
- According to the instructions, the well-being of isolated patients had to be monitored at least every hour. According to established





*An unannounced inspection was carried out at Muurola Psychiatric Hospital in the Lapland Hospital District on 5 June. The large balconies of the building are vestiges of its history as a tuberculosis sanatorium. The Parliamentary Ombudsman found it important that access to the balcony does not replace actual daily outdoor exercise.*

practice in inspections and decisions on the part of those overseeing legality, the proper monitoring interval is 15–20 minutes, and no more than half an hour. It was not evident from the instructions whether there was a chance for patients in isolation to contact the staff immediately. An isolation room must have either a bell or some other arrangement to ensure that the patient can have immediate contact with nursing staff.

- It was recommended that the hospital should record in its instructions that patients had to have an opportunity to use the toilet when they needed to, even if they were being kept in isolation. Patients should be permitted to go outdoors for recreation/exercise on a daily basis, even during observation or when they are being kept in isolation, if their condition allows. Being out on a balcony is no substitute for proper outdoor activity.
- The hospital was advised to produce leaflets for new patients and their close relatives. They should spell out all the rights of the patient in a way that is comprehensible (including the right to complain to external bodies).

Access to all the inspected wards and departments of Muurola Hospital was via a gate that had a metal detector. There are no rules on this. The Parliamentary Ombudsman stressed the need to inform patients and those visiting the wards of the use of the metal detector.

An inspection of Keropudas Hospital entailed a focus of attention on the safety of a toilet in an isolation area, especially regarding patients exhibiting self-destructive behaviour. Patients themselves were able to close the sliding door of the toilet, so that they were completely out of sight. The hospital was asked for an account of how patient safety was ensured. The inspection also revealed the fact that it was not possible for patients in isolation to go outdoors because of a shortage of staff. A report on this matter was also requested.

It was observed on the inspection that an injection given against a patient's will whilst held in restraints had not been entered in the list of restrictions, where a record of all restrictive procedures with respect to patients had to be kept. The Regional State Senior Medical Officer included in the inspection provided some oral guidance on the matter and urged the centre to make the appropriate entries.

## 3.4

# Shortcomings and improvements in implementation of fundamental and human rights

The Ombudsman's observations and comments in conjunction with oversight of legality often give rise to proposals and expressions of opinion to authorities as to how they could in their actions promote or improve implementation of fundamental and human rights. In most cases these proposals and expressions of opinion have had an influence on official actions, but measures on the part of the Ombudsman have not always achieved the desired improvement.

On the recommendation of the Constitutional Law Committee (PeVM 10/2009 vp), the 2009 Annual Report contained, for the first time, a section outlining observations of certain typical or persistent shortcomings in implementation of fundamental and human rights. Also outlined were examples of cases in which measures by the Ombudsman had led or are leading to improvements in the authorities' activities or the state of legislation. The Constitutional Law Committee has expressed the wish (PeVM 13/2010 vp) that a section of this kind will become an established feature of the Ombudsman's Annual Report.

The Ombudsman does not become aware of all problems relating to legality or fundamental and human rights. Oversight of legality is founded to a large degree on complaints from citizens. Information about shortcomings in official actions or defects in legislation is obtained also through inspection visits and the media. However, receipt of information about various problems and the opportunity to intervene in them can not be completely comprehensive. Thus lists that contain both negative and positive examples can not be exhaustive presentations of where success has been achieved in official actions and where it has not.

The way in which certain shortcomings repeatedly manifest themselves shows that the public authorities' reaction to problems that are highlighted in the implementation of fundamental and human rights has not always been adequate. In principle, after all, the situation ought to be that a breach pointed out in a decision of the Ombudsman or, for example, in a judgment of the European Court of Human Rights should not re-occur. The public authorities have a responsibility to respond to shortcomings relating to fundamental and human rights through measures of the kind that preclude comparable situations from arising in the future.

Possible defects or delays in redressing the legal situation can stem from many different factors. In general, it can be said that the Ombudsman's stances and proposals are complied with fairly well. When this does not happen, the explanation is generally a dearth of resources or defects in legislation. Delay in legislative measures also appears often to be due to there being insufficient resources for law drafting.

### 3.4.1 TEN CENTRAL FUNDAMENTAL AND HUMAN RIGHTS PROBLEMS IN FINLAND

This section in the Annual Report for 2013 described ten central fundamental and human rights problems that Parliamentary Ombudsman Jääskeläinen brought up in an expert seminar on the evaluation of the Finnish National Action Plan on Fundamental and Human Rights in December 2013. The list of problems had been put together on the basis of observations made in the course of the Ombudsman's work.



The same ten problems remain topical today. In the following sections, any development noted during the reporting year is shown in italics.

### Shortcomings in the conditions and treatment of the elderly

There are tens of thousands of elderly customers living in institutional care and assisted living units. Shortcomings related to nutrition, hygiene, change of diapers, rehabilitation and access to outdoor areas are identified continuously as is substituting medication for insufficient staffing.

There are also shortcomings in safety, outdoor recreation arrangements and services for running errands.

Measures limiting the right to self-determination in the care of the elderly should be based on law. However, the required legislative foundation is entirely lacking.

There are insufficient resources for internal overseeing of the administration. The regional state administrative agencies do not, in all cases, have the means to supervise the activities.

### Shortcomings in child protection and the handling of child matters

A general lack of municipal resources for child protection and the low number of tenures, in particular those of social workers; deteriorate the quality of child protection services. In addition, social workers do not always receive an adequate education and employee turnover is high.

The supervision of foster care in child protection is insufficient. The child protection authorities at the municipal level do not have enough time to visit foster care locations and they are not sufficiently familiar with the conditions and treatment of the children. The regional state administrative agencies do not have enough resources for inspections.

Mental healthcare services for children and the youth are lacking. It is difficult to arrange the treatment needed by children placed in foster care.

The insufficiency and delays of open welfare support services for families cause problems for families that need services. This insufficiency is manifested as an increased need for child protection and is reflected in children's mental health problems.

The total handling time in matters related to the care of a child and other matters often becomes unreasonably long from the perspective of the child's interest. In particular, preparing a report of the child's circumstances takes an excessively long time.

### Shortcomings in the guarantee of the rights of persons with disabilities

There are physical, legal and social obstacles as well as shortcomings in the guarantee of equal opportunity of participation for persons with disabilities.

There is a lack of support for the employment of persons with disabilities and their right to a family. In many cases, persons with mental disabilities work at activity centres for a salary lower than minimum wage. The child of a disabled mother is often taken into custody and alienated from her rather than arranging for the support services the family requires.

The policies for limiting the right to self-determination vary in institutional care. The social and health services for children with disabilities are insufficient.

*During the reporting year, several cases came up which involved shortcomings in transport to the day-care centre or school of children with disabilities (problems with transport safety and addressing the individual needs of children with disabilities).*

### Policies limiting the right to self-determination at institutions

Measures limiting the right to self-determination often lack legal grounds, for example, when they are based only on “institutional power”. In unregulated situations, limiting measures may be excessive or inconsistent.

The supervision of policies limiting self-determination is insufficient, and the controllability of these measures has shortcomings as there are no procedural guarantees of protection under the law.

*During the reporting year, a government bill on strengthening the self-determination of social welfare customers and patients and criteria for the use of limiting measures was submitted to the Parliament (HE 108/2014 vp), but it lapsed.*

### Problems with the detention of foreigners and insecurity of immigrants without documentation

Keeping people who have lost their freedom under the Aliens Act in a police prison is problematic, as police prisons are not suitable for the long-term confinement of people. Due to the conditions at the police prisons, the freedom of a person who remains detained under the Aliens Act is unnecessarily limited at police prisons.

The reason for keeping foreigners in police prisons is that the only detention unit for foreigners (Metsälä) is continuously full. In addition, there is no appropriate detention place intended for families.

*The situation improved as a detention unit was opened in connection with Joutseno reception centre in autumn 2014.*

Shortcomings and ambiguities have been identified in meeting the basic needs of immigrants without documentation, such as social and health services and a primary education.

*A government bill was submitted to the Parliament in the reporting year (HE 343/2014 vp) that would have improved the right to health services of certain groups among the so-called undocumented persons (including pregnant women and minors), but the bill lapsed.*

### Flaws in the conditions and treatment of prisoners and remand prisoners

For many prisoners, the lack of activities is a serious problem. Some prisoners must be in their cells 23 hours per day. The Council of Europe anti-torture committee (CPT) recommends that prisoners have at least eight hours per day outside of their cell.

Toiletless cells used for confining prisoners are against the international standards of prison administration and can violate the human dignity of the prisoners. Despite many years of criticism from the Ombudsman and CPT, there were still 180 toiletless cells in use in Finnish prisons at the end of the reporting year.

Remand prisoners are still excessively detained at police prisons. CPT has criticised Finland for this for 20 years. According to international prison standards, crime suspects should be kept in remand prisons rather than police detention facilities, where conditions are suitable only for short stays and where remand prisoners are at risk of being put under pressure.

*CPT visited Finland in the reporting year. In its preliminary findings, CPT noted that keeping remand prisoners in police prisons must be discontinued, as no acceptable justifications exist for continuing this practice.*

### Shortcomings in the availability of sufficient health services

There are shortcomings in arranging for statutory health services. For example, there are problems with the distribution of care supplies and the supplies are not distributed sufficiently in all cases because of financial reasons.

*Shortcomings in the handing over of assistive devices for medical rehabilitation came up repeatedly during the reporting year.*

The round-the-clock dentist service required by the Health Care Act has not been implemented.

*A so-called emergency care decree entered into force from the beginning of 2015, which contains more detailed provisions on the manner in which emergency care must be organised.*

The access to treatment assured under Treatment Guarantee legislation has still not been implemented in full.

*Observations made during the reporting year indicate that in particular, this applies to mental health services for children and young people.*

In many cases, the queues for treatment are too long.

There are shortcomings in the healthcare of special groups, such as conscripts, prisoners and immigrants without documentation.

### Shortcomings in the safety of the primary education learning environment

Bullying at school is often left to run its course. The schools do not have the means of identifying aggressors and intervening in bullying.

Indoor air problems are continuously identified at schools.

The availability of student care, rehabilitation and other school-related and learning support depends on the child's place of residence and the financial situation of the home municipality. The

unique needs of the child cannot always be taken into consideration.

*Increasing numbers of teachers have been laid off.*

### Lengthy handling times of legal processes and shortcomings in the structural independence of courts

Delayed trials have long been a problem in Finland. This has been identified in both the national oversight of legality and in the ECHR legal praxis. Despite some legislative reforms that have improved the situation, trials can still last an unreasonably long time. This can be a serious problem particular for matters that require urgent handling, such as child-related matters.

With respect to the structural independence of the courts, the fact that the court system is led by a ministry is problematic, not to mention the insufficient resources allocated to the court system. With respect to the independence of the courts, an alarming example is that in 2013, a supplementary budget was necessary to finance a single criminal case (the so-called "Wincapita" case).

*The Ministry of Justice has looked into the establishment of an independent national courts administration.*

*In inspections conducted by courts of appeal, cases of burnout have been discovered among both judges and the office staff, as well as inadequacy of resources in proportion to the workload. In its statement on the government's budget proposal for 2015, the parliamentary Constitutional Committee (PeVL 29/2014 vp) expressed its concern over the reduced funding of courts and the prosecution system. Reductions in the numbers of court staff will further hamper the justice system's capabilities for ensuring access to legal protection.*

### Shortcomings in the prevention and recompense for basic and human rights violations

Basic and human rights violations are not always taken seriously, which partly results from insufficient human rights training and education.

International human rights treaties are not ratified quickly enough in Finland. This, in turn, slows down the creation of the structures and procedures aimed at securing the rights guaranteed by the treaties.

The legislative foundation for the recompense for basic and human rights violations is inadequate.

#### 3.4.2 OTHER LONG-TERM SHORTCOMINGS

The Deputy-Ombudsman has repeatedly drawn attention to the long-term problems of statutory financial and debt advisory services, including a lack of resources, the underdeveloped system of allocating central government transfers to municipalities, inconsistent operating methods, provision of services by undersized units, inadequate steering, and shortcomings in contract oversight. Adequate national measures have still not been taken to implement the equality of customers.

For some time now, the project to reform the police information systems (the so-called VITJA project) has been expected to bring improvements for example to information flows in the criminal process (police-prosecutor-court), which plays a role in the implementation of a fair trial. The project was already launched in 2009, and it was due for completion at the latest as the new Criminal Investigations Act and Coercive Measures Act came into force at the beginning of 2014. However, the project has been beset by continuous delays.

#### 3.4.3 EXAMPLES OF POSITIVE DEVELOPMENT

The following presents certain cases from different administrative branches where, because of the comment by the Ombudsman or Deputy-Ombudsman or a proposal made therein or otherwise, there has been favourable development with respect to the basic or human rights. The examples also describe the impact of the Ombudsman's activities.

For the Ombudsman's recommendations concerning recompense for mistakes or violations and measures for the amicable settling of matters, see sub-chapter 3.5. These proposals and measures have mostly led to positive outcomes.

##### Police

The number of complaints concerning the licence and permit administration of the police has declined significantly. This is likely to be due to the shortened waiting times, development of electronic services for licence and permit matters, and improved functioning of the system. In previous years, large numbers of complaints were received, and among other things, the Deputy-Ombudsman commented on acceptable waiting times and the manner in which a licence or permit matter can be initiated.

##### Social welfare

The Deputy-Ombudsman found that the lengthy processing times of demands for rectification by the social welfare and health services of a city may have put at risk the right to indispensable care and adequate health services enshrined in the Constitution of persons in need of support. The Deputy-Ombudsman felt that the time it took to process demands for rectification was a particularly serious problem in case of persons with severe disabilities or mental health problems

and social welfare customers who live solely on social assistance, who are in a vulnerable position (5105/4/13).

*According to information provided by the city's social welfare and health committee, the anticipated processing times of demands for rectification had been reduced by nearly one half at the end of 2014.*

### Health care

The Parliamentary Ombudsman proposed that the National Supervisory Authority for Welfare and Health Valvira consider whether developing clear triage guidelines is necessary. Consistent triage principles should be followed in different emergency care units to ensure that patients are not treated differently depending on their place of care in a preliminary assessment of how urgently care should be administered (2704/4/13\*).

*Valvira reported that national triage guidelines would be necessary. Valvira proposed that the Ministry of Social Affairs and Health ensure the preparation of national guidelines applicable to primary health care and joint emergency care services and that more detailed principles concerning the division of duties between nurses and doctors and triage followed in health centres would be set out.*

The Parliamentary Ombudsman proposed that Valvira use all means available to it to ensure that the monitoring of children with a cleft palate is carried out by phoniaticians in public health care (976/4/13).

*Valvira urged hospital districts and municipalities to make sure that all children with a congenital cleft palate are being monitored by a phoniatician.*

The Parliamentary Ombudsman criticised the incorrect practices and instructions that some hospital districts and health centres had followed when handing over wigs as assistive devices for medical rehabilitation. The Ombudsman stressed

the Ministry of Social Affairs and Health's duty of steering and oversight (1077/4/13\*).

*The Ministry of Social Affairs and Health reported that it had sent the hospital districts a letter in which they were reminded of the statutory practices in handing over wigs. The Ministry requested that the hospital districts also communicate this information to health centres.*

### Guardianship

The Parliamentary Ombudsman found that equality of principals was not implemented in public guardianship services, as value-added tax was added to fees charged for outsourced guardianship services. The principals thus ended up paying more for their guardianship services than if they had been provided by the legal aid office. According to the Parliamentary Ombudsman, the principals had to be compensated for this violation of equality (3108/2/12).

*The Ministry of Justice announced that on the initiative of the Ministry, an appropriation was included in the 2015 Budget for the purpose of paying compensation to the principals of outsourced guardianship services. In addition, the Ministry reported that an existing working group had been assigned the task of examining how the value-added tax will be reimbursed to the principals. The working group is preparing a model and instructions for legal aid offices concerning the procedures for paying the reimbursement.*

The Parliamentary Ombudsman looked into the general questions of cancelling contracts on outsourcing public guardianship services and considered that the Ministry of Justice should draw up a more detailed analysis on the basis of which the requisite development measures could be assessed (2695/2/13).

*The Ministry of Justice announced that its Internal Audit Unit had audited the internal supervision and risk management of outsourced public guardianship services. In addition, a working group had*

been appointed to draw up instructions for supervision procedures and to evaluate the effectiveness of legislation in situations where services are outsourced. The Ministry also intended to separately assess the needs for legislative amendments.

### Language matters

The Parliamentary Ombudsman proposed to the Ministry of Justice that legislation on languages used in enforcement matters be improved as, for example, there are no provisions on how the language used in the process and the right to translations of documents are determined in these matters (3254/4/13 and 2330/2/14).

*The Ministry reported that it would take the necessary steps to clarify the relevant legislation, ensuring that a government bill can be submitted during the next government term.*

The Parliamentary Ombudsman feels that bilingualism should be better reflected on the Facebook site maintained by the National Police Board (Suomen poliisi). The National Police Board was to assess how this could be carried out in practice (3746/4/13).

*The National Police Board reported that it had made functional modifications in the Facebook site, issued police departments with instructions concerning the requirements set by bilingualism in social media, and brought the issue up both at the meetings of the police communication network and in a handbook on social media.*

### Transport

The question of which tasks in civil aviation are public administrative duties subject to the general legislation on administration has come up repeatedly in the oversight of legality. The Parliamentary Ombudsman has proposed that it should be considered how aviation legislation could be

clarified to ensure that it sets out the public administrative duties as unambiguously as possible (1634/2/12).

*In the government bill on aviation submitted to the Parliament (HE 79/2014 vp), the public administrative duties in aviation were specified more clearly than before. The Aviation Act (864/2014) entered into force on 13 November 2014.*

### Other authorities

In a decision issued in 2013 (4372/4/12\*), the Deputy-Ombudsman found that the procedural provisions of the population information act (väestötietolaki) on refusals to disclose data for safety reasons were deficient, and the practices of the authorities in Local Register Offices varied. This had led into a situation where the citizens' equality concerning refusals to disclose data for safety reasons was at risk.

*The Ministry of Finance reported that as the provisions on appeals in the population information act and the municipality of residence act (kotikuntalaki) are reviewed, it will also be verified that the procedures on disclosing data to which a refusal applies are unambiguous and ensure that the rights of the person having requested for a refusal are implemented. The amendments are to be brought into force by the end of 2015. In this context, the steering and development unit for Local Register Offices in the Regional State Administrative Agency for Eastern Finland reported that it is working to complement the rules on practices related to refusals to disclose data for safety reasons, with the aim of incorporating in them the perspectives proposed in the Deputy-Ombudsman's decision among others. These rules will be completed in early 2015.*



## 3.5

# The Ombudsman's proposals concerning recompense and matters that have led to an amicable solution

The Parliamentary Ombudsman Act empowers the Ombudsman to recommend to authorities that they correct an error that has been made or rectify a shortcoming. Section 22 of the Constitution, in turn, obliges the public authorities to ensure implementation of fundamental and human rights. Making recompense for an error that has occurred or a breach of a complainant's rights on the basis of a recommendation by the Ombudsman is one way of reaching an agreed settlement in a matter. The Ombudsman has made numerous recommendations regarding recompense over the years. These proposals have in most cases led to a positive outcome. In its report (PeVM 12/2010 vp) the Constitutional Law Committee also took the view in its report that a proposal by the Ombudsman to reach an agreed settlement and effect recompense in clear cases was a justifiable way of enabling citizens to achieve their rights, bring about an amicable settlement and avoid unnecessary legal disputes.

Recompense was recommended in 12 cases in the report year. In addition, during the handling of complaints, communication from the office to the authority often led to the rectification of the error or insufficient action and, therefore, contributed to an amicable settlement. In numerous other cases, guidance was also provided to the complainants and the authorities by explaining the applicable legislation and the practices of administration of justice and oversight of legality as well as the means of appeal that are available.

The grounds on which the Ombudsman recommends recompense are explained more extensively in the 2011 and 2012 annual reports (p. 84 and p. 65).

### 3.5.1 RECOMMENDATIONS FOR RECOMPENSE

The recommendations for recompense that the Ombudsman made during the year under review are set forth below. The authorities' responses have not yet been received in all cases.

#### Right to equal treatment

The Parliamentary Ombudsman found that equality of principals is not implemented in public guardianship services as value-added tax is added to fees charged for outsourced guardianship services. In practice, the persons in question cannot choose whether their affairs will be looked after by a legal aid office or a service provider. They may thus have ended up using a service provider liable to pay value-added tax quite at random and against their will, without knowing or understanding the significance of the value added tax liability.

The Parliamentary Ombudsman finds this a serious shortcoming as it affects persons in a vulnerable position who are themselves unable to look after their interests or manage their financial or other affairs. This is a violation of equality for which recompense must be made to the principals in question (3108/2/12).

*According to the Ministry of Justice, an appropriation of EUR 90,000 has been included in the 2015 Budget on the Ministry's initiative for the purpose of reimbursing principals of outsourced guardianship services. The Parliamentary Ombudsman welcomed this move. A question that remains unanswered, however, is whether this reimbursement is only to be paid in the future. The Parliamentary Om-*

*budsman felt that reimbursements should be paid not only in the future but to all principals who have against their will, unknowingly and without understanding the issue had to pay a fee for guardianship services which included the value added tax.*

*The Ministry later reported that an existing working group had also been assigned the task of examining how the value-added tax will be reimbursed to the principals. The working group is to prepare a model and instructions for legal aid offices concerning the procedures for paying the reimbursement.*

### Right to be treated with human dignity and right to indispensable subsistence and care

Parliamentary Ombudsman Jääskeläinen found that a patient with an intellectual disability had been subjected to unnecessary pain and suffering for over one month as the provision of urgent oral health care needed by the patient was neglected. Among other things, the pain had caused the patient to resort to self-harm by hitting their head against the wall. The patient's rights to indispensable care and adequate health services enshrined in the Constitution were not implemented. Neither was the patient treated with human dignity, which is also guaranteed under the Constitution.

To the Parliamentary Ombudsman, it was clear that this negligence caused the patient unnecessary pain and suffering, for which recompense cannot be made solely by acknowledging the violation or issuing a reprimand to the subjects of oversight. The Ombudsman proposed that the Joint Municipal Authority of Kanta-Häme Hospital District pay compensation for the violations of the patient's fundamental and human rights (4915/4/13\*).

*The Director of the Hospital District has made a decision under which the patient will be paid EUR 1,500 as compensation for immaterial damage caused by the pain and suffering afflicted on them as a result of delays in access to treatment.*

### A violation of freedom of speech

A principal had issued a teacher a written warning for having contributed to a newspaper discussion on mental health work at schools. His letter was regarded as having a negative impact on the school's working atmosphere and wellbeing at work. The Parliamentary Ombudsman found that the issuing of the warning was a violation of the complainant's freedom of speech and also constituted a breach of the European Convention on Human Rights and the Finnish Constitution. The Ombudsman also asked the city to assess how the violation of the freedom of speech could be rectified and how recompense could be made to the teacher (5342/4/13\*).

*The city reported that the principal and the vice mayor had apologized to the teacher for the violation of his freedom of speech. The principal had also cancelled the warning issued to the teacher.*

### Right to social security

The processing of a complainant's applications for employment disability pension and care allowance for pensioners had been delayed regardless of the fact that the complainant had made several requests for accelerated processing. According to the Deputy-Ombudsman, in this case accelerated applications had been left sitting in the job queue for a lengthy period. The illegal action of the employment disability pension team of Social Insurance Institution's health department and the insurance district had eroded trust in the Institution's operation. For this reason, the Deputy-Ombudsman proposed that the Institution make some recompense to the complainant for the damage, nuisance and inconvenience caused (1500/4/13).

*The Social Insurance Institution reported that it had paid the complainant an increased allowance to compensate for the delays in making rehabilitation allowance payments. As the process and the matter were complex, the complainant had incurred costs, and they had to take additional trouble to see the*

case settled. As a result, the Social Insurance Institution had decided to pay them the reasonable amount of EUR 500 as compensation.

According to the Substitute for Deputy-Ombudsman, the home care unit of Helsinki social welfare and health services had neglected its duties by not issuing a complainant a personalised decision that could be appealed on the provision of home service. The home care unit had also neglected its duty of oversight when it procured outsourced cleaning services for the complainant without monitoring the actual service provision. This negligence caused the customer losses as the cleaning services were not provided. The Substitute for Deputy-Ombudsman proposed that the social welfare and health care services in the City of Helsinki consider how they could make recompense to the complainant for the established negligence (5646/4/13).

*The social welfare and health care services in the City of Helsinki reported that they had discussed the situation with the complainant, checked the best way of contacting the complainant and verified the contact details of the complainant's family members. A letter of apology will also be sent to the complainant. The instructions followed by the home care unit will be revised, and the unit will consider how to make decisions that can be appealed in the future. The practices of meeting the duty of oversight will also be revised.*

### Violations of legal protection and good governance

A mistake was made in the processing of a complainant's letter of complaint concerning social assistance in the Registry Office of the City of Tampere, as a result of which the complainant was unable to take the decision issued to them on social assistance to the Administrative Court. The mistake had put the complainant's legal protection at risk. While the City was informed of the mistake as a result of the complaint, it had not been investigated, and the City had made no

effort to assume responsibility for its actions or to regain the complainant's trust in its activities. The Deputy-Ombudsman proposed that the City consider whether the problem could be settled with the complainant, for example by agreeing upon suitable recompense (5127/4/13).

*The City of Tampere reported that the complainant had accepted a proposed settlement where the City apologised for the incident and paid the complainant EUR 2,100 as compensation for its illegal action.*

The Deputy-Ombudsman found that as a consequence of an error made in the Centre for Economic Development and the Environment (ELY Centre), a company's application for a development grant had been unduly rejected. The company reported that the ELY Centre's error had caused it significant losses of income and damages. The grant had only been paid more than three years later subsequent to a decision of the Supreme Administrative Court. The Deputy-Ombudsman proposed that the ELY Centre consider how it could compensate the complainant for the damage thus caused (5330/4/13).

An elderly Russian passenger had been removed from the train at Vainikkala border crossing because of problems with their visa. They had been forced to wait for the next train to St Petersburg at the border crossing, and were only able to embark on their homeward journey a number of hours later. An elderly passenger may have experienced this situation as confusing and threatening. The Deputy-Ombudsman found that an apology contained in the statement submitted by the Border Guard Headquarters to the Ombudsman cannot be considered sufficient recompense in this case. The Deputy-Ombudsman proposed that the Border Guard make recompense for the hurt and inconvenience caused by the incident as they see fit (1384/4/13).

*The Border Guard headquarters reported that they had paid the complainant a total of EUR 200 in compensation for the additional telephone and taxi costs incurred as a result of the border check and for the hurt caused by the delayed journey.*

The process of granting a renovation subsidy to support the care and well-being of a severely disabled child failed due to the negligence of the Housing Finance and Development Centre of Finland (ARA). The Deputy-Ombudsman proposed that ARA, the Ministry of the Environment and the municipality jointly consider how they could compensate the complainants for the negligence shown in processing the matter. The child's parents had filed a complaint with the Parliamentary Ombudsman. In 2010, they had applied to the municipality for a renovation subsidy to pay for repairs required in their one-family house to meet their child's care needs (328/4/13\*).

The Ministry of the Environment reported to the Deputy-Ombudsman that together with ARA and the municipality, the Ministry had taken action to pay compensation for the negligence shown in this matter. The complainants have accepted this action as sufficient. The municipality remitted to the complainants the subsidy granted in the original decision, or EUR 38,886 with interest. ARA paid the entire amount, including the overdue interest, to the municipality. The municipality had offered the complainants a written apology from ARA and the municipality, and decided to pay the complainants EUR 400 as compensation for the upset caused to them. In addition, the municipal committee on basic security had given the complainants a grant under the Act on services and assistance for the disabled (vammaispalvelulaki, 380/1987).

The Parliamentary Ombudsman found that a complainant employed by a joint municipal authority was justified in feeling that they had been groundlessly suspected of breaches of information security as a result of the joint municipal authority's actions. The suspicion violated their honour and caused them suffering. The Ombudsman requested that the joint municipal authority consider if it could recompense the complainant for the upset caused by the incident (1211/4/13).

*The joint municipal authority reported that it had sent the departmental secretary a written apology for the suffering and hurt caused to them by the deficiencies in investigating the matter.*

The Deputy-Ombudsman found that the actions of a city's financial administration services did not comply with the service principle that is part of good governance, as it had first refunded the complainant the rent amounts that they had paid in advance, and later sent them reminders. The Deputy-Ombudsman proposed that the financial administration services consider how they could make recompense to the complainant for the insult and damages caused by the violation against the principle of good governance (1270/4/14).

*The financial administration services, which is a public enterprise, reported that it had apologised to the complainant for the worry and additional work that the enterprise's actions had caused. It had also given the complainant additional credit for the overdue rents of two months, or EUR 455.20 in total, as compensation. The public enterprise had also sent the complainant an analysis of the rent invoices and the payments allocated to them, as well as the details of the current rental payment status.*

A prison had acted inappropriately when it failed to inform a prisoner of the cancellation of an unsupervised visit granted to the prisoner. According to the complaint, a visitor had arrived to meet the prisoner on the date for which the unsupervised visit had been granted. The visitor incurred travel and childcare costs as they made their way to the prison. The information provided by the prison does not indicate conclusively whether or not the visitor had called at the prison. The Deputy-Ombudsman proposed to the prison governor that they consider if the prison should compensate the visitor for the actual reasonable costs incurred for the meeting if the visitor had called at the prison (1020/4/13).

*The prison stated that the inmates themselves usually inform the visitors of the time and date of an unsupervised visit, and of any cancellations of such visits. It was impossible for the prison to find out afterwards if the visitor had called at the prison or not. As the unsupervised visit had been cancelled, no documentation or information remained in the prison on whether the visitor had called or not.*

### 3.5.2 CASES RESULTING IN AN AMICABLE SETTLEMENT

The following describes certain cases where, during the handling of complaints, communication from the office to the authority led to the rectification of the error or insufficient action and, therefore, an amicable settlement was reached.

#### Police

A complainant criticised the actions of Häme police department in handling a request for a document. According to the Deputy-Ombudsman, rather than deny access to the documents requested by the complainant, the police department and the officials at the prosecutor's office were unclear about who should have made a decision on the request. An Investigating Officer from the Office of the Parliamentary Ombudsman contacted Häme police department about the complaint, and the department delivered the requested documents to the complainant on that day. The case thus warranted no further action on the part of the Deputy-Ombudsman (3299/4/14).

The Substitute for Deputy-Ombudsman informed a Detective Chief Inspector that in their view, a decision had been made on insufficient grounds. They also informed the Detective Chief Inspector of the significance of the grounds. Helsinki police department reported that they would revise the decision and send it to the complainant for information. No further action was thus required in the case (2521/4/14).

#### Customs

The Deputy-Ombudsman examined the format of appeal instructions attached to car tax decision as an own-initiative investigation. After receiving a request for information, the Customs took immediate action to implement the required changes in their system, and separate appeal instruc-

tions in an appropriate format were introduced in 2014 to be attached to the decisions (2473/2/13).

#### Prison service

Incorrect appeal instructions had been attached to a decision made by a prison governor. The Principal Legal Adviser dealing with the complaint contacted the prison governor by telephone. The governor promised to provide the complainant with new appeal instructions. The matter thus gave rise to no further action by the Deputy-Ombudsman (4592/4/14).

#### Distraint

According to a complainant, an enforcement office had started collecting a debt in an incorrect amount. The mistake was later rectified. According to the report provided by the district bailiff, the error had been taken into account in training provided for the enforcement office staff. The secretaries responsible for record-keeping in this matter had also been given instructions aiming to minimise the risk of similar mistakes reoccurring. In their statement, the district bailiff announced that the enforcement office regretted the incident. No further action by the Deputy-Ombudsman was thus required in this case (4200/4/13).

#### Social welfare

A complainant criticised the website maintained by the technical services of the City of Oulu as misleading and deficient. The welfare services of Oulu gave a statement on the complaint, reporting that the website had been revised. As corrective action was taken, no further measures by the Substitute for Deputy-Ombudsman were necessary (4754/4/13).

A complainant criticised the decision of the social welfare services in Turku to not grant him social assistance in November 2013. As a result of



the Deputy-Ombudsman's request for information, the social welfare services of Turku put the matter to rights by means of an own-initiative revised decision on social assistance that granted the complainant social assistance for both November and December (5139/4/13).

A complainant claimed that the social welfare services of Kuopio invoiced a home care customer for the costs incurred for the mechanical dosage of medications. This was considered illegal. According to the statement issued by the social welfare services of Kuopio, the city has started covering the costs of mechanical dosage for home care customers as from 1 January 2014 by decision of the city's committee on basic services and health. The information obtained by the Deputy-Ombudsman indicated that the problem had thus been solved, and no further action was necessary (114/4/14).

A complainant criticised the actions of Lahti social welfare services in organising substitute care for a child. The complaint claimed that the health care services needed by an intellectually disabled child placed in a children's home had not been organised as prescribed in the Child Welfare Act. The statement and information provided by the social welfare and health care services in Lahti indicated that the services the child needed had been organised as a result of the complaint and the request for information sent by the Deputy-Ombudsman. The complaint did thus not warrant other action by the Deputy-Ombudsman except to draw the attention of Lahti social welfare and health care services to their duty to organise the services needed by a child (775/4/14).

A complainant criticised the action of social welfare and health care services in Vantaa in organising transport services. As the processing of the complainant's case had been re-initiated by Vantaa social welfare services as a result of the Deputy-Ombudsman's request for information and a new decision, which the complainant will be able to appeal, will be made on the transport services, no further action by the Deputy-Ombudsman was necessary (1957/4/14).

### Health care

A complaint claimed that certain instructions issued to patients by the Hospital District of Southwest Finland guided the patients to make inappropriate decisions. After receiving a request for information from the Ombudsman, the Hospital District discontinued the use of these instructions. No further action by the Ombudsman was thus necessary in this case (1986/4/13).

### Guardianship

A complainant was dissatisfied as they had not received a response to their complaint from a municipality. As a Principal Legal Adviser from the Office of the Parliamentary Ombudsman contacted the municipality's Financial Manager, the Manager reported that they would send the decision made in the matter to the complainant for information. No further action by the Parliamentary Ombudsman was necessary in this case (460/4/14).

The payment of a principal's credit card bill had been delayed. As the Ombudsman has been informed that the legal aid office will compensate the principal for the damage caused by the failure to pay the credit card bill, no further action was necessary in this case (1900/4/14).

### Social insurance

According to a complainant, the Social Insurance Institution had failed to send them a decision referred to in the Administrative Procedure Act. The Institution had interpreted the customer's contact as an enquiry and responded to it accordingly. As urged in the decision of the Deputy-Ombudsman, the Social Insurance Institution had reviewed the case. A new, justified decision on insurance had been issued to the complainant (5492/4/13).

The Deputy-Ombudsman informed an insurance company of his view that it should have



started processing the matter as soon as it had received the relevant decision of the Insurance Court. As the company had later issued a decision on payment with appeal instructions to the complainant, no further action by the Deputy-Ombudsman was necessary in this case (2192/4/14).

### General municipal matters

According to a complainant, the Municipality of Nurmijärvi had imposed a stricter ban on using snuff during working hours than it had a legal right to do. The complainant referred to the Deputy-Ombudsman's decision of 30 May 2013 (912/4/12). A Principal Legal Adviser telephoned the Employee Relations Manager in Nurmijärvi about the complaint. According to information provided by the Manager, the Municipality of Nurmijärvi had not been aware of the Deputy-Ombudsman's decision at the time of issuing its instructions on Smoke free working hours. The Deputy-Ombudsman decided to send the aforementioned decision to the municipal board for information. The Municipality of Nurmijärvi reported to the Deputy-Ombudsman that the instructions were revised by a decision of the HR Department to ensure its compliance with the Tobacco Act (4208/4/14).

The actions of a private parking enforcement company were criticised in a letter of complaint. By way of a mistake, the complainant had paid the tickets issued to them several times. Regardless of contacting the company, they had been unable to recover the excess payments. The complainant had noticed that the company had filed for bankruptcy. In a response given to the complaint, the Substitute for Deputy-Ombudsman explained the legal situation of private parking enforcement. The complainant was given the postal address and telephone number of the company's liquidator, which could be found in the public Business Information System (YTIJ). The complainant was advised to contact the insolvency estate and find out about the possibilities of claiming the debt. The complainant later thanked

the Deputy-Ombudsman for the advice and reported that the insolvency estate had refunded his excess payments (4631/4/14).

### Language matters

Proof of service of summons in a dispute had been issued in Finnish, even though the defendant's mother tongue was Swedish. When the matter was investigated, the district court acknowledged the mistake. It also reported that it had already drawn the bailiff's attention to the importance of careful implementation of linguistic rights and that it intends to serve the summons again. No further action by the Ombudsman was thus necessary in this case (596/4/14).

It was claimed in a complaint that the instructions provided on the Finnish Competition and Consumer Authority's Swedish website on blocking telephone advertising were unclear. The Authority reported that its website is currently being updated and that during this process, the unclear instructions referred to in the complaint could also be addressed. No further action in this matter by the Substitute for Deputy-Ombudsman was thus necessary (2319/4/14).

### Taxation

A complainant had received no answer to a written request for information addressed to the Tax Administration. When the tax office received the Deputy-Ombudsman's request for information, it immediately started processing the complainant's request. A senior tax expert contacted the complainant, explained that a mistake had occurred in the processing of the case in the tax office, and apologised for the delay. A decision was immediately made on the matter that the request for information concerned, and a reply was sent to the complainant on the same day. In the reply, the apology for the delay was reiterated. The reply stated that as recompense for the delay, no fee was charged for photocopying the documents. As

a result of the steps taken by the tax office, the Deputy-Ombudsman took no further action in this case, apart from drawing the Tax Administration's attention to the need to process requests for information as prescribed in the legislation (5031/4/13).

### The environment

After a complaint was filed, Helsinki Region Environmental Services, which is a joint municipal authority, had revised and complemented the processing of the complainant's case and issued a decision on his claim. The Deputy-Ombudsman found no need to investigate the matter further (5556/4/13).

### Agriculture and forestry

A complaint criticised the actions of the provincial veterinary surgeon of the Regional State Administrative Agency for Northern Finland for the fact that the short time period reserved for hearing a farmer put the farmer's legal protection at risk. According to information provided by the provincial veterinary surgeon to the Office of the Parliamentary Ombudsman in a telephone conversation, the complainant would be granted an additional delay of two weeks for complementing his response if necessary. Considering the new deadline set for the complainant and the means of appeal available to him, no further action by the Substitute for Deputy-Ombudsman was necessary (1041/4/14).

## 3.6

# Special theme for 2014: The rights of persons with disabilities

### 3.6.1 INTRODUCTION

For the first time, the special theme for the Office of the Ombudsman was the implementation of the rights of persons with disabilities. The theme was opportune, the work group drafting the ratification of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol having proposed tasks and duties under Article 33(2) of the Convention to the Finland's National Human Rights Institution, consisting of the Parliamentary Ombudsman, the Human Rights Centre and its Human Rights Delegation. These tasks and duties are the promotion, protection and monitoring of the Convention's implementation.

The theme of the rights of the disabled relates to the broader issue of equality. The theme was prominent on all inspection visits and was also taken into consideration in other contexts, such as when considering investigations on own initiative (for details of how the theme is dealt with and made prominent in the Ombudsman's work in general, see the summary of the annual report for 2010, pages 105-106).

In the oversight of legality by the Ombudsman it has been noticed that the opportunities that persons with disabilities have to participate equally and have dealings with others are not always addressed satisfactorily by the various authorities and other agencies and parties. Enabling unrestricted mobility, organising and delivering services for persons with disabilities are some of the particular problems noticed by the Ombudsman in this oversight of legality.

The starting points for the theme were Article 9 of the Convention on the Rights of Persons

with Disabilities, which provides for accessibility, full participation in aspects of life, and equal access to the physical environment, for example, and Article 19 of the Convention, which deals with inclusion in the community and the notion that community services and facilities for the general population should be available on an equal basis to persons with disabilities and be responsive to their needs. On the Ombudsman's inspections, this meant giving attention to access to premises and facilities and the general surroundings and accessibility to information and private transactions from the perspective of different actors. A key idea was to investigate, in the spirit of the Convention, whether the surroundings/environment restricted the participation, involvement and activities of those with disabilities.

The theme was continued in 2015.

A background memorandum was produced for the theme; it contained details of the matters and issues to be raised on visits when obstacles and barriers were perceived. The memorandum featured reasonable accommodation that could be applied to assert human equality and pending reforms.

Article 33(3) of the Convention requires that civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process. Participation is thought to have been accomplished mainly by the Human Rights Centre Delegation. Accordingly, the background memorandum was also considered by a work group set up by the Delegation in 2014, with the task of outlining the provisions on the functions and composition of the Permanent Disability Sub-Committee (Human Rights Committee for the Dis-

abled) for the Human Rights Delegation's Rules of Procedure.

This section describes the findings of investigations and decisions on complaints connected with the theme from the angle of accessibility and participation. The observations from inspections by the National Preventive Mechanism against Torture in section 3.3.

### 3.6.2 THE CONCEPT OF DISABILITY

Disability in Finnish law is defined in various ways, depending on the Act and situation. In the Finnish Act on Services and Support due to Disability (380/1987), a disabled person means someone who, owing to a disability or illness, has long-term and special difficulties in performing normal life functions.

Finnish policy on disability is based on the definition of disability as a state of affairs resulting from environmental barriers and interaction between individuals. Disability is not a condition, but a state of affairs. The Convention on the Rights of Persons with Disabilities also highlights the fact that disability is an evolving concept and results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

The Convention defines persons with disabilities as those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. It is worth noting that a depiction of disability must be based on the person's relationship with society around him/her, and is not a definition based on a medical diagnosis. The concept of disability is not fixed for all time either. The Convention contains a broad definition of disability, which can be adequately relied upon to ensure the rights and equality of the disabled in different ways. It insists that attention must be paid to human rights in all areas of life.

### 3.6.3 ACCESSIBILITY IN ALL ITS FORMS

An accessible, unimpeded environment for people with disabilities is an absolute requirement if they are to lead an independent life and enjoy equal status. The obstacles imposed by the built environment and barriers to movement result in unequal status among people. People with disabilities can only use some of the services on offer in society and only take part in some of the activities that society provides because of inaccessibility in buildings and their surroundings.

Environmental accessibility partly depends on the elimination of problems to do with communications and access to information. Interpreting services, communication aids and easy access to information (for example, using plain language) are vital factors for equality as far as the disabled are concerned.

The Convention on the Rights of Persons with Disabilities is based on the notion that all activity must take account of the demands of accessibility across society, because this is often a prerequisite for the implementation of other rights. The Convention also extends the obligation to provide reasonable accommodation in individual cases to accomplish equality for persons with disabilities.

The following sections present some of the findings and solutions made during inspections of various administrative branches.

#### Health care

On an inspection of a psychiatric clinic, it was evident that one ward had several visually impaired patients and some of them used a rollator. For disabled persons, a single room with its own toilet was more appropriate. The reception ward had been designed in the best way possible to serve the needs of patients with restricted mobility (2322/3/14).

*The Ombudsman thought it important that persons with disabilities should be able to take part in*

activities organised for patients and to minimise the various barriers in the environment by making adjustments.

A Prison hospital ward had a cell for disabled persons (3702/3/14).

*The Deputy-Ombudsman stated that the hospital should try to eliminate any sources of inconvenience or harm for prisoners using wheelchairs.*

The number of disabled parking spaces close to a hospital's psychiatric unit was temporarily reduced, owing to the presence of a hospital building site. There were more disabled parking spaces in the public parking area, but the distance to the psychiatric clinics was a lot longer (1396/3/14).

On an inspection, mention was made of the fact that a psychosis clinic was equipped to take disabled patients as it had two rooms with facilities for the disabled. If these rooms were not suitable or the number of patients were to exceed the number of such rooms, beds would be provided by another hospital (1396/3/14).

It was evident on a visit to a psychiatric hospital that one ward did not have a proper disabled toilet, although the toilet that was there could be accessed in a wheelchair. The passageways were wide and allowed movement using a wheelchair or a rollator. The staff said that there were plans to renovate the hospital building and at the same time address problems of inaccessibility (2204/3/14).

The inspection of a hospital found it to be challenging for patients who were hearing impaired as it was not possible to provide a round-the-clock emergency interpreting service. The staff had themselves developed communication cards, with which patients could make known their needs and communicate with staff (2323/3/14).

On an inspection, staff said that deaf patients could have access to a sign language interpreter at the psychiatric clinic coming from the outpatients department for the hearing impaired at another hospital (1396/3/14).

## Social welfare

Inspections of institutions for the care of the elderly, other forms of social welfare, and residential units focused on the size of the rooms, accessibility and the mobility and communication aids that residents used. Accessibility to the entrances to, and the grounds surrounding, the residential units was also inspected. With regard to social welfare units, the issue was also raised as to whether rooms were satisfactorily equipped and had their own toilet facilities.

An inspection of a service centre for the elderly revealed that there was no disabled toilet on the premises (1952/3/14).

Rehabilitation and research units for persons with intellectual disabilities were located in an area where needs for improvements were largely within the built environment. Several buildings were erected in the 1950s and 1960s and consequently were not all fully accessible. An inspection revealed that the common dining area, for example, could not be accessed in a wheelchair independently, because the ramp was too steep. There were no disabled parking places in the public car park, although there was one in front of some of the rehabilitation units (4467/3/14).

An inspection of a service centre for care of the elderly revealed that residents' rooms were cramped and impractical for both them and the employees. There was wheelchair access to the building and the common areas but these areas were partly unlit. There was wheelchair access to the grounds (2293/3/14).

The facilities of a service building for the care of the elderly generally had wheelchair access. However, Building A had steps between staircases A and B on each floor because of a construction site on a slope. By one of the staircases there was a platform lift. On two floors there were staircases, where there was a chair lift, but the residents were unwilling to use it. One staircase was also located dangerously close to the door of an apartment, and had no gate fitted. Apparently, they were supposed to be getting one (2394/3/14).

The indoor areas of a retirement home had wheelchair access and there were ramps and handrails at the entrances to the building. Elderly residents used rollators and wheelchairs to get around. The rooms were small and had no private toilets. The grounds were level and easy to move around on (2290/3/14).

Many residents in a service building for the care of the elderly had varying degrees of visual impairment and hearing loss. They used hearing and reading aids (2394/3/14). In one residential unit for the elderly, the residents used walking sticks, rollators and wheelchairs to get around (1856/3/14). A residential unit for the care of the elderly had indoor wheelchair access and the passageways had support rails (2291/3/14).

The city placed elderly people reliant on sign language in a special residential service centre that provided round-the-clock assistance, and where all the carers knew sign language (3033/3/14).

A youth home had a disabled toilet and an entrance with wheelchair access (1677/3/14).

### Courts, the prosecution service and the police

On an inspection of a court, it was found that the National Board of Antiquities had prohibited the installation of fitted ramps. Moveable telescopic ramps were available for use, but they were not thought to be completely appropriate from the perspective of accessibility. For the hearing impaired, the court had amplifiers (communicators), and sign language interpreters were made available if required. Something still being considered was a disabled parking facility, which at that time was missing at the main entrance to the building. The court website had a leaflet with illustrations for the disabled. On the site, people with reduced mobility were advised to contact the notary or accessibility contact person before arriving for the main hearing. The guidance was thought to work well (1057/3/14).

The outer door to a court building opened by means of a push-button and a wheelchair could fit into the lift. However, the inspectors thought that it was rather awkward to use the lift independently, because it was fairly confined and in an awkward position (4979/3/14).

The Public Prosecutor's Office was located on the first floor of a commercial building in the city centre. The only way to get to the office was up some fairly steep stairs. The inspectors were of the view that it was impossible for people with reduced mobility to use the services of the Office without someone to help them (3772/3/14).

The refurbishment of a police prison involved the conversion of a detention room to make it accessible. The cell's toilet and shower area were large enough to allow a wheelchair in, and the taps were fit for purpose. Making the toilet area larger, however, had taken up space in the cell, making it difficult or impossible to get next to the bed in a wheel chair as far as the inspector could see (3929/3/14).

A court had an induction loop. There did not appear to be any need for interpreting services (4979/3/14).

### Other authorities

On an inspection of an enforcement agency (bailiff), discussions revealed that the door of an office in another location was so stiff that a person in a wheelchair could probably not get it open. The client service unit could actually come and give assistance, as there was visual contact between it and the outer door of the agency (5085/3/14).

*The Deputy-Ombudsman confirmed that the authority had an obligation to promote accessibility in the built environment (see, for example, section 117 of the Land Use and Building Act, section 53 of the Land Use and Building Decree and the Decree of the Ministry of the Environment on Accessible Buildings - Finnish Building Regulations F1). Inaccessibility due to heavy doors could be eliminated by means of*



*various technical solutions, such as automated door opening systems or sliding doors. In connection with an accessibility issue at the Agency it would be possible to contact the owner of the property or the Ministry of Justice Department of Judicial Administration, which is responsible for renting the premises used by enforcement/bailiff units.*

One complainant said that it had not been possible to apply for sign language interpreting service by email or telephone or on line in a way that was accessible. A report by Kela (the Social Insurance Institution) stated that an attempt had been made to take the needs of all visually impaired persons into account as far as was feasible in improvements to the forms used to deliver the interpreting service, and there had been collaboration on these developments with the Finnish Centre for Easy to Read, for example. Kela is also developing their content and improving their effectiveness in response to feedback from clients. Although many Kela benefits can be applied for electronically, this does not extend to the interpreting service as yet (681/4/13 and 890/4/13).

*Because Kela was trying to improve its transaction channels, according to the account it gave, (e.g. e-services and the option to apply for benefits orally), to meet the needs of clients, the complaint did not result in action being taken on the part of the Deputy-Ombudsman, at least not at this stage. The Deputy-Ombudsman stressed, however, that there appeared to be a need for these improvements.*

An inspection revealed that a legal aid office had a separate entrance for wheelchair users and the doorways had been widened accordingly. A private lessor had been prepared to have all the necessary conversion work that was requested done (4980/3/14).

There were no ramps or disabled toilets at the reception centre or detention unit. As a result, disabled clients were not normally accommodated there, but placed in another reception centre in the same city (5099/3/14).

### 3.6.4 INCLUSION AND PARTICIPATION

A general principle according to Article 3 of the Convention on the Rights of Persons with Disabilities is full and effective participation and inclusion in society. The Convention emphasises the importance of the insistence on equality and the prohibition of discrimination in society, where persons with disabilities are able to live among the rest of the population. The Convention makes it very clear that the participation of disabled persons in all policy-making that concerns them and the monitoring process that relates to them is an absolute requirement. The new emphasis on the importance of self-determination and inclusion is what sets this Convention apart from previous human rights agreements.

Inclusion is promoted if, for example, disabled persons have equal status in schools and at work. The following findings resulted from the inspections:

- a lay member of the District Court was able to use a wheelchair with no problems (1058/3/14)
- a District Court judge had used a wheelchair; the court room had a height-adjustable desk specially fitted (4979/3/14)
- an IT support person used a wheelchair at a youth home (1677/3/14)
- a school employee and pupils enjoyed wheelchair access (4496/3/14)

A school inspection revealed that the integration of children reliant on sign language had proven problematic because of a lack of sign language skills among the teaching staff. There was one pupil at the school whose only language was sign language (4496/3/14).

The Ombudsman stressed that it was important that the needs of clients residing in supportive housing for disabled persons were duly assessed together with clients and their relatives or people close to them in the context, too, of participation in society and the community. The Ombudsman said that placing restrictions on the drinking of coffee should not be a means of educating someone or punishment. The Ombuds-

man pointed out that the reasonable use of stimulants would be discussed and negotiated with the client (3517/3/14).

The Ombudsman stressed that restrictions on movement/disabilities should not mean that prisoners spend their terms in isolation because of their disability. It must be possible to place prisoners with reduced mobility in an open institution using the same criteria as for other prisoners (2391/4/13\*).

*The Central Administration Unit of the Criminal Sanctions Agency said that it had undertaken an investigation of the cells for persons with restricted mobility in Finnish prisons and asked each Criminal Sanctions Region if it had an open institution where disabled prisoners or those with restricted mobility could be placed. There were 14 cells for such prisoners in closed prisons and only one in an open prison located in the Criminal Sanctions Region of Western Finland. A suitable open prison site would be opening in the Criminal Sanctions Region of Southern Finland. The Criminal Sanctions Region of Eastern and Northern Finland had an open prison project in preparation that would take account of the need for accessibility.*

An inspection of a Criminal Sanctions Region centre revealed the practical problem that an open institution could not take people who used wheelchairs (2878/3/14).

The manager of a letting agency had held a resident's meeting in an area that residents with reduced mobility could not access. Although the manager had looked into the matter prior to the meeting, the door for disabled access had remained locked. The Ombudsman could do nothing about it because oversight of legality does not extend to the monitoring of the procedures of private limited companies. The Ombudsman nevertheless brought the response he gave to the attention of the City Board and the Housing Finance and Development Centre of Finland (ARA) for them to take account of in the advice and guidance they gave to the city's letting agencies and in the general guidelines on the co-management of rented housing. According to the Ombudsman, these guidelines should focus atten-

tion on the implementation of each individual's opportunities to participate and have an influence, as enshrined in the Finnish Constitution (1414/4/14).

The Deputy-Ombudsman visited the Beirut Office under the auspices of the Syrian Embassy in Finland. The Finnish mission in Lebanon had cooperation projects in place that supported children and disabled people fleeing from Syria to Lebanon. In July 2014 Finland signed an agreement with the Lebanese Organisation for the Rights of Persons with Disabilities. The mission will provide support for projects worth EUR 100,000 in the period 1 July 2014 – 31 December 2015. The aim of the Organisation's project is to help Lebanese organisations for the disabled to function more effectively and to support disabled refugees coming to Lebanon from Syria. At a practical level, the project will entail exerting an influence on legislation and government policy on disabled people in the Lebanon in order to have the disabled exercise their right to vote and to acknowledge their rights in the educational system (4940/3/14).

Special schools were found to be centres of expertise providing other schools with advice and guidance. The staff seemed motivated and professional, and they invested time and resources in particular in building rapport with the pupils. The pupils were consulted and they got to experience care and attention. The inspectors found that the premises were fit for purpose (2197/3/14).

In response to a complaint, the Ombudsman stressed that the information provided by the nursing home staff about dental pain experienced by a patient should have been taken into greater consideration when assessing the need for care of a patient with serious intellectual disability. Among other things, the patient had resorted to self-harm by hitting their head against the wall. The Ombudsman took the view that the fact that there had been negligence with regard to the patient's urgent dental treatment and proposed that the patient should receive compensation for what was an infringement of fundamental and human rights (4915/4/13\*).

## 3.7

# Statements on fundamental rights

### 3.7.1 FUNDAMENTAL AND HUMAN RIGHTS IN OVERSIGHT OF LEGALITY

The following text contains a report of the observations concerning implementation of fundamental and human rights that the Ombudsman made in the course of oversight of legality. This section provides a summary of the contents of rights which are safeguarded by Sections 6–22 of the Constitution and examples of cases involving each type of right in decisions made by the Ombudsman. The observations are primarily based on complaints and own-initiative investigations on which decisions were issued during the year under review as well as on information that came to light in the course of inspection visits. The statements presented in this section are mainly those specifically justified on the basis of fundamental rights norms.

### 3.7.2 EQUALITY, SECTION 6

Equal treatment of people is one of the cornerstones of our legal system. It is enshrined in Section 6 of the Constitution. However, an acceptable societal interest may justify people being treated differently. In the final analysis, it is a matter for the legislator to assess the generally acceptable reasons that in each individual situation justify giving people or a group of people a different status. The public authorities have the duty to promote *de facto* equality in society.

Complaints received by the Ombudsman frequently make appeal to viewpoints of equality. A violation of equality may, for example, manifest itself as a lack of regional equality between residents in different municipalities, or in treating

persons differently as a starting point without legal grounds when granting a certain allowance.

The requirement of equal treatment precludes discrimination on the basis of state of health.

A prisoner who used a wheelchair had little or no possibility of spending time and taking part in activities outside the cell, as the handicapped-accessible cell was located in the prison's reception department where no activities were organised. In addition, the Criminal Sanctions Region in question had no open prison places that were suitable for wheelchair users.

It must be possible to place a prisoner with impaired physical mobility in an open prison on the same grounds as other prisoners. It was obvious to the Parliamentary Ombudsman that in order for equality to be implemented, open prisons with conditions that also allow them to receive prisoners with physical or other disabilities must be available in Finland if the conditions for their placement in an open prison are otherwise met.

The Act on Imprisonment requires that, apart from certain exceptions cited in the Act, all prisoners have a possibility of spending time with other inmates and taking part in various activities outside the cell. Prisoners who have disabilities or whose functional capacity is otherwise reduced must have the same opportunities as other prisoners in this respect (2391/4/13).

The Parliamentary Ombudsman found that equality of principals is not implemented in public guardianship services as value-added tax is added to fees charged for outsourced guardianship services. The possibility of outsourcing guardianship services and the duty of the relevant service providers to pay value added tax on fees charged to principals for these services are based on law. However, the joint effects of these procedures have led into a structural problem that violates the equality of the principals, as the principals'

obligation to pay depends on how the legal aid offices have arranged public guardianship services in their area (3108/2/12).

### Prohibition on discrimination

The prohibition on discrimination enshrined in Section 6(2) of the Constitution complements the equality provision. No one may, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

Treating a person differently for a reason expressly cited in this provision or for other reason concerning the person without an acceptable reason is prohibited. Section 6(2) of the Constitution does not prohibit treating people differently in all cases. The key consideration is whether or not the different treatment can be justified in a manner that is acceptable in terms of the fundamental rights system.

A hospital district joint municipal authority could not categorically exclude children in need of home hospital care who had a parent in prison from this type of care. Different treatment of this type cannot be justified in a manner that is acceptable in terms of the fundamental rights system (129/4/13).

### The right of children to equal treatment

The equality provision of the Constitution contains a special reminder that children have a right to equal treatment and that they are entitled to influence decisions concerning them to the degree that their level of development allows. On the other hand, as a group with less power and who are weaker than adults, they need special protection and care. The provision also offers a ground on which children can be given positive special treatment to ensure that their equal status relative to the adult population can be safeguarded.

In a matter that concerned morning assemblies with religious content, it was found that from the perspective of the rights of the child, it is justified for the education provider to respect the personal announcement of a child who is old enough to make judgements in these issues stating that, because of his or her conviction, he or she will not take part in events regarded as practice of a religion. On the other hand, as human rights treaties impose an obligation to respect the parents' conviction, and under the law the guardian has the right to make decisions on the child's care, upbringing, place of residence and other personal matters, it is difficult to find acceptable grounds, at least in the case of a pupil in the age of compulsory education, for overlooking or completely ignoring the views of the child's guardians when deciding on procedures. The Basic Education Act and the General Upper Secondary Schools Act also impose on education providers the obligation to cooperate with the homes of the children and young people. (3994/4/13\*).

### 3.7.3 THE RIGHT TO LIFE, PERSONAL LIBERTY AND INTEGRITY, SECTION 7

The fundamental right to life, personal liberty, integrity and safety covers all cruel, inhuman or degrading forms of punishment or other treatment. The prohibition on treatment that offends against human dignity applies to both physical and mental treatment.

The public authorities must refrain from breaching these rights themselves, and they must create conditions in which these fundamental rights also enjoy the best possible protection against private violations. For example, protecting people against crime comes within the sphere of the latter obligation.

Matters that are especially sensitive from the perspective of implementation of a person's physical fundamental rights are the coercive measures and force used by the police as well as conditions in closed institutions and the armed forces. Cus-

tomarily a large proportion of the complaints that come under the heading of Section 7 of the Constitution concern police measures hindering the liberty of an individual person. According to the complaints, either there was no legal foundation for the police action or it went against the principles of proportionality.

### Personal integrity and security

Section 7(1) of the Constitution guarantees everyone the right to personal liberty, integrity and security. Many cases concerning health care and the care of elderly and disabled people have dealt with restrictions on the right of self-determination which are not prescribed by law. For that reason, these types of measures have been assessed from the point of view of provisions on self-defence or defence of others or necessity.

A bodily search carried out in a prison had interfered with the complainant's personal integrity more severely than what was permitted by the relevant provision, as in addition to being ordered to strip, the prisoner was also forced to squat down. Relying on a wider interpretation where a bodily search is equalled to a physical examination in order to implement safety in prison is not appropriate (2348/4/14).

### Prohibition on treatment violating human dignity

Section 7(2) of the Constitution states that no one may be sentenced to death, tortured or otherwise treated in a way that violates human dignity.

This provision has largely the same content as Article 3 of the European Convention on Human Rights, according to which no one may be tortured or treated or punished in an inhuman way. When evaluating what is treatment that violates human dignity, one is always to some degree bound by the changing values and perceptions in

society and the case law with respect to application of the Constitution and of the Convention does not always have the same content.

The significance of treatment with human dignity may come up in a variety of situations. These cases often are about the treatment of persons in closed institutions, subjected to other restrictions of their personal liberty, or with a reduced functional capacity.

The gender reassignment therapy of a transgender person had been interrupted. The justifications for the interruption mainly included the person's psychological status and an impression that their behaviour was impulsive, as well as an allegation that they had threatened to kill a member of the TRANS team. Interrupting the gender reassignment process left this person in question in limbo regarding their gender, which caused them intense daily suffering. This situation had to be considered highly problematic in terms of the inviolable nature of human dignity. Interrupting a gender reassignment process against the patient's will would only have been possible for pressing medical reasons (1883/4/13).

The assessment of the dental care needs of a patient with severe intellectual disabilities failed in many ways, and the patient's urgent dental care was neglected. As a result of this negligence, unnecessary pain and suffering were inflicted on the patient, offending their human dignity. Among other things, the pain had caused the patient to resort to self-harm by hitting their head against the wall (4915/4/13).

A bucket to serve as a toilet had been provided in the room of a person placed in observation under the Mental Health Act, and the patient was only wearing a shirt and underwear. The Ombudsman felt that giving a patient in isolation the possibility of using the toilet whenever they wish to do so, and ensuring that they had appropriate clothing when in isolation, were essential elements of treatment with human dignity (1513/4/13).



### The conditions of individuals deprived of their liberty

Section 7(3) of the Constitution prohibits the violation of the personal integrity of the individual as well as deprivation of liberty arbitrarily or without a reason prescribed by an Act. All deprivations of liberty and interventions in personal integrity must be founded on laws enacted by Parliament, and they must not be arbitrary. The right to personal liberty protects not only a person's physical freedom but also his or her freedom of will and right of self-determination.

The rights of persons deprived of their liberty are safeguarded by legislation. The treatment of individuals deprived of their liberty must meet the requirements of, *inter alia*, international conventions on human rights. The Ombudsman's oversight of legality is specifically focused on the exercise of the rights of individuals deprived of their liberty during their incarceration. Numerous cases concerning restriction of rights are resolved each year in the oversight of legality. The fundamental rights of individuals who have been deprived of their freedom must not be limited without a reason founded in law.

In a case that concerned restraining a prisoner, it was found that merely the fact that the prisoner was placed in a secure ward or that they had committed breaches of order were not adequate grounds for keeping the prisoner in restraints to prevent them from escaping, unless conclusions about the prisoner's liability to escape can be made from the grounds of their placement in a secure ward or the quality of the breaches of order they had committed. A prisoner may not be kept restrained for longer than necessary. A precondition for using restraints as a last resort is considering the possibility of finding more moderate means for preventing the prisoner from escaping (1109/4/13).

### 3.7.4 THE PRINCIPLE OF LEGALITY UNDER CRIMINAL LAW, SECTION 8

One of the fundamental principles of the rule of law is that no one may be regarded as guilty of a crime or sentenced to a punishment on the basis of an act that is not a punishable offence at the time of its commission. Nor may anyone be sentenced to a more severe penalty than what is provided for in the law at the time it is committed.

A complainant on whom a penal order had been imposed asked if an act could be a breach of the Medicines Act if the decision on classifying a product as a medicine was not legally valid at the time when the act was committed. The Deputy-Ombudsman found that the question of the duty to comply with a decision that confirms a product as a medicine before the decision is legally valid is open to interpretations. Imposing sanctions for importation on the basis of an administrative decision that is not legally valid is problematic in terms of the principle of legality under criminal law (5718/4/13).

### 3.7.5 FREEDOM OF MOVEMENT, SECTION 9

Finnish citizens and foreigners legally resident in Finland have the right to move freely within the country and to choose their place of residence. Everyone also has the right to leave the country. Regulation of entry into and departure from the country by foreigners is also included in freedom of movement.

Complaints with a bearing on freedom of movement often concern the decisions made or procedures followed by the authorities when granting passports.

Cases where an individual's freedom of movement within a closed institution is groundlessly restricted may also involve restrictions of the freedom of movement in violation of Section 9 of the Constitution.



In a matter concerning the actions of a substitute care provider, it turned out that as a child was caught smoking, the following sanctions were imposed on them: "No access to a bus card or a bicycle or no lifts for a month". The child consequently had no factual possibilities of spending their free time outside the institution, or at least no possibility of visiting the nearest town on the expense and with the support of the institution. In actual fact, this meant that if the child had no money of their own, for example for a bus ticket, they had in practice no possibility of spending free time with their friends in the nearest town or pursuing hobbies outside the institution. This may have restricted the child's freedom of movement to the extent that a decision on restricting their mobility should have been made in the case (3573/4/13).

### 3.7.6 PROTECTION OF PRIVACY, SECTION 10

The right to privacy is protected by Section 10 of the Constitution. This protection is complemented by closely related fundamental rights, such as the right to protection of honour and the respect for the privacy of the home and confidential communications. As the protection of other fundamental rights, including the freedom of speech and the associated principle of publicity or the publicity of the administration of law, necessitate a certain degree of interference with privacy or disclosure of information associated with it, it often becomes necessary to find a balance between the various rights in a given situation.

On 25 June 2012, the Border Guard Headquarters issued an order under which the Border Guard was a smoke-free workplace. Under this order, smoking and the use of snuff or electronic cigarettes was to be prohibited in the Border Guard institution in two stages, with the full prohibition entering into force in the entire institution at the latest from 1 January 2014. This order was criticised in a complaint.

The decision issued by the Deputy-Ombudsman on this complaint stated that grounds laid down in the law must exist in order for the public authorities to interfere with the individual freedoms safeguarded as fundamental rights. The decision to smoke is within the scope of an individual's freedom of will and self-determination. The state employer cannot, within the limits of its authority as an employer, issue orders that are not based on performance of the work or which, without grounds underpinned by a legislative provision, interfere with the right of self-determination protected in the Constitution. The Tobacco Act contains provisions on the employer's duty to prohibit and limit smoking to ensure that the employees do not inadvertently become exposed to tobacco smoke in those working facilities of the workplace where smoking is not expressly prohibited under the law. An order that was more extensive than the provisions contained in the Tobacco Act issued by the Border Guard, which interfered with an individual's free will, could not be imposed as a general regulation under administrative law (5224/4/13).

### Respect for the privacy of home

Whether measures on the part of the authorities that extend into the sphere of domestic peace are founded in law is a matter that often arises when the police conduct house searches. In recent years, a large proportion of complaints concerning house searches conducted by the police have related to presence during the search. It would appear that the police quite easily – and often on grounds that give rise to criticism – fail to reserve an opportunity for the occupant of the premises to be present when the house search is conducted. There have likewise been problems with the fact that the occupant has not had the opportunity to call a witness to the scene.

### Protection of family life

Section 10 of the Constitution does not contain a mention of protection of family life. However, this is considered to fall within the scope of the protection of privacy that is enshrined in the Constitution. In Article 8 of the European Convention on Human Rights family life is specifically equated with private life.

Protection of family life arose also in several cases relating to arrangements for inmates of closed institutions to meet family members.

In a decision concerning a child placed in a child welfare institution, the Deputy-Ombudsman noted that the manner in which a child will keep in touch with his or her parents or other persons close to him or her is subject to agreement in a customer plan. If it is necessary to limit contacts between the child and his or her family members, a decision on limiting the contacts that can be appealed must be made in the matter. If the child's freedom of movement during his or her stay with the substitute care provider has been restricted, this decision still does not indicate how the child's right to keep in contact with his or her family should be implemented. In other words, a decision on restricting a child's freedom of movement cannot also be applied to limiting his or her possibilities of keeping in contact. If the preconditions for this exist and if it has not been possible to agree upon the matter in a customer plan or otherwise, a decision that can be appealed must be made on restricting contact (3116/4/13, 3321/4/13, 3604/4/13 and 3667/4/13).

### Confidentiality of communications

Opening and reading a postal despatch or eavesdropping on and recording a telephone conversation are examples of restricting the confidentiality of communications. These measures must be based on an Act.

In a decision which concerned the opening of a letter from an attorney to a prisoner and which led to a reprimand, the Deputy-Ombudsman not-

ed that the case was about the confidentiality of communications protected by the Constitution and correspondence between an attorney and their customer, which enjoys particular protection. In the context of the secrecy of correspondence protected in the Constitution, particular care and alertness may be expected of a public servant who applies the law in practice. The confidentiality of correspondence between prisoners and their attorneys and the fact that interfering with it, either unintentionally or by design, is a serious violation of this confidentiality are aspects that have been particularly highlighted in the oversight of legality (1374/4/13).

### Protection of privacy and personal data

The patient's privacy and the fact that anybody not participating in the patient's treatment and associated tasks are to be regarded as third parties must be taken into consideration in health care and social welfare measures.

A complainant criticised, among other things, the fact that when treating a patient, a health centre doctor had left the door of the surgery open while a warder stood in front of it. The open door could have allowed the warder to see or hear what was happening in the surgery, which infringed on the patient's protection of privacy. The Deputy-Ombudsman stated in his decision that the door of the surgery cannot automatically be left open, and the doctor or another health care professional receiving the patient must in each individual case, taking into consideration the confidential relationship between a patient and a doctor, consider whether or not this is necessary. For this reason, it is important that the doctor or other health care professional can be provided with adequate information about the patient to assess the necessity of the presence of another health care professional or a warder. If a violation of privacy cannot completely be avoided, an attempt should be made to minimise the violation when treating a patient (5190/4/13).

The provision on the protection of personal data in the Constitution refers to the need to safeguard through legislation the legal protection of an individual and his or her privacy when personal data are being processed, registered and used. An individual must be able to trust that secret information handed over to an authority is not disclosed to third parties.

An occupational health and safety inspector had acted incorrectly when they e-mailed secret information to a complainant in an unprotected message. The secrecy provisions and the duty to protect information under the Personal Data Act do not permit the transmission of secret information in an unprotected e-mail message, even if the person in question had him/herself originally sent the information in an unprotected message (5462/4/13).

A journalist had requested copies of all decision on removing or restricting a doctor's professional practice rights on the grounds of abusing alcohol, drugs or medicines containing narcotics from the National Supervisory Authority for Welfare and Health Valvira. Among the documents submitted by Valvira to the journalist, there was a decision on revoking the complainant's right to practise, in which the name and other identification data of the interested party had been removed under Section 10 of the Act on the Openness of Government Activities. In this respect, Valvira had complied with Section 10 of the Act on the Openness of Government Activities. However, information subject to strict secrecy remained in the document which, in the Ombudsman's view, was not necessary in order to understand the matter and Valvira's decision. These details should have been removed, as the complainant could still be identified in certain circles, regardless of the removal of the identification data and workplace information. When disclosing a document that contains sensitive and secret information on a person, the risk of this person being identified shall be minimised (4695/4/13).

### 3.7.7 FREEDOM OF RELIGION AND CONSCIENCE, SECTION 11

Everyone has the right to profess and practise a religion, the right to express conviction and the right to belong or not to belong to a religious community. No one is under an obligation to participate in practising a religion that is contrary to his or her conscience.

In the response made to a complaint concerning spring celebrations in schools, the Deputy-Ombudsman referred to the report of the parliamentary Constitutional Committee (PeVM 2/2014 vp), in which the Committee expressed its views on taking the freedom of religion and conscience into account in school events from the viewpoint of the Finnish Constitution and international human rights treaties. For example, the report noted that the Constitution or the legal practice of the European Court of Human Rights do not imply a demand of removing all religious content from school activities. In the Committee's opinion, far-reaching efforts to pass on religious traditions do not promote religious tolerance, whereas it is important to account for the key principles conveyed by the legal practice of the European Court of Human Rights in the operation of schools and the direction of their operation, including the prohibition of indoctrination, the requirement of neutrality of public authorities, and religious tolerance and pluralism.

Furthermore, the Constitutional Committee did not consider annual religious services related to celebrating festival days or other similar events that can be regarded as practice of religion problematic in terms of the freedom of religion and conscience when the children and their guardians are informed of them in advance and participation in them is voluntary for all. In the opinion of the Constitutional Committee, ultimately the most important aspect is guaranteeing the pupils' or their guardians' genuine freedom to choose whether or not the pupil will take part in school events with religious content. As far as possible,

the schools must organise meaningful alternative activities for the duration of such school events. In addition, public authorities must strive to ensure that taking or not taking part in such events will not result in the pupils being stigmatised, or subject them to other negative consequences (2458/4/14).

### 3.7.8 FREEDOM OF SPEECH AND PUBLICITY, SECTION 12

#### Freedom of speech

Freedom of speech includes the right both to express and publish information, opinions and messages and to receive them without anyone preventing this in advance. The key purpose of the freedom of speech provision is to guarantee the free formation of opinion, open public discourse, free development of mass media and plurality as well as the opportunity for public criticism of exercise of power that are prerequisites for a democratic society. The duties of the public authorities include promoting freedom of speech.

According to the Ombudsman, the freedom of speech and the duty of loyalty are not commensurate, as the former right is protected in the Constitution as a fundamental right, while the latter is mainly based on the provisions of ordinary laws or established interpretations of these laws. Even when assessing the limits of public servants' freedom of speech, the aim must be at reinforcing fundamental rights. For instance, this may mean that a statement made by a public servant must be sufficiently unambiguous before it can be regarded as grounds for interfering with the freedom of speech. In situations open to interpretation, an approach that advocates the freedom of speech must be adopted, and the employer should refrain from interfering with the freedom of speech if the public servant's statement can have several meanings or it is otherwise open to interpretation (5342/4/13\*).

Freedom of speech includes also photographing. Complaints are made both because an authority has, without a valid reason, prohibited photographing and also alleging that an authority has allowed photographs to be taken in a situation that, in the complainant's view should be kept secret. What is often involved is a matter of striking a balance between freedom of expression and some or other fundamental right – such as protection of privacy.

An authority does not have the right to prevent a social welfare customer from recording discussions or other customer situations when the recording concerns information that the person in question had a legal right to and that the social welfare customer would be given access to if they were written down in a document.

In some situations, secret information whose use and disclosure to third parties may be restricted may come up in a discussion. In a situation of this type, a social welfare authority must consider the preconditions for disclosing the information under the Act on the Openness of Government Activities and the Act on the Status and Rights of Social Welfare Customers. The mere fact that a person is recording a discussion they are having with an authority does not mean that the privacy of the persons working for the authority is violated. Neither is the authority entitled to forbid the filming of a customer situation on these grounds, as the filming focuses on issues that the customer may observe in the situation. As a separate issue, if these recordings are handed over to third parties without permission, a social welfare customer may be guilty of an offence. In that case, the assessment is always carried out subsequently (2276/4/13).

#### Publicity

Closely associated with freedom of speech is the right to receive information about a document or other recording in the possession of the authorities. Publicity of recorded materials is a consti-

tutional provision of domestic origin. The Act on the Openness of Government Activities emphasises especially promotion of access to information.

The Ombudsman has received many complaints concerning publicity of recorded material, although in most cases the complainant has still had the opportunity to refer the matter to a competent authority for resolution. Then the Ombudsman has advised the complainant to use this legal remedy in the first instance.

An authority had refused to give access to documents related to a complaint to the person who was the factual object of the complaint, as this person had not been considered an interested party. The Parliamentary Ombudsman found that in complaint matters, everyone's right of access to information in a matter that concerns himself or herself applies not only to the complainant but also to the *de facto* object of the complaint. The Ombudsman also drew attention to every person's right to always have access to information that concerns him/herself. The refusal received by the complainant also lacked the appeal instructions required under law, even if this decision of the authority could be appealed (1797/4/13).

### 3.7.9 FREEDOM OF ASSEMBLY AND ASSOCIATION, SECTION 13

The constitutional provision on the freedom of assembly and association also covers the right of demonstration and the freedom to organise. The freedom to organise also includes the negative freedom to organise *i.e.* the right to refrain from membership in any association.

Freedom of assembly and association is generally dealt with in complaints associated with demonstrations. What is often involved is assessing whether the police have adequately safeguarded the exercise of freedom of assembly. Complaints concerning the procedure for registering an association are likewise received.

According to the Parliamentary Ombudsman, placing a person under guardianship does not affect that person's freedom to organise. As far as possible and within the limits of their competence, the guardian must strive to promote the principal's right to exercise this freedom. On the other hand, the principal's financial situation has a *de facto* effect on the exercise of the principal's freedom to organise, similarly to any other person. The person may thus exercise his or her right of self-determination and right to organise within the limits of his or her ability to manage the financial obligations brought about by the membership. Making sure that these obligations are met, on the other hand, is part of the guardian's duties (1723/2/13).

### 3.7.10 ELECTORAL AND PARTICIPATORY RIGHTS, SECTION 14

Political rights, *i.e.* electoral and participatory rights are key fundamental rights in a democratic society. In addition to the right to vote, an obligation has been placed on the public authorities to promote the opportunity of everyone to participate as far as possible in societal activities and influence decision-making that concerns him/herself.

The Parliamentary Ombudsman naturally receives particularly high numbers of complaints relevant to this fundamental right in election years.

Provisions on the procedure for making decisions on the reimbursement status of medicinal products and their reasonable wholesale prices by the Pharmaceuticals Pricing Board are contained in Chapter 6 of the Health Insurance Act. Under the Health Insurance Act, the Pharmaceuticals Pricing Board does not have a duty to consult patients or patient organisations when processing applications. In his decision, the Parliamentary Ombudsman noted that while assessing the necessity of obtaining expert opinions is at the discretion of the Board, it is important in terms of

the implementation of fundamental rights, however, that the necessity of consulting patient organisation is genuinely assessed in individual cases, thus meeting the obligation imposed on public authorities under Section 14(4) of the Constitution to promote the opportunities for the individual to participation (4932/4/13).

### 3.7.11 PROTECTION OF PROPERTY, SECTION 15

Matters relating to protection of property only rarely have to be investigated by the Ombudsman. This is due at least in part to the fact that, for example, it is possible to have a seizure by the police referred to a court for examination or that, for instance, there is a statutory right of appeal to a district court against an implementation measure conducted in conjunction with distraint or a distraint officer's decision. There is also, as a general rule, a statutory right of appeal to a court in relation to planning and compulsory purchase matters.

### 3.7.12 EDUCATIONAL RIGHTS, SECTION 16

The Constitution guarantees everyone cost-free education as a subjective fundamental right. In addition, everyone must have an equal right to education and to develop themselves without lack of funds preventing it. The freedom of science, the arts and higher education is likewise guaranteed by the Constitution.

In his decision on a complaint concerning the refusal to allow a pupil to participate in a class excursion, the Deputy-Ombudsman felt it was clear that a class excursion, which takes place during school time and is part of the curriculum, constitutes school activities with an equal status to other instruction, in which all pupils in the class have the right to take part. As a basic assumption, an education provider may not prevent the pupil

from taking part in certain instruction and organise substitute instruction for the corresponding time period. As only the disciplinary measures laid down in the Basic Education Act may be used to discipline a pupil, the education provider may not prohibit a pupil from participating in a class excursion as a punishment. Whether or not the education provider can refuse to allow the pupil to take part in instruction (class excursion) on the grounds of a suspicion that the pupil may disturb others or behave inappropriately is also a problematic question. A pupil may not be excluded from a class excursion solely as a general precautionary measure (2395/4/13).

### 3.7.13 THE RIGHT TO ONE'S OWN LANGUAGE AND CULTURE, SECTION 17

Guaranteed in the Constitution are, besides the equal status of Finnish and Swedish as the national languages of the country, the right of the Sámi, the Romani and others to maintain and develop their own language and culture.

The Parliamentary Ombudsman found it problematic and highly unsatisfactory from the perspective of legal protection and, in particular, linguistic rights, that neither the Enforcement Code nor the Language Act contain provisions on the language to be used in enforcement cases, even if enforcement has a very central and important role in official activities. It was obvious that enforcement could not be excluded from the application of linguistic rights; on the contrary, the significance of linguistic rights is highlighted as a person is the object of the state's compulsory enforcement measures. Even when the legislation was interpreted in a manner favourable to fundamental and human rights, the problem of which provisions of the Language Act should be applied in which situation in enforcement could not be unambiguously resolved. Consequently, the Parliamentary Ombudsman proposed that the Ministry of Justice consider measures aiming to develop linguistic provisions applicable to enforcement (2330/2/14).



According to the Ombudsman, there were no grounds that would stand up to judicial scrutiny on which the national languages could be treated differently in the social media. The basic assumption should thus be that the provisions of the Language Act also apply to information distributed by an authority on Facebook. The point of departure of the legislation is that a monolingual authority may provide information in its own language, whereas a bilingual authority must use both national languages. However, the Language Act does not require that the contents and extent of information provided in both languages must be identical, and the legislation leaves scope for the authority's discretion (3746/4/13).

In a decision issued on a complaint concerning the schedules of Finnish Broadcasting Company's television news in Sámi (Oddasat) in areas to the south of the Province of Lapland, the Deputy-Ombudsman welcomed the fact that the broadcasting time of Oddasat had been brought forward to 21.45 on Thursdays. The information received on this matter did not explain, however, why the news broadcast could not be scheduled to an earlier hour on other nights. The Deputy-Ombudsman found the broadcasting time of the news in the Sámi language vital for the discharge of the Finnish Broadcasting Company's public duties. The importance of these duties is highlighted considering that the Sámi people as the only indigenous people in the EU enjoy a special position among our minorities. When discharging its public duties, the Finnish Broadcasting Company has an obligation to promote the rights of the Sámi speakers (3703/4/13).

### 3.7.14 THE RIGHT TO WORK AND THE FREEDOM TO ENGAGE IN COMMERCIAL ACTIVITY, SECTION 18

Under the law, everyone has the right to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The point of departure is the principle of freedom of enterprise and, in general, the individual's own activity in obtaining his or her livelihood. However, the public authorities have a duty in this respect to safeguard and promote.

In particular, this duty concerns labour protection, above all in terms of occupational safety and health and related activities. Issues related to labour protection are commonly raised in matters such as problems of indoor air quality in schools and health centres.

In a decision on a complaint concerning the actions of a regional occupational safety and health inspector when investigating an accident at work, the Deputy-Ombudsman noted that the occupational safety and health inspectors have an important and highly respected position as experts. The inspection reports can thus be expected to be thorough and impartial. The details that are recorded should be based on observations made during an inspection and other reliable information, and the inspector's personal opinions of the company that filed the complaint should not have been included in the report (4885/4/13).

### 3.7.15 THE RIGHT TO SOCIAL SECURITY, SECTION 19

The central social fundamental rights are safeguarded in Section 19 of the Constitution. Everyone is entitled to the indispensable subsistence and care necessary for a life of human dignity. In separately mentioned situations of social risk, everyone is additionally guaranteed the right to basic security of livelihood as laid down in an Act.

The public authorities also have the duty to safeguard by legislation everyone's access to adequate social welfare and health care services, and to promote the health of the public, wellbeing and personal development of children, and everyone's right to housing.

### The right to indispensable subsistence and care

The indispensable subsistence and care necessary for a life of human dignity enshrined in Section 19(1) of the Constitution means, at least in some situations, that the public authorities have the duty to take active measures to safeguard the right to housing.

The Deputy-Ombudsman found that the lengthy processing times of demands for rectification in social welfare and health services may, at least in some cases, put at risk the right to indispensable subsistence and care enshrined in the Constitution of a person in need of support. The Deputy-Ombudsman felt that the time it took to process demands for rectification was a particularly serious problem in the case of persons with severe disabilities or mental health problems and social welfare customers who live solely on social assistance, who are in a vulnerable position (5105/2/13).

### The right to security of basic subsistence

Section 19(2) of the Constitution guarantees everyone the right to basic subsistence in the event of unemployment, illness and disability and during old age as well as at the birth of a child or the loss of a provider. The benefits payable in these situations are taken care of mainly by the social insurance system.

### The right to adequate social welfare and health services

The Constitution obliges the public authorities to ensure through an Act that everyone enjoys adequate social, health and medical services. They must also support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.

A process where the assessment of the need for an aid to medical rehabilitation was only initiated some seven weeks after the referral was received by the health care operating unit did not safeguard the right of a person with a disability to adequate health services (4321/4/13).

Neither was the patient's right to adequate health services safeguarded when a patient who was a foreign-language speaker was issued instructions for home care in Finnish, without ensuring that the patient had understood the instructions correctly (1655/4/13).

The right of a patient suffering from keratoconus to adequate health service is not implemented if the patient is directed to attend a private ophthalmologist at their own cost for the necessary monitoring of the eye disease. The monitoring of keratoconus must be organised within the public health care system (2846/4/13).

A remand prisoner needed medicinal rehabilitation, which could only be provided in a limited form in the Criminal Sanctions Agency's units. An effort had been made to organise rehabilitation outside the prison, but it had been necessary to cancel several visits to the rehabilitation provider. The Deputy-Ombudsman found that the Criminal Sanctions Agency was in breach of legislation when it had failed to transport the remand prisoner to rehabilitation provided outside the prison because of lack of transportation resources and been unable to organise corresponding treatment by other means. The remand prisoner's right to necessary health care was not fully implemented (4780/4/13).

## The right to housing

Section 19(4) of the Constitution requires the public authorities to promote the right of everyone to housing and the opportunity to arrange their own housing. The provision does not safeguard the right to housing as a subjective right nor specifically set quality standards for housing. However, it may be of relevance when interpreting other fundamental rights provisions and other legislation. A subjective right to housing may, however, be derived from membership in a certain group referred to in dedicated acts, including the Child Welfare Act.

In situations referred to in Section 35 of the Child Welfare Act, the municipality carries the overall responsibility for organising housing for a child. The local authorities may not make appeal to internal division of duties in the municipality in order to shift this responsibility, for example to the housing services, or limit the housing to be offered to properties owned by the municipality itself. If the customer cannot provide housing for themselves or their minor children because of their financial situation or for other reasons, and the municipal authority that is mainly responsible for housing issues cannot offer them housing, the responsibility for taking measures referred to in the Social Welfare Act or the Child Welfare Act aiming to organise housing for these customers is passed on to the social welfare authorities in the municipality (635/4/13).

### 3.7.16 RESPONSIBILITY FOR THE ENVIRONMENT, SECTION 20

Section 20 of the Constitution contains two elements: first of all, everyone bears responsibility for nature, the environment and cultural heritage, and secondly, the public authorities have an authority to strive to guarantee for everyone the right to a healthy environment and the possibility to influence the decisions that concern their own living environment.

Responsibility for nature, the environment and the cultural heritage has rarely featured as a fundamental right in complaints. By contrast, the obligation on the public authorities to strive to safeguard for everyone the right to a healthy environment and the possibility to influence the decisions that concern their own living environment has been cited in many complaints. The possibility to influence decisions concerning the living environment often arises together with the fundamental right to protection under the law and the associated guarantees of good administration. The issue can be, for example, hearing an interested party, interaction in planning, the right to institute proceedings and the right to receive an appealable decision or the right of appeal in environmental matters.

### 3.7.17 PROTECTION UNDER THE LAW, SECTION 21

The protection under the law associated with an official procedure has traditionally been a core area of oversight of legality. Questions concerning good administration and fair trial have been the focus of the Ombudsman's attention in various categories of cases most frequently of all.

Protection under the law is provided for in Section 21 of the Constitution. The provision applies equally to criminal and civil court proceedings, the application of administrative law and administrative procedures.

The principles of good administration and procedural regulations enshrined in the Administrative Procedure Act implement the constitutional imperative that qualitative demands relating to good administration be confirmed on the level of an Act.

In the Finnish system, the general obligations that are binding on public servants under threat of a penalty include observing principles of good administration insofar as they are expressed in the "provisions and regulations to be observed in official actions". Deviation from good adminis-

tration is excluded from the scope of the threat of punishment in the event that the deed is deemed to be “when assessed on the whole, petty” in the manner defined in the Penal Code. This area of non-criminalised actions is especially important in the Ombudsman’s oversight of legality. Besides, the oversight conducted by the Ombudsman extends also to the activities of bodies that perform public tasks, but whose employees do not bear official accountability for their actions.

### The right to have a matter dealt with and the right to effective legal remedies

Section 21 of the Constitution guarantees everyone a right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority. When a person’s rights and obligations are concerned, it must be possible for the matter to be reviewed by a court of law or other independent organ for the administration of justice.

Section 21(2) of the Constitution requires the right to appeal and other guarantees of a fair trial to be safeguarded in an Act. The legal remedies must be effective, both in legal terms and in reality.

What is typically involved in cases belonging to this category is obtaining an appealable decision or, more rarely, application of refusal of leave to appeal. Both factors influence whether a person can at all have a matter referred to a court or other authority to be dealt with. It is also important with the effectiveness of legal remedies in mind that an authority provides a direction of redress to facilitate an appeal or at least sufficient information for the person to be able to exercise the right of appeal.

A municipal board raised the salaries of the city manager and the deputy city manager, and attached a refusal of leave to appeal to the decision. The mistakenly attached refusal of leave to appeal was corrected as a typing error. The Deputy-Ombudsman stressed that the demand for rectification and the appeal against the decision

of a municipal authority are remedies that protect the possibilities of supervising municipal decision-making and its legality available for the members of the municipality. Incorrect appeal instructions may prevent municipal residents from evaluating whether or not a decision is appropriate and legal. Incorrect appeal instructions erode the residents’ trust in municipal decision-making and thus undermine the effectiveness of representative municipal self-government. The city reported that in the future, it will attach appeal instructions to similar decisions and provide more effective instructions and training related to appeal instructions (157/2/13).

Disability services had not made an appealable decision on restricting contacts between a complainant and their child, who was of age. The Parliamentary Ombudsman found this illegal and also stressed that before a decision is made, the persons whom the restriction concerns must be heard (1956/4/13).

The Ministry of the Environment and the Housing Finance and Development Centre of Finland (ARA) had neglected the appropriate administrative processing of complaints concerning housing matters. A performance guidance document may not be inconsistent with legislative requirements that concern the appropriate processing of complaints. The Deputy-Ombudsman was concerned that an agency responsible for housing matters had limited its competence to the extent that residents of housing companies had no access to appropriate legal remedies in rent determination and rent equalisation matters (4002/2/13).

### Expediency of dealing with a matter

Section 21 of the Constitution requires that a matter be dealt with by a competent authority “without undue delay”. A comparable obligation is enshrined in Section 23.1 of the Administrative Procedure Act. Article 6 of the European Convention on Human Rights, in turn, requires a trial in a court “within a reasonable time”.

There has been an important trend of providing maximum processing times in an Act. Provisions on the maximum processing time are in place, *inter alia*, for subsistence subsidy (7 days), statements on eligibility of unemployment benefits (14 days), requests of information under the Act on the Openness of Government Activities (14 days), and the treatment time guarantee (3/6 months). The Child Welfare Act also provides maximum processing times for different procedures. In criminal matters, the deadline for proceedings is determined by provisions on the expiry of the right to institute criminal proceedings.

The statutory processing time is the maximum processing time. For example, in unemployment benefit matters, Kela must issue its decision without undue delay and in any case within 30 days. In practice, Kela's own target has been seven days for some time already.

Complaints received by the Ombudsman suggest that considerable improvement has been made in the area of treatment time guarantee. In contrast, breaches of the law continued to take place among a number of local authorities with regard to the processing time of subsistence subsidy applications. The maximum time has been exceeded on multiple occasions. There were also delays in the issuing of labour policy statements and processing pay security applications, as well as in pre-trial investigations and permit and licence administration of the police.

Regulations on legal remedies to prevent trial delays and effect recompense for them are included in legislation. Chapter 19 of the Code of Judicial Procedure contains provisions enabling a case to be declared urgent in a district court. The act on compensation for excessive duration of judicial proceedings stipulates that an involved party has a right to receive State compensation if legal proceedings in a civil, petition or criminal case in a general court of law are delayed. Recompense for delays in legal proceedings is also possible in new cases initiated in administrative courts after June 2013.

Questions relating to the expeditiousness of handling matters continually arise in oversight of legality. Where the maximum processing time is not provided in other areas of legislation, the constitutional requirement on the avoidance of undue delay is applied and, in many cases the same requirement provided for by the Administrative Procedure Act. What can be regarded as a reasonable length of time to deal with a matter depends on the nature of the matter. Other things that demand especially speedy processing include protection of family life and matters relating to the state of health of an involved party, employment relationships, the right to practise an occupation, holding an official post, pensions or compensation for damages. Ensuring expeditiousness is particularly important also when the personal circumstances of an involved party mean that he or she is in a weak position.

The advance inspection of a religious society's rules of organisation took 11 months in a ministry-appointed committee, which cannot be considered to comply with the requirement of expedient processing. The extremely long processing time was significant in terms of the freedom of religion protected under Section 11 of the Constitution (95/4/13).

A complainant's right to have their case processed without delay was not implemented as the processing of a complaint in Valvira took around one year and ten months (491/4/13). Documents related to medico-legal determination of cause of death were not drawn up or submitted without delay when they were only completed over one year after the person was pronounced dead (3201/4/13).

A complainant had filed a request for an investigation with the police concerning a suspected patent violation. The police had taken no action in the matter in more than two and a half years. The Deputy-Ombudsman found that there had been an undue delay in the investigation (812/4/13).

The processing of a matter that concerned assessing the necessity for guardianship services took some ten and a half months. This delay can be considered extremely long in view of not only the nature of the matter but also the Local Registry Office's own target time of four months (3386/4/13).

The Administrative Court had obliged social welfare services to organise a child a place in an assisted living unit referred to in the Act on the Services for the Disabled by a legally valid decision. The social welfare services only implemented the decision that concerned a child with severe disabilities four months after being issued with the Administrative Court decision and after receiving a request for information from the Office of the Parliamentary Ombudsman (2514/4/14).

Delay in processing is often associated with inadequacy of the resources available. Delays were caused also by the absence of staff during holiday periods. According to established practice of the Ombudsman, merely referring to "the general work situation" is not a sufficient excuse for exceeding reasonable processing deadlines. Delay can also result from otherwise defective or erroneous handling of the matter in question. In such cases, there can often be other problems from the perspective of good administration.

A district court had issued its judgment in a criminal case some 11 months after the main hearing had been concluded. The Parliamentary Ombudsman considered this case a worrying example of how, due to lack of resources, the judicial system cannot cope with its duties appropriately, even if the judges are pushing themselves to the limit (2399/4/13). The Parliamentary Ombudsman found the processing time of some 2.5 years in the Supreme Administrative Court unreasonable in a matter concerning a leave to appeal, where the application for a leave to appeal was finally declared inadmissible as it had been submitted one day too late (5379/4/13).

### Publicity of proceedings

Questions relating to publicity of proceedings arise mainly in the context of oral hearings in courts of law. One of the basic situations, relating to implementation of requests for documents and information, is dealt with under the heading of Section 12 of the Constitution.

### Hearing an interested party

According to Section 21(2) of the Constitution, the right to be heard shall be laid down by an Act as part of guarantees of a fair trial and good governance. Shortfalls related to the hearing of interested parties are commonly found in the oversight of legality by the Ombudsman.

In a complaint concerning an enforcement matter, a district court had neglected to hear one of the parties or to reserve this party a right to appeal the district court's decision. This had an immediate effect on the position of the party to be heard, who should have been offered an opportunity for becoming acquainted with the documents of the district court process and submitting a response to it, and given a possibility of appealing the decision by the regular procedure (1423/4/14).

An Employment and Economic Development Office should have reserved a complainant the possibility of stating their opinion on the matter before a labour policy statement was revised (3818/4/13).

In connection with a domestic emergency call, the police had taken possession of a complainant's firearms and cartridges. A temporary decision to take the firearms and ammunition in custody had been made (several weeks later) without reserving the owner of the firearms an opportunity of being heard (4187/4/12).



### Providing reasons for decisions

The right to receive a reasoned decision is safeguarded as one component of good administration and a fair trial in Section 21(2) of the Constitution. It is not enough to announce the final decision; instead, the interested parties also have the right to know how and on what grounds the decision has been arrived at. The reasons given for a decision must express the main facts underlying it as well as the regulations and orders. The language in which the decision is written must also be as understandable as possible. Reasoning is important from the perspective of both implementation of the interested parties' protection under the law and general trust in the authorities as well as also of oversight of official actions.

A complainant had asked the police to investigate if certain persons had been guilty of fraud in a matter related to his paternity. The police had dropped the investigation on the grounds that they were not competent to investigate paternity. The Deputy-Ombudsman found that the reasons given for this decision were insufficient, as the preconditions for initiating a pre-trial investigation were not evaluated (1092/4/14).

The role of a group leader was open for application in a police department. The memorandum drawn up on the appointment decision did not contain an evaluation of the applicants' competence or a comparison of their merits. The Deputy-Ombudsman reprehended the police department for the inadequacies in the appointment memorandum (4271/4/13).

The decision on pursuing independent studies issued by an Employment and Economic Development Office should have provided the complainant more information on how the details of their state of health had been taken into account when considering the matter (5290/4/13).

### Appropriate handling of matters

The demand for appropriate handling of matters contains a general duty of care. An authority must carefully examine the matters that it is dealing with and comply with the regulations and orders that have been issued. This extensive category includes cases of very different types.

The Parliamentary Ombudsman drew the attention of a guardianship agency to exercising care when paying bills, as the agency had paid a bill for which their principal was not liable out of the principal's account, and the error had only been rectified three months later as the principal pointed it out (515/4/14).

A complainant had agreed with an Employment and Economic Development Office that instead of taking up employment provided for them as a municipal obligation, they would take part in labour force training that fulfilled the obligation. However, the Office had not informed the complainant of how choosing the training would affect their unemployment security. The Deputy-Ombudsman found it extremely important that those within the scope of employment obligation are informed adequately (1181/4/13).

The State Treasury had attempted to send a complainant a request to be heard by e-mail in a matter related to reimbursement for medications. However, the e-mail had been sent to a wrong address. The mistake was later discovered, and the request had been resent to the complainant, this time to the correct e-mail address. Secret information of this type should not have been sent using an unprotected e-mail connection. The request to be heard should have either been sent by a letter or by a protected e-mail connection, making it possible to ascertain that the message was received by the correct person (2420/4/14).

### Other prerequisites for good administration

In the oversight of legality, cases involving issues related to other prerequisites of good governance are seen repeatedly. These principles of legality under the Administrative Procedure Act include, *inter alia*, the principles of appropriateness, confidentiality and proportionality. The Administrative Procedure Act also safeguards the service principle, free advice and the requirement of proper language.

The Parliamentary Ombudsman examined the use of Facebook as a channel of information and feedback by authorities. When an authority offers the possibility of giving feedback, it is justified to provide various optional and easy-to-use methods for this, and duly inform the public of them. The customer must be able to rely on the information and advice provided being correct, so that they are not left with a misconception that, for example, there is only one way of providing feedback. Not making it clear that other channels apart from Facebook are also available was not in keeping with the principle of good governance (2149/4/13).

The Board of the Governing Body of Suomenlinna changed the established method of electing residents' representatives. The Governing Body had previously organised elections in accordance with its rules of procedure, but omitted to do so in spring 2013. Pursuant to the Administrative Procedure Act, the actions of an authority must protect expectations that are justified on the basis of the legal system (2933/4/13).

The Finnish Patent and Registration Office (PRH) had made a decision under which it refuses to accept cash when the customers are making payments to PRH. The decision was justified by the fact that the majority of payments are made online, by cards or by invoice. In addition, handling cash results in additional work and causes a safety risk. The Deputy-Ombudsman found this decision problematic, among other reasons because not everyone has the possibility of using

other methods of payment, and the customer may incur additional costs for using these methods. The Deputy-Ombudsman considered that the service principle requires PRH to also accept cash payments from customers using its services without additional costs (2360/4/13).

### Guarantees of protection under the law in criminal trials

The minimum rights of a person accused of a crime are separately listed in Article 6 of the European Convention on Human Rights. They are also included in Section 21 of the Constitution, although they are not specifically itemised in the same way in the domestic list of fundamental rights. The Constitution's regulation of criminal trials is more extensive than the first-mentioned document's, because the Constitution guarantees procedural rights also to an interested party and his/her right to demand punishment.

In breach of legislation, a district court heard a charge brought by an interested party alone in a one-judge formation. This error was serious and relevant to the core area of the exercise of judicial power. However, considering that the matter had been given a careful hearing, this had apparently not affected the complainant's legal protection (1051/4/14).

An instant drug test had been performed on a complainant, but the results had not been entered in a pre-trial investigation record, nor had they been shown to the complainant. The Deputy-Ombudsman considered that an action of this nature taken as part of an investigation should have been recorded. Additionally, no appropriate reasons for not showing the test results to the complainant were presented as part of the information provided on the matter (5161/4/13).

### Impartiality and general credibility of official actions

In compliance with a rule crystallised by the European Court of Human Rights, it is not enough for justice to be done; it must also be seen to be done. What is involved in the final analysis is that in a democratic society all exercise of public power must enjoy the trust of citizens.

Reason to doubt the impartiality of an authority or public servant must not be allowed to arise owing to extraneous causes. Something that must also be taken into consideration here is whether a public servant's earlier activities or some special relationship that he or she has to the matter can, objectively evaluated, provide a reasonable ground to suspect his or her ability to act impartially. Indeed, it can be considered justified for a public servant to refrain from dealing with a matter also in a case where recusability is regarded as open to interpretation.

An adult student who was a candidate for the Specialist Qualification for Driving Instructors complained about the recusability of the assessors of the competence test in a vocational institute and the members of the qualification committee. The Deputy-Ombudsman found that there were problems related to recusability in both respects. The Ministry of Education and Culture has appointed a working group to clarify the system of competence-based qualifications (1370/4/14).

### Behaviour of officials

Closely associated with the trust that the actions of a public servant must inspire is the official's behaviour both in office and outside it. The legislation on public servants requires both State and municipal officials to behave in a manner that his or her position and tasks presuppose. Public servants holding offices that demand special trust and esteem must behave in a manner commensurate with their position also outside their official working hours.

### 3.7.18 SAFEGUARDING FUNDAMENTAL RIGHTS, SECTION 22

Section 22 of the Constitution enshrines an obligation on all public authorities to guarantee the observance of basic rights and freedoms and human rights. The obligation to safeguard can also presuppose proactive measures. The general obligation to safeguard extends to all provisions with a bearing on fundamental and human rights.

Decisions by the Ombudsman concerning the obligation to safeguard have focused on, *inter alia*, the key role of the Parliament's budgetary powers with regard to the ability of the public authorities to meet their obligations related to fundamental and human rights. For example, the insufficiency of the monitoring resources of regional state administrative agencies has been criticised. The obligation to safeguard has also been highlighted in areas such as the implementation of language rights.

The obligation to safeguard fundamental rights can also be considered to include the equivalent requirement of Article 13 of the European Convention of Human Rights on the right to an effective remedy in cases of violations of fundamental rights. These also include the availability of compensation in cases where the violation of fundamental rights can no longer be prevented or rectified. The Ombudsman's recommendations on compensation are detailed in section 3.5 of the report.

## 3.8

# Complaints to the European Court of Human Rights against Finland in 2014

A total of 186 new applications against Finland were lodged with the European Court of Human Rights (ECHR or the Court) in 2014 (315 in the previous year). A response from the Government was requested to 8 complaints (34). After the turn of the year, 146 cases were pending (197). The number of applications lodged against Finland was nearly halved from the figures of the preceding years.

The ECHR's amended rules of procedure, which came into force from the beginning of 2014, impose more stringent preconditions for lodging applications. The applications must now be lodged using the form prepared by the ECHR Secretariat and the requested information must be provided, in addition to which the application must contain copies of all documents relevant to the case. The Court will not examine a complaint that does not contain the requisite information or documents.

In November 2014, government proposal HE 261/2014 vp on bringing into force Protocol No. 15 to the European Human Rights Convention was submitted to the Parliament. This Protocol is not yet in force internationally. Among other things, the Protocol shortens the time for lodging applications with the ECHR from six to four months after the date of issue of the national decision.

In late 2014, government proposal HE 286/2014 vp on bringing into force Protocol No. 16 to the Convention was submitted to the Parliament. This Protocol is not yet in force internationally, either. The Protocol establishes a system of advisory opinions, which will allow the highest courts and tribunals of a State Party to request the Court to give advisory opinions on questions of principle relating to the interpretation or appli-

cation of the rights and freedoms defined in the Convention or its protocols.

The decision on the admissibility of an application is made by the ECHR in a single-judge formation, in a Committee formation or in a Chamber formation (7 judges). The Court's decision may also confirm a settlement, and the case is then struck out of the ECHR's list. Final judgments are given either by a Committee, a Chamber or the Grand Chamber (17 judges). In its judgment, the ECHR resolves an alleged case of a human rights violation or confirms a friendly settlement.

A very high share of the applications lodged with the ECHR, or some 95%, are declared inadmissible. In 2014, an application was declared inadmissible or struck out of the Court's list in 272 (300) cases that concerned Finland. The majority of these decisions were made in simplified judicial formations. Since Finland's accession to the ECHR, a total of 4,546 applications against Finland have been declared inadmissible.

The ECHR decided a number of applications concerning Finland in 2014. The Court delivered 12 (3) judgments, of which four confirmed a violation of rights. In addition, the ECHR issued 13 (14) decisions.

One (4) of the cases was concluded as the applicant and the Government had reached a settlement; this case was about the duration of a criminal process. In addition, the ECHR delivered 50 (40) decisions on requests for the application of interim measures, of which 2 (4) were granted.

By the end of 2014, Finland had received a total of 178 judgments from the Court, and 102 applications had been decided following a friendly settlement or a unilateral declaration by the

Government. The total number of ECHR judgments confirming a violation of rights by Finland since the country's accession is strikingly large, at 133. In recent years, however, the number of judgments against Finland has declined.

Whereas Sweden, Norway, Denmark and Iceland have been State Parties to the ECHR for considerably longer than Finland, the Court has only ruled against them in a total of 109 cases. In 2014, the other Nordic countries received 15 judgments, in five of which the Court found against the government. In recent years, Finland has no longer differed significantly from the other Nordic Scandinavian countries regarding the numbers of judgments for infringements.

### 3.8.1 MONITORING OF THE EXECUTION OF JUDGMENTS IN THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

The Committee of Ministers of the Council of Europe monitors the execution of ECHR judgments. The Committee's oversight focuses on three different aspects: the payment of compensation, individual measures, and general measures taken as a result of a judgment. The monitoring primarily takes place by diplomatic means. Where necessary, the Committee of Ministers can refer a question of execution to the ECHR for confirmation.

Within six months of the ECHR judgment becoming final, the states shall submit either an action report or an action plan comprising a report on any measures that have been taken and/or that are being planned. The reports are published on the Committee of Ministers' website.

In the year under review, the Finnish Government submitted action report DD(2014)1138 resulting from certain judgments relating to violations of the freedom of speech (Eerikäinen and Others) On 15 December 2014, Finland also submitted an action plan relating to the judgment in the case Lindström and Mässeli that concerned the wearing of sealed overalls in prison.

In the year under review, four new monitoring cases became pending. Monitoring of execution remained pending in further 40 judgments concerning Finland.

The Committee of Ministers brought to conclusion the monitoring of execution of the following ECHR judgments concerning Finland:

ResDH(2014)23: five complaints resolved by a friendly settlement concerning a house search, duration of court proceedings and the taking of a child into care (Kanerva, Tolppanen, K., Åberg, Panajoti)

ResDH(2014)207: two complaints resolved by a friendly settlement concerning a house search (Lupala, Sipiläinen).

### 3.8.2 JUDGMENTS AND DECISIONS DURING THE YEAR UNDER REVIEW

#### Changing of the personal identity code of a transgender person

In the reporting year, the ECHR delivered one judgment concerning Finland in the Grand Chamber formation. In the judgment delivered in the case *Hämäläinen* (16 July 2014), the ECHR majority did not find a violation of the protection of private life (Article 8 EHRC) or protection against discrimination (Article 14, taken in conjunction with Article 12). After the applicant, who was married, had undergone gender reassignment therapy to change her gender from a man to a woman, a personal identity code reflecting the gender reassignment was not granted to her in the Population Information System. The confirmation was denied as the applicant's spouse had not given her consent. The spouse's consent was mainly required because under the law, the recognition of the applicant's new gender would directly have resulted in their marriage being transformed into a registered partnership, which was against the wishes of both spouses. The Grand Chamber of the Court examined the case under Article 8 in the light of the state's positive

obligations, rather than interference with rights as had been done in the judgment of the Chamber (ruling in case *H.* 13 November 2012).

### Expulsion of a foreigner

In the case *Senchishak* (18 November 2014), the Court did not confirm a violation of EHRC Articles 3 or 8. The case concerned a 66-year-old Russian woman who lives in Finland and who had arrived on a tourist visa to stay with her daughter in 2008. She was refused a permit of residence. The Court held that expelling the applicant to Russia would not be a violation of Article 3 EHRC as the applicant was considered to have access to adequate health care in Russia. The Court was also assured that the applicant's state of health at the time of her removal would be taken into account by the authority executing the expulsion and that appropriate transportation – by ambulance for example – would be organised.

### Four judgments concerning the right not to be punished twice

In cases *Nykänen* and *Glantz* (both 20 May 2014) the ECHR found a violation of the right not to be punished twice referred to in Article 4 of Protocol no. 7 to the Convention (*ne bis in idem*). The cases concerned applicants on whom a tax surcharge had been imposed, and who had later been sentenced for tax fraud in criminal proceedings. The Court found that the two sets of proceedings that were pending concurrently violated the *ne bis in idem* principle, because the second process had not been dropped as the first one became final.

In two other *ne bis in idem* judgments in cases *Häkki* and *Pirttimäki* (both on 20 May 2014), on the other hand, the Court found no violation of rights. In one of these cases, this was on the grounds that national legal remedies had not been exhausted, and in the other, that the criminal proceedings and the administrative process focused on different facts.

### Sealed observation overalls in prison

In the case *Lindsröm and Mässeli* (14 January 2014), the Court found that wearing sealed prison overalls was a violation of the right to privacy safeguarded under Article 8 EHRC. The applicants had been forced to wear sealed overalls when in isolation due to suspicions of drug smuggling. The ECHR found that the wearing of sealed overalls was a violation of respect for private life, for which the national legislation did not provide sufficient grounds. According to the ECHR, the legislation in force did not contain clear enough provisions on this question. After a vote, the Court found the case not to be a violation of Article 3 EHRC. Provisions on the wearing of sealed overalls were later laid down as the Prison Sentences Act was amended in 2014.

### Four judgments on freedom of speech

In the case *Pentikäinen* (4 February 2014) the Court's majority found no violation of Article 10 EHRC. The case concerned the arrest of the applicant, a newspaper photographer and a journalist, in connection with a demonstration against the ASEM summit in 2006, and a judgment where he was found guilty of having disobeyed the police in this connection. The judgment delivered by the Court in a Chamber formation is not final, as in June 2014, the case was referred to the Grand Chamber for a fresh examination.

In cases *Ojala and Etukeno Oy* and *Ruusunen* (both 14 January 2014) no violation of the freedom of speech was found. The cases concerned a sentence handed down for disclosing information that was a violation of private life, in which a published book was found to contain information and hints about the sex life and intimate private events of a former Prime Minister that violated core areas of his private life, whose publication without the Prime Minister's permission was unlawful. The national courts had considered the case in compliance with Article 10 EHRC and achieved a reasonable balance between the various interests in the consideration of the case.



No violation of Article 10 EHRC was found in the case *Salumäki* (29 April 2014). A journalist had been sentenced to pay a fine and compensation for defamation as a result of an article about a homicide. The judgment was based on the fact that the headline of the article was considered to hint that X was connected with the crime, even if the article itself did not claim that X was involved in it. The ECHR found that while there was no dispute about the facts in the case, the headline of the article led readers to believe that X had in some way been responsible for the crime, which was defamatory to X. National courts had appropriately considered the balance between the applicant's freedom of speech and the suffering inflicted on X and damage to their reputation.

### Unreasonable duration of criminal proceedings

In case *Varjonen* (22 April 2014), the ECHR found that the processing time of a case in the Insurance Court (4 years and 2 months) was unreasonably long. During the process the interested party, who was the applicant's spouse, had died.

### Applications declared inadmissible by a Chamber decision

A total of 13 (14) applications were rejected or declared inadmissible in a Chamber or a Committee formation, either because no breach of rights had been established or on a variety of processual grounds.

Seven of the cases concerned refusal of entry or removal from the country of foreigners. In five cases, the application was declared to be unfounded (*T.H.-A. et al.*, *V.J.*, *E.O.*, *S.B.* and *T. et al.*); in once case the examination of the application was concluded as a permit of residence was granted to the applicant (*Frolova*); and in one case, examination of the application was left pending (*Perez Lizaso*).

Two of the applications that concerned unreasonable delays in criminal proceedings were rejected for non-exhaustion of domestic remedies (*Hyvärinen*, *Nikkinen*) and in one case, inadmissible as manifestly ill-founded (*Mattila*). In one case, examination of the application was concluded as a friendly settlement was reached between the applicant and the Finnish Government (*Becker*; compensation amounting to EUR 4,600).

An application concerning legal remedies in the case of a house search (*Hänninen*) was declared inadmissible as it was unfounded. An application that concerned the distribution of parish magazines (*Ruotsalainen*) was struck out of the Court's list as the applicant withdrew the complaint.

### Compensation amounts

As a result of cases where the Court found a violation, the State of Finland was ordered to pay compensation to the applicants amounting to a total of EUR 21,443 (EUR 28,740 in 2013). Payment obligations resulting from cases that ended with a friendly settlement or a unilateral declaration amounted to EUR 4,600 (14,250). In total, complaints concerning breaches of human rights thus cost the state a total of EUR 26,043 (42,990).

### Communicated new cases

Responses from the Government were requested in relation to 5 (34) new applications, including the following: implementation of the principle of hearing the parties when processing of a patent dispute, freedom of speech, acceptability of deportation, legality of placing a patient in mental health care against their will, and the prohibition of amending a decision to the detriment of the party having appealed it, if only one of the parties has appealed the decision (so-called *reformatio in peius*).

## 4 Annexes





# 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. A Deputy Ombudsman may have a substitute as provided in more detail by an Act. The provisions on the Ombudsman apply, in so far as appropriate, to a Deputy Ombudsman and to a Deputy Ombudsman's a substitute. (802/2007, entry into force 1.10.2007)

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

Minister has the right to attend and to participate in debates in plenary sessions of the Parliament even if the Minister is not a Representative. A Minister may not be a member of a Committee of the Parliament. When performing the duties of the President of the Republic under section 59, a Minister may not participate in parliamentary work.

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 115** **Initiation of a matter concerning the legal responsibility of a Minister**

An inquiry into the lawfulness of the official acts of a Minister may be initiated in the Constitutional Law Committee on the basis of:

- 1) A notification submitted to the Constitutional Law Committee by the Chancellor of Justice or the Ombudsman;

- 2) A petition signed by at least ten Representatives; or
- 3) A request for an inquiry addressed to the Constitutional Law Committee by another Committee of the Parliament.

The Constitutional Law Committee may open an inquiry into the lawfulness of the official acts of a Minister also on its own initiative.

### **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

14 March 2002 (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 of oversight 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 (20.5.2011/535)*

(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 or if the Ombudsman for another reason takes the view that doing so is warranted.

(2) Arising from a complaint made to him or her, the Ombudsman shall take the measures that he or she deems necessary from the perspective of compliance with the law, protection under the law or implementation of fundamental and human rights. Information shall be procured in the matter as deemed necessary by the Ombudsman.

(3) The Ombudsman shall not investigate a complaint relating to a matter more than two years old, unless there is a special reason for doing so.

(4) The Ombudsman must without delay notify the complainant if no measures are to be taken in a matter by virtue of paragraph 3 or because it is not within the Ombudsman's remit, it is pending before a competent authority, it is appealable through regular appeal procedures, or for another reason. The Ombudsman can at the same time inform the complainant of the legal remedies available in the matter and give other necessary guidance.

(5) The Ombudsman can transfer handling of a complaint to a competent authority if the nature of the matter so warrants. The complainant must be notified of the transfer. The authority must inform the Ombudsman of its decision or other measures in the matter within the deadline set by the Ombudsman. Separate provisions shall apply to a transfer of a complaint between the Parliamentary Ombudsman and the Chancellor of Justice of the Government.

### 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 (28.6.2013/495)*

(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 Finland's military crisis management organisation to monitor the treatment of conscripts, other persons doing their military service and crisis management personnel.

(2) In the context of an inspection, the Ombudsman and officials in the Office of the Ombudsman assigned to this task by the Ombudsman have the right of access to all premises and information systems of the inspection subject, as well as the right to have confidential discussions with the personnel of the office or institution, persons serving there and its inmates.

*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 pre-trial investigation (22.7.2011/811)*

The Ombudsman may order that a police inquiry, as referred to in the Police Act (872/2011), or a pre-trial investigation, as referred to in the Pre-

trial Investigations Act (805/2011), 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 promoting fundamental and human rights.

(3) If a decision made by the Parliamentary Ombudsman referred to in Subsection 1 contains an imputation of criminal guilt, the party having been issued with a reprimand has the right to have the decision concerning criminal guilt heard by a court of law. The demand for a court hearing shall be submitted to the Parliamentary Ombudsman in writing within 30 days of the date on which the party was notified of the reprimand. If notification of the reprimand is served in a letter sent by post, the party shall be deemed to have been notified of the reprimand on the seventh day following the dispatch of the letter unless otherwise proven. The party having been issued with a reprimand shall be informed without delay of the time and place of the court hearing, and of the fact that a decision may be given in the matter

in their absence. Otherwise the provisions on court proceedings in criminal matters shall be complied with in the hearing of the matter where applicable. (22.8.2014/674)

### *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 1 a**

### **National Preventive Mechanism (NPM) (28.6.2013/495)**

#### *Section 11 a*

##### *National Preventive Mechanism (28.6.2013/495)*

The Ombudsman shall act as the National Preventive Mechanism referred to in Article 3 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (International Treaty Series / ).

#### *Section 11 b*

##### *Inspection duty (28.6.2013/495)*

(1) When carrying out his or her duties in capacity of the National Preventive Mechanism, the Ombudsman inspects places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (place of detention).

(2) In order to carry out such inspections, the Ombudsman and an official in the Office of the Ombudsman assigned to this task by the Ombudsman have the right of access to all premises and information systems of the place of detention, as well as the right to have confidential discussions with persons having been deprived of their liberty, with the personnel of the place of detention and with any other persons who may supply relevant information.

#### *Section 11 c*

##### *Access to information (28.6.2013/495)*

Notwithstanding the secrecy provisions, when carrying out their duties in capacity of the National Preventive Mechanism the Ombudsman and an official in the Office of the Ombudsman assigned to this task by the Ombudsman have the right to receive from authorities and parties maintaining the places of detention information about the number of persons deprived of their liberty, the number and locations of the facilities, the treatment of persons deprived of their liberty and the conditions in which they are kept, as well as any other information necessary in order to carry out the duties of the National Preventive Mechanism.

#### *Section 11 d*

##### *Disclosure of information (28.6.2013/495)*

In addition to the provisions contained in the Act on the Openness of Government Activities (621/1999) the Ombudsman may, notwithstanding the secrecy provisions, disclose information about persons having been deprived of their liberty, their treatment and the conditions in which they are kept to a Subcommittee referred to in Article 2 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

*Section 11 e**Issuing of recommendations (28.6.2013/495)*

When carrying out his or her duties in capacity of the National Preventive Mechanism, the Ombudsman may issue the subjects of supervision recommendations intended to improve the treatment of persons having been deprived of their liberty and the conditions in which they are kept and to prevent torture and other cruel, inhuman or degrading treatment or punishment.

*Section 11 f**Other applicable provisions (28.6.2013/495)*

In addition, the provisions contained in Sections 6 and 8–11 herein on the Ombudsman's action in the oversight of legality shall apply to the Ombudsman's activities in his or her capacity as the National Preventive Mechanism.

*Section 11 g**Independent Experts (28.6.2013/495)*

(1) When carrying out his or her duties in capacity of the National Preventive Mechanism, the Ombudsman may rely on expert assistance. The Ombudsman may appoint as an expert a person who has given his or her consent to accepting this task and who has particular expertise relevant to the inspection duties of the National Preventive Mechanism. The expert may take part in conducting inspections referred to in Section 11 b, in which case the provisions in the aforementioned section and Section 11 c shall apply to their competence.

(2) When the expert is carrying out his or her duties referred to in this Chapter, the provisions on criminal liability for acts in office shall apply. Provisions on liability for damages are contained in the Tort Liability Act (412/1974).

*Section 11 h**Prohibition of imposing sanctions (28.6.2013/495)*

No punishment or other sanctions may be imposed on persons having provided information to the National Preventive Mechanism for having communicated this information.

**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 (24.8.2007/804)*

(1) A person elected to the position of Ombudsman, Deputy-Ombudsman or as a substitute for a 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, Deputy-Ombudsman or substitute for a Deputy-Ombudsman.

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

### CHAPTER 3 General provisions on the Ombudsman, the Deputy-Ombudsmen and the Director of the Human Rights Centre (20.5.2011/535)

#### 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 (24.8.2007/804)*

(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) Having received the opinion of the Constitutional Law Committee on the matter, the Parliamentary Ombudsman shall choose a substitute for a Deputy-Ombudsman for a term in office of not more than four years.

(4) 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, unless the Ombudsman, as provided for in Section 19 a, paragraph 1, invites a substitute for a Deputy-Ombudsman to perform the Deputy-Ombudsman's tasks. When a substitute is performing the tasks of a Deputy-Ombudsman, the provisions of paragraphs (1) and (2) above concerning a Deputy-Ombudsman shall not apply to him or her.

#### 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 the person elected as Ombudsman, Deputy-Ombudsman or Director of the Human Rights Centre holds a state office, he or she shall

be granted leave of absence from it for the duration of their term of service as as Ombudsman, Deputy-Ombudsman or Director of the Human Rights Centre (20.5.2011/535).

### 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.

### Section 19 a Substitute for a Deputy-Ombudsman (24.8.2007/804)

(1) A substitute for a Deputy-Ombudsman can perform the duties of a Deputy-Ombudsman if the latter is prevented from attending to them or if a Deputy-Ombudsman's post has not been filled. The Ombudsman shall decide on inviting a substitute to perform the tasks of a Deputy-Ombudsman. (20.5.2011/535)

(2) The provisions of this and other Acts concerning a Deputy-Ombudsman shall apply *mutatis mutandis* also to a substitute for a Deputy-Ombuds-

man while he or she is performing the tasks of a Deputy-Ombudsman, unless separately otherwise regulated.

## CHAPTER 3 a Human Rights Centre (20.5.2011/535)

### Section 19 b Purpose of the Human Rights Centre (20.5.2011/535)

For the promotion of fundamental and human rights there shall be a Human Rights Centre under the auspices of the Office of the Parliamentary Ombudsman.

### Section 19 c The Director of the Human Rights Centre (20.5.2011/535)

(1) The Human Rights Centre shall have a Director, who must have good familiarity with fundamental and human rights. Having received the Constitutional Law Committee's opinion on the matter, the Parliamentary Ombudsman shall appoint the Director for a four-year term.

(2) The Director shall be tasked with heading and representing the Human Rights Centre as well as resolving those matters within the remit of the Human Rights Centre that are not assigned under the provisions of this Act to the Human Rights Delegation.

### Section 19 d Tasks of the Human Rights Centre (20.5.2011/535)

- (1) The tasks of the Human Rights Centre are:
- 1) to promote information, education, training and research concerning fundamental and human rights as well as cooperation relating to them;
  - 2) to draft reports on implementation of fundamental and human rights;
  - 3) to present initiatives and issue statements in order to promote and implement fundamental and human rights;



4) to participate in European and international cooperation associated with promoting and safeguarding fundamental and human rights;

5) to take care of other comparable tasks associated with promoting and implementing fundamental and human rights.

(2) The Human Rights Centre does not handle complaints.

(3) In order to perform its tasks, the Human Rights Centre shall have the right to receive the necessary information and reports free of charge from the authorities.

#### *Section 19 e*

##### *Human Rights Delegation (20.5.2011/535)*

(1) The Human Rights Centre shall have a Human Rights Delegation, which the Parliamentary Ombudsman, having heard the view of the Director of the Human Rights Centre, shall appoint for a four-year term. The Director of the Human Rights Centre shall chair the Human Rights Delegation. In addition, the Delegation shall have not fewer than 20 and no more than 40 members. The Delegation shall comprise representatives of civil society, research in the field of fundamental and human rights as well as other actors participating in the promotion and safeguarding of fundamental and human rights. The Delegation shall choose a deputy chair from among its own number. If a member of the Delegation resigns or dies mid-term, the Ombudsman shall appoint a replacement for him or her for the remainder of the term.

(2) The Office Commission of the Eduskunta shall confirm the remuneration of the members of the Delegation.

(3) The tasks of the Delegation are:

- 1) to deal with matters of fundamental and human rights that are far-reaching and important in principle;
- 2) to approve annually the Human Rights Centre's operational plan and the Centre's annual report;

3) to act as a national cooperative body for actors in the sector of fundamental and human rights.

(4) A quorum of the Delegation shall be present when the chair or the deputy chair as well as at least half of the members are in attendance. The opinion that the majority has supported shall constitute the decision of the Delegation. In the event of a tie, the chair shall have the casting vote.

(5) To organise its activities, the Delegation may have a work committee and sections. The Delegation may adopt rules of procedure.

#### **CHAPTER 3 b**

##### **Other tasks (10.4.2015/374)**

#### *Section 19 f (10.4.2015/374)*

##### *Promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities*

(1) The tasks under Article 33(2) of the Convention on the Rights of Persons with Disabilities concluded in New York in 13 December 2006 shall be performed by the Parliamentary Ombudsman, the Human Rights Centre and its Human Rights Delegation.

(2) Chapter 3 b and Section 19 f added pursuant to Act 374/2015 shall enter into force on the date to be laid down in a Decree.

#### **CHAPTER 4**

##### **Office of the Parliamentary Ombudsman and the detailed provisions (20.5.2011/535)**

#### *Section 20 (20.5.2011/535)*

##### *Office of the Parliamentary Ombudsman and detailed provisions*

For the preliminary processing of cases for decision by the Ombudsman and the performance of the other duties of the Ombudsman as well as for the discharge of tasks assigned to the Human Rights Centre, there shall be an office headed by the Parliamentary Ombudsman.

*Section 21**Staff Regulations of the Parliamentary Ombudsman and the Rules of Procedure of the Office (20.5.2011/535)*

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

(2) The Rules of Procedure of the Office of the Parliamentary Ombudsman shall contain more detailed provisions on the allocation of tasks among the Ombudsman and the Deputy-Ombudsmen. Also determined in the Rules of Procedure shall be substitution arrangements for the Ombudsman, the Deputy-Ombudsmen and the Director of the Human Rights Centre as well as the duties of the office staff and the cooperation procedures to be observed in the Office.

(3) The Ombudsman shall confirm the Rules of Procedure of the Office having heard the views of the Deputy-Ombudsmen and the Director of the Human Rights Centre.

**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.

*Entry into force and application of the amending acts:**24.8.2007/804:*

The date on which this Act enters into force shall be laid down in a Government Decree. (Act 840/2007 enters into force under Decree 836/2007 on 1 October 2007.)

*20.5.2011/535*

This Act shall enter into force on 1 January 2012.

Section 3 and the first paragraph of Section 19 a of the Act shall, however, enter into force on 1 June 2011.

The measures necessary to launch the activities of the Human Rights Centre may be taken before the entry into force of the Act.

*22.7.2011/811*

This Act shall enter into force on 1 January 2014.

*28.6.2013/495*

This Act shall enter into force on the date to be laid down in a Government Decree. However, Section 5 of the Act shall enter into force on 1 July 2013.

*22.8.2014/674*

This Act shall enter into force on 1 January 2015.

*10.4.2015/374*

This Act shall enter into force on the date laid down in a Government Decree.

## Division of labour between the Ombudsman and the Deputy-Ombudsmen

### **Ombudsman Mr. Petri Jääskeläinen**

decides on matters concerning:

- the highest organs of state
- questions involving important principles
- courts
- health care
- legal guardianship
- language legislation
- the prison service and execution of sentences (till 31.3.2014)
- asylum and immigration (since 1.4.2014)
- the rights of persons with disabilities (since 1.4.2014)
- oversight of covert intelligence gathering (since 1.4.2014)
- the coordination of the tasks of the National Preventive Mechanism against Torture and reports relating to its work (since 1.4.2014)

### **Deputy-Ombudsman Ms. Maija Sakslin**

decides on matters concerning:

- municipal affairs
- children's rights and early childhood education and care
- social welfare
- Sámi affairs
- agriculture and forestry
- customs
- distraint, bankruptcy and dept arrangements
- taxation
- environmental administration
- asylum and immigration (till 31.3.2014)
- Defence Forces, Border Guard and non-military national service (since 1.4.2014)
- church affairs (since 1.4.2014)
- traffic and communications (since 1.4.2014)

### **Deputy-Ombudsman Mr. Jussi Pajuoja**

decides on matters concerning:

- the police
- public prosecutor
- social insurance
- labour administration
- unemployment security
- education, science and culture
- data protection, data management and telecommunications
- Defence Forces, Border Guard and non-military national service (till 31.3.2014)
- traffic and communications (till 31.3.2014)
- church affairs (till 31.3.2014)
- the prison service and execution of sentences (since 1.4.2014)

## Statistical data on the Ombudsman's work in 2014

### MATTERS UNDER CONSIDERATION

#### Oversight-of-legality cases under consideration **6,478**

Cases initiated in 2014	5,042
- complaints to the Ombudsman	4,558
- complaints transferred from the Chancellor of Justice	48
- taken up on the Ombudsman's own initiative	60
- submissions and attendances at hearings	84
- other written communications	292
Cases held over from 2013	1,383
Cases held over from 2012	25
Cases held over from 2011	24
Cases held over from 2010	3
Cases held over from 2009	1

#### Cases resolved **5,196**

Complaints	4,757
Taken up on the Ombudsman's own initiative	58
Submissions and attendances at hearings	87
Other written communications	294

#### Cases held over to the following year **1,282**

From 2014	1,228
From 2013	22
From 2012	19
From 2011	11
From 2010	1
From 2009	1

#### Other matters under consideration **286**

Inspections <sup>1</sup>	111
Administrative matters in the Office	155
International matters	20

<sup>1</sup> Number of inspection days 74

## OVERSIGHT OF PUBLIC AUTHORITIES

### Complaint cases 4,757

Social security		1,092
- social welfare	737	
- social insurance	355	
Police		700
Health care		557
Criminal sanctions		349
Courts		242
- civil and criminal	203	
- special	1	
- administrative	38	
Education		212
Labour administration authorities		185
Municipal affairs		168
Environment		151
Transport and communications		131
Distraint		116
Taxation		115
Guardianship		103
Agriculture and forestry		92
Prosecutors		86
Highest organs of state		80
Customs		61
Asylum and immigration		53
Defence		41
Municipal councils		31
Private parties not subject to oversight		23
Church		22
Other subjects of oversight		147

## OVERSIGHT OF PUBLIC AUTHORITIES

<b>Taken up on the Ombudsman's own initiative</b>		<b>58</b>
Criminal sanctions		13
Guardianship		9
Social security		8
- social welfare	7	
- social insurance	1	
Police		8
Defence		4
Health care		3
Municipal affairs		3
Distraint		2
Customs		2
Labour administration authorities		1
Taxation		1
Education		1
Asylum and immigration		1
Highest organs of state		1
Courts		-
- civil and criminal	-	
- special	-	
- administrative	-	
Environment		-
Transport and communications		-
Agriculture and forestry		-
Prosecutors		-
Church		-
Municipal councils		-
Other subjects of oversight		1
<b>Total number of decisions</b>		<b>4,815</b>



## MEASURES TAKEN BY THE OMBUDSMAN

**Complaints** **4,757**

**Decisions leading to measures on the part of the Ombudsman** **736**

- prosecution		-
- reprimands		15
- opinions		563
- as a rebuke	325	
- for future guidance	238	
- recommendations		21
- to redress an error or rectify a shortcoming	6	
- to develop legislation or regulations	4	
- to provide compensation for a violation*	11	
- to reach an agreed settlement	-	
- matters redressed in the course of investigation		46
- other measure		91
- to reach an agreed settlement	11	

**No action taken, because** **2,535**

- no incorrect procedure found		317
- no grounds		2,218
- to suspect illegal or incorrect procedure	1,647	
- for the Ombudsman's measures	571	

**Complaint not investigated, because** **1,486**

- matter not within Ombudsman's remit		164
- still pending before a competent authority or possibility of appeal still open		587
- unspecified		304
- transferred to Chancellor of Justice		13
- transferred to Prosecutor-General		5
- transferred to other authority		158
- older than two years		137
- inadmissible on other grounds		118

## MEASURES TAKEN BY THE OMBUDSMAN

### Taken up on the Ombudsman's own initiative 58

#### Decisions leading to measures on the part of the Ombudsman 38

- prosecution		-
- reprimands		3
- opinions		16
- as a rebuke	5	
- for future guidance	11	
- recommendations		5
- to redress an error or rectify a shortcoming	-	
- to develop legislation or regulations	4	
- to provide compensation for a violation	1	
- matters redressed in the course of investigation		4
- other measure		10

#### No action taken, because 16

- no incorrect procedure found		6
- no grounds		10
- to suspect illegal or incorrect procedure	8	
- for the Ombudsman's measures	2	

#### Own initiative not investigated, because 4

- still pending before a competent authority or possibility of appeal still open		-
- inadmissible on other grounds		4

## INCOMING CASES BY AUTHORITY

### Ten biggest categories of cases

Social security		1,042
- social welfare	705	
- social insurance	319	
Police		691
Health care		531
Criminal sanctions		364
Courts		236
- civil and criminal	197	
- special	2	
- administrative	37	
Education		186
Labour administration authorities		185
Municipal affairs		171
Environment		149
Distraint		122

# Inspections

\* = inspection without advance notice

## Courts

- Administrative Court of Åland, Mariehamn
- Court of Appeal Turku
- Finland Proper District Court
- Helsinki District Court, Department of Enforcement (tele-coercive measures and house searches)
- Northern Savo District Court, Kuopio office (tele-coercive measures and house searches)
- Åland District Court, Mariehamn

## Prosecution service

- The Office of the Prosecutor General, City of Helsinki
- The Office of the Prosecutor of Eastern Finland, Kuopio regional office, Kuopio

## Police administration

- Central Finland Police Department, Legal Unit, Tampere
- Central Finland Police Department, Tampere Central Police Station, police prison
- Eastern Finland Police Department, Kuopio
- Eastern Finland Police Department, Kuopio Central Police Station, police prison and detention facilities for intoxicated persons, Kuopio
- Eastern Finland Police Department, Legal Unit, Kuopio
- Eastern Uusimaa Police Department, Legal Unit
- Eastern Uusimaa Police Department, Vantaa Central Police Station, police prison and detention facilities for intoxicated persons, Kouvola

- Häme Police Department, Hämeenlinna Police Station, police prison
- Häme Police Department, Legal Unit, Hämeenlinna
- Helsinki Police Department, Legal Unit
- Helsinki Police Department, Pasila Police Station, police prison\*
- Lapland Police Department, Kemi Police Station, police prison and detention facilities for intoxicated persons
- Lapland Police Department, Rovaniemi
- National Bureau of Investigation (NBI), Covert Intelligence
- National Police Board, (twice)
- Ostrobothnia Police Department, Legal Unit, Seinäjoki
- Ostrobothnia Police Department, Seinäjoki Police Station, police prison, Seinäjoki
- Oulu Police Department, Legal Unit
- Oulu Police Department, Oulu Central Police Station, police prison and detention facilities for intoxicated persons
- Southeast Finland Police Department, Kouvola Central Police Station, police prison and detention facilities for intoxicated persons, Kouvola
- Southeast Finland Police Department, Legal Unit, Kouvola
- Southwestern Finland Police Department, Legal Unit, Turku
- Southwestern Finland Police Department, Turku Central Police Station, police prison, Turku
- The Finnish Security Intelligence Service (Supo), Covert Intelligence
- Western Uusimaa Police Department, Espoo Central Police Station, police prison
- Western Uusimaa Police Department, Legal Unit, Espoo

## Defence Forces and Border Guard

- Finnish crisis management force in Lebanon
- Jaeger Brigade
- Kainuu Brigade
- Southeast Finland Border Guard, Vaalimaa Border Inspection Post
- The Lapland Border Guard District, Border Jaeger Company

## Customs

- Finnish Customs, Covert Intelligence
- Vaalimaa Customs

## Criminal sanctions

- Criminal Sanctions Agency, Central Administration Unit
- Criminal Sanctions Region of Eastern and Northern Finland, Tampere Region Centre and an Assessment Centre
- Hämeenlinna Prison
- Hämeenlinna Prison clinic
- Kuopio Prison
- Prison hospital in Hämeenlinna

## Distraint

- City of Kotka, financial and debt counselling
- District of Mikkeli, financial and debt counselling, Mikkeli
- National Administrative Office for Enforcement
- South Savo Enforcement Agency (bailiffs), Mikkeli

## Asylum and immigration

- City of Helsinki, Metsälä Detention Unit
- City of Helsinki, Metsälä Reception Centre
- Municipality of Vöyri family group homes, Taberna and Stella, the sheltered housing unit Stödis, Oravainen and the family group home Villa Miranda, Pietarsaari (units for minors seeking asylum)
- Oravainen Reception Centre Ryhmäkoti Ruths (unit for unaccompanied minors seeking asylum)

## Social welfare

- City of Helsinki, Rudolf Services\* (housing for the elderly)
- City of Rovaniemi, Etelärinne home for young people\*
- City of Vantaa, Simonkylä Centre for the Elderly, Simonkoti nursing home 2\* (nursing home for people with memory loss)
- City of Vantaa, Simonkylä Centre for the Elderly, Simonkoti ward 3\* (for elderly people with memory loss)
- Hiekkarinne Service Centre\* (private child welfare unit run by Nuorten ystävät Oy), Rovaniemi
- Hoivakoti Kultala\* (private nursing home run by SunHouse Oy), Koskue
- Kivistöntien Services\* (home for dementia sufferers run by the association Mäntsälän palvelukotiyhdistys)
- Kotoplassi Service Centre\* (long-term care unit for the elderly run by JIK-peruspalveluliikelaitoskuntayhtymä [JIK basic public utility federation of municipalities]), Kurikka
- Municipality of Kirkkonummi Volskoti\* (long-term care for the elderly)
- Municipality of Mäntsälä, Kotokartano serviced flats, Pikkukoto\* (housing for the elderly)
- Municipality of Soini, Kotivaara Retirement Home\*, Soini

- Palvelukoti Rauha Oy\*, Pornainen (private housing service for persons with disabilities)
- Pienkoti Kultalanka Oy\* (private nursing and housing service for the elderly run by Nordic Senior Services Oy), Alajärvi
- Puro residential home for psychiatric care of young people (private child welfare unit), Vähäkyrö
- Ruusulankatu Housing Services\* (unit run by Sininauha Oy providing housing services for people with mental health and substance abuse problems), City of Helsinki
- The Rinnekoti Foundation, Rehabilitation & Research Units
- Tiirakallio Youth Home\* (child welfare unit run by Kalliola Settlement), Espoo
- Vire Koti Mäntsälä\* (private nursing home run by Mainio Vire Oy)

### Health care

- District of Forssa Joint Municipal Authority for Wellness, Adult Psychiatry, Forssa Hospital\*
- Hospital District of Helsinki and Uusimaa (HYKS), Psychiatry Profit Centre, Jorvi group of clinics
- Lapland Hospital District Lapland Drugs and Alcohol Clinic, Muurola\*
- Lapland Hospital District, psychiatric clinic, Muurola Hospital
- Länsi-Pohja Hospital District, Keropudas Hospital\* (psychiatric hospital)
- Åland Provincial Government, Health and Medical Care Office
- Ålands centralsjukhus, psykiatriska kliniken, Mariehamn

### Social insurance

- Kela (Social Insurance Institution of Finland) Kymenlaakso Insurance District, Kouvola
- Kela (the Social Insurance Institution of Finland) Kouvola office
- The Social Security Appeal Board, City of Helsinki

### Labour and unemployment security

- City of Lahti, Lyhty (labour service centre)
- Häme Centre for Economic Development, Transport and the Environment, business, labour, skills, expertise and culture division; unit for employment, entrepreneurship and competence, Lahti
- Häme TE Office (employment), Lahti
- Kouvola Labour Service Centre
- Regional State Administrative Agency for Southern Finland (Occupational Safety and Health Division), Helsinki
- Southeastern Finland TE Office (employment), Kouvola

### Education

- City of Espoo, Merisaapas School (special school)
- City of Helsinki Solakallio School\* (special school for persons with intellectual disabilities and autistic children)
- City of Helsinki, Education Department
- City of Kauniainen, Mäntymäki School
- City of Lappeenranta, Education Department
- City of Lappeenranta, Sammonlahti School
- City of Tampere, Education Department
- City of Tampere, Puistokoulu, Liisanpuisto School (special school)
- City of Tampere, Sampo School, special lessons
- City of Tampere, Saukonpuisto School (special school)

- Department of Health and welfare; state residential schools
- Lagmansgården Residential School (state-run), Pännäinen

### Other inspections

- Agency for Rural Affairs, in Seinäjoki
- Beirut Office under the auspices of the Syrian Embassy in Finland.
- District of Seinäjoki Business Centre, Rural Affairs
- Legal Aid Office of Åland and General Lobbying Service, Mariehamn
- Provincial Government of Åland Language Council, Mariehamn
- State Department of Åland, Mariehamn

### Other inspection-related meetings

- Animal Welfare Ombudsman
- Debate on the oversight of legality in the field of education (Finnish National Board of Education-Office of the Chancellor of Justice – Office of the Parliamentary Ombudsman – Regional State Administrative Agencies)
- National Bureau of Investigation, Improvements in the Reporting of Covert Intelligence
- Office of the Prosecutor General police crime team
- The Finnish Border Guard, Legal Division



## The Accreditation Recommendation of the National Human Rights Institution

As a result of Finland's accreditation application, the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions issued the following recommendation and presented the following observations in October 2014.

*Recommendation:* It is recommended that the Finnish National Human Rights Institution (FNHRI) be accredited with *A status*.

The SCA welcomes the establishment of the FNHRI.

The SCA takes note of the particular structure of the Finnish National Human Rights Institution as an umbrella structure composed of the Parliamentary Ombudsman (Ombudsman), the Human Rights Centre (HRC) and the Human Rights Delegation (HRD). The SCA understands that the government bill establishing these three components as the NHRI is a source of law in Finland. In order to avoid any confusion, it encourages the FNHRI to take steps to clearly delineate the respective roles of each component in respect of the promotion and protection of human rights domestically and internationally.

The SCA notes:

### 1. Functional immunity and independence

Section 115 of the Constitution provides that the Ombudsman can be held liable for official acts in the same manner as Members of the Government, that being through a hearing by the High Court of Impeachment. While the FNHRI reports that there are judicial immunities in Finland and that it is content with this state of affairs, the SCA notes that the Constitution provides for immunity for Members of Parliament. It strongly recommends that provisions be included in national law to protect relevant office holders of the

FNHRI from legal liability for actions and decisions that are taken in good faith in their official capacity.

External parties may seek to influence the independent operation of a NHRI by initiating, or by threatening to initiate, legal proceedings against a member. For this reason, NHRI legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity. Such a provision promotes:

- security of tenure;
- the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference;
- the independence of the senior leadership; and
- public confidence in the NHRI.

The SCA recognizes that no office holder should be beyond the reach of the law and thus, in certain circumstances, such as corruption, it may be necessary to lift immunity. However, the authority to do so should not be exercised by an individual, but rather by an appropriately constituted body such as the superior court or by a special majority of parliament. It is recommended that the law clearly establishes the grounds, and a clear and transparent process, by which the functional immunity of the decision-making body may be lifted.

The SCA encourages the FNHRI to advocate for the inclusion in its enabling law of express provisions that clearly establish the functional immunity of relevant office holders.

The SCA refers to Paris Principle B.3 and to its General Observation 2.3 on 'Guarantee of functional immunity'.

## 2. Tenure

In accordance with Section 38 of the Constitution, Parliament, by a decision of two-thirds of the votes cast and after having obtained the opinion of the Constitutional Law Committee, can dismiss the Ombudsman for “extremely weighty reasons”. The SCA is of the view that this provision is unclear.

The SCA is of the view that in order to address the Paris principles requirement for a stable mandate, which is important in reinforcing independence, the enabling law of a NHRI must have an independent and objective dismissal process.

The SCA encourages the FNRI to advocate for the formalization of a dismissal process that includes the following elements:

- a) Dismissal is made in strict conformity with all the substantive and procedural requirements prescribed by law;
- b) Grounds for dismissal are clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate; and
- c) Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction.

The SCA refers to Paris Principle B.3 and to its General Observation 2.1 on ‘Guarantee of tenure for members of the NHRI decision-making body’.

## 3. Adequate funding

The SCA notes the continued challenges faced by the HRC in securing the appropriate financial and human resources to effectively carry out its work. In particular, the SCA was advised that, due to the current financial situation in Finland, the HRC’s budget has not increased and it has not been able to recruit the 8 additional staff that had been originally proposed.

The SCA further notes that the mandate of the Ombudsman has been expanded as a result of its designation as the National Preventive Mechanism under the Optional Protocol to the Convention Against Torture, and that the mandate of the FNHRI will be expanded as a result of its designation as National Monitoring Mechanism under the Convention on the Rights of People with Disabilities.

The SCA emphasizes that in order to function effectively, a NHRI must be provided with an appropriate level of funding in order to guarantee its ability to freely determine its priorities and activities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the NHRI’s operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, at a minimum, include the following:

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that the offices are not co-located with government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) remuneration of members of the decision-making body (where appropriate);
- d) the establishment of well-functioning communications systems including telephone and internet; and
- e) the allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

The SCA encourages the FNHRI to advocate for the allocation of an appropriate level of funding to effectively carry out its mandate.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding of NHRIs'.

#### 4. Annual report

In accordance with Section 12 of the Parliamentary Ombudsman Act, the annual report of the Ombudsman is tabled in Parliament and is discussed in the presence of the Ombudsman. The report of the HRC is presented to the Constitutional Law Committee, to other Committees depending upon the content of the report, and to members of Parliament. However, it is neither tabled nor discussed in Parliament.

The SCA is of the view that, as a result of this difference in procedure, Parliament is not provided with a complete account of the work of the FNHRI. The SCA considers it preferable that the enabling laws of a NHRI establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the Parliament.

The SCA encourages the FNHRI to provide a consolidated report to Parliament. A consolidated report will highlight the full extent of the mandate and activities of the FNHRI.

The SCA refers to Paris Principle A.3 and to its General Observation 1.11 on 'Annual reports of NHRIs'.

# Staff of the Office of the Parliamentary Ombudsman

## Parliamentary Ombudsman

Mr. Petri Jääskeläinen, LL.D., LL.M. with court training

## Deputy-Ombudsmen

Mr. Jussi Pajujoja, LL.D.  
Ms. Maija Sakslin, LL.Lic.

## Secretary General

Ms. Päivi Romanov, LL.M. with court training

## Principal Legal Advisers

Mr. Juha Haapamäki, LL.M. with court training  
Mr. Eero Kallio, LL.M. with court training (part-time till 30.9.2014)  
Mr. Jorma Kuopus, LL.D., LL.M. with court training  
Ms. Riitta Lämsisyrjä, LL.M. with court training  
Mr. Raino Marttunen, LL.M. with court training  
Mr. Juha Niemelä, LL.M. with court training  
Mr. Harri Ojala, LL.M. with court training  
Mr. Pasi Pölönen, LL.D., LL.M. with court training  
Mr. Tapio Rätty, LL.M.  
Ms. Kaija Tanttinen-Laakkonen, LL.M.

## Senior Legal Advisers

Ms. Tuula Aantaa, LL.M. with court training (on leave 1.4.–30.6.)  
Mr. Erkki Hännikäinen, LL.M.  
Ms. Anne Kumpula, LL.Lic., LL.M. with court training (1.1.–30.6.)  
Ms. Kirsti Kurki-Suonio, LL.D.  
Ms. Ulla-Maija Lindström, LL.M.  
Mr. Jari Pirjola, LL.D., M.A.  
Mr. Mikko Sarja, LL.Lic., LL.M. with court training

Mr. Håkan Stoor, LL.Lic., LL.M. with court training

Ms. Mirja Tamminen, LL.M. with court training

## Legal Advisers

Ms. Terhi Arjola-Sarja, LL.M. with court training  
Mr. Mikko Eteläpää, LL.M. with court training  
Mr. Kristian Holman, LL.M., M.Sc. (Admin.) (job rotation)  
Mr. Juha-Pekka Konttinen, LL.M. (since 1.9.)  
Mr. Juho Martikainen, LL.M. with court training  
Mr. Kari Muukkonen, LL.M. with court training  
Ms. Anu Rita, LL.M. with court training  
Ms. Piatta Skottman-Kivelä, LL.M. with court training  
Ms. Iisa Suhonen, LL.M. with court training  
Ms. Heli Tamminen, LL.M. with court training (20.1.–31.7.)  
Mr. Jouni Toivola, LL.M.  
Ms. Minna Verronen, LL.M. with court training  
Ms. Pirkko Äijälä-Roudasmaa, LL.M. with court training

## Referendary

Ms. Marika Riekkö, LL.M. with court training

## On-duty lawyers

Ms. Jaana Romakkaniemi, LL.M. with court training  
Ms. Pia Wirta, LL.M. with court training

## Information Officer

Ms. Kaija Tuomisto, M.Soc.Sc.

## Information Management Specialist

Mr. Janne Madetoja, M.Sc.(Admin.)

### Notaries

Ms. Taru Koskiniemi, LL.B.  
Ms. Kaisu Lehtikangas, M.Soc.Sc.  
Ms. Helena Rahko, LL.B.  
Ms. Pirkko Suutarinen, LL.B. (till 28.2.)  
Ms. Eeva-Maria Tuominen, M.Sc.(Admin.), LL.B.

### Investigating Officers

Mr. Reima Laakso  
Mr. Peter Fagerholm

### Administrative secretary

Ms. Eija Einola

### Filing Clerk

Ms. Helena Kataja

### Assistant Filing Clerk

Ms. Päivi Karhu

### Departmental Secretaries

Ms. Päivi Ahola  
Ms. Anu Forsell  
Ms. Mervi Stern

### Office Secretaries

Ms. Johanna Hellgren  
Ms. Pirjo Hokkanen (part-time)  
Ms. Sanna Hosike (till 1.4.)  
Mr. Mikko Kaukolinna  
Ms. Krissu Keinänen  
Ms. Marjut Lievonen (2.4.-31.8.)  
Ms. Nina Moisio, M.Soc.Sc., M.A.  
Ms. Tiina Mäkinen (since 1.9.)  
Ms. ArjaRaahenmaa (part-time)  
Ms. Sirpa Salminen, M.Sc.(Admin.)  
(on leave since 12.8.)  
Ms. Virpi Salminen  
Ms. Riikka Saulamaa (since 14.10.)

### Trainee

Ms. Riikka Saulamaa  
(19.5.-31.8. and part-time 1.9.-13.10.)

## Staff of the Human Rights Centre

### Director

Ms. Sirpa Rautio, LL.M. with court training  
(on leave till 30.11.)  
Ms. Kristiina Kouros, LL.M. (till 30.11.)

### Assistant Expert

Ms. Elina Hakala, M.Soc.Sc.

### Experts

Ms. Kristiina Kouros, LL.M. (on leave till 30.11.)  
Ms. Leena Leikas, LL.M. with court training  
(on leave since 1.6.)  
Ms. Kristiina Vainio, M.Soc.Sc.

