Parliamentary Ombudsman of Finland

Summary of the Annual Report 2011

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TO THE READER

The Constitution of Finland 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, 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 2011. My term of office is from 1.1.2010 to 31.12.2013. Those who have served as Deputy-Ombudsmen are Doctor of Laws *Jussi Pajuoja* (from 1.10.2009 to 30.9.2013) and Licentiate in Laws *Maija Sakslin* (from 1.4.2010 to 31.3.2014). 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. Pajuoja 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 responsible reseacher with the Social Insurance Institution.

Doctor of Laws, Senior Legal Adviser *Pasi Pölönen* was selected to serve as the Substitute for a Deputy-Ombudsman for the period 15.12.2011–14.12.2015. I asked him to perform the tasks of a Deputy-Ombudsman from 28.12 to 29.12.2011.

The annual report is published in both of Finland's official languages, Finnish and Swedish. It consists of general comments by the office-holders, a review of activities, a section devoted to the implementation of fundamental and human rights and the use of coercive measures affecting telecommunications as well as some observations and individual decisions with a bearing on central sectors of oversight of legality. It additionally contains statistical data and an outline of the main relevant provisions of the Constitution and the Parliamentary Ombudsman Act.

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 2011.

Helsinki, 19.4.2012

Petri Jääskeläinen
Parliamentary Ombudsman of Finland

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1 General comments

PETRI JÄÄSKELÄINEN

THE CITIZEN PERSPECTIVE IN THE OMBUDSMAN'S WORK

In conjunction with its deliberation of the Ombudsman's annual reports and amendments to the Parliamentary Ombudsman Act, the Eduskunta's Constitutional Law Committee has emphasised the importance of the citizen perspective in developing the Ombudsman's operational methods. Efforts to respond to this wish have been made in many ways.

The amendments to the Parliamentary Ombudsman Act that entered into force at the beginning of June during the year under review have made it possible to add flexibility to investigation of complaints and develop working methods. In accordance with the new regulation, the Ombudsman responds to a complaint by taking the measures that he believes are warranted from the perspective of observance of the law, protection under the law or implementation of fundamental and human rights. I have tried, *inter alia* in my general comments in earlier Ombudsman's reports, to describe and give concrete expression to the objectives and principles that are involved in investigating a complaint. According to these, the first question that is posed when considering investigation of a complaint comes precisely from the citizen perspective: Can the Ombudsman help?

What kind of help the Ombudsman can give and what kind of help complainants expect vary greatly. Complainants sometimes do not have an exact conception of the Ombudsman's powers and for that reason their expectations can be too great. Contrary to what complainants sometimes think, the Ombudsman can not change or overturn decisions that authorities have made or issue binding instructions to authorities.

As the Parliamentary Ombudsman, Petri Jääskeläinen attends to cases dealing with the highest State organs, those of particular importance, and to cases dealing with courts of law, prisons, health care, guardianship and language legislation.

At the Office of the Parliamentary Ombudsman we have been trying to classify and follow up different

kinds of situations in which help is given and the ways that it is done. These include concrete ways of helping the complainant, providing advice and guidance as well as pointing out and criticising errors by authorities. However, the Ombudsman can not always help. I shall now go on to highlight the reasons for this. To conclude, I shall deal with recommendations by the Ombudsman concerning compensation and mediation as forms of helping as well as with efforts associated with them to alter the authorities' operational culture.

CONCRETE HELP

At best, the Ombudsman can help a complainant in concrete terms. That is the case when, for example, the expression of an opinion or a recommendation by the Ombudsman or some other measure on his part leads to correction or rectification of an error that has been made or to an action that has been neglected being implemented. To be able to provide a complainant with concrete help, efforts to develop flexible procedural methods have been made in the Office of the Parliamentary Ombudsman. When a complainant can be helped, it is important to provide the help as quickly as possible. For this reason, the telephone and email are used increasingly often when preliminarily investigating matters. Often, the Ombudsman´s Office contacting the authority that is the focus of a complaint can in itself lead to the result that the complainant wishes.

I shall take a simple example. What is quite often involved in complaints is that an authority has not observed its obligation, which is an aspect of good administration, to reply to letters from citizens. The traditional method followed by the Ombudsman on foot of this kind of complaint has been to send a written request for an explanation to the authority. On the basis of the explanation received and the complainant's response that may have been obtained as well as other written material, the authority's action has been evaluated in the written decision that is eventually issued. This may have taken even a long time, and in the worst-case situations the complainant has not received a reply to his or her letter to the authority throughout the process. The primary aim nowadays is to ensure that the complainant receives the authority's answer to his or her letter. A matter of this kind can often be taken care of by phoning the authority, and perhaps the laborious and time-consuming complaint examination procedure in writing need not be taken any further.

The perspective of helping is highlighted also on inspection visits by the Ombudsman. Confidential discussions with inmates of closed institutions are a regular feature of inspection visits to these establishments. These discussions can lead to a complaint or an investigation being launched on the Ombudsman's own initiative, but in many cases the Ombudsman can already during the inspection help inmates in matters relating to the conditions in which they are kept or the way they are treated.

ADVICE

Even in cases where the Ombudsman could not directly help a complainant, an effort is made to provide advice and guidance. The Ombudsman can not give complainants actual legal advice as to what course of action it would be advisable for them to follow in their cases. That is because the Ombudsman must remain impartial in all matters. By contrast, a complainant can be given guidance with respect to, for example, the legal remedies that are still available. Advice and guidance are provided also in conjunction with inspection visits.

Since the Ombudsman can not change the solutions that authorities have arrived at, those dissatisfied with them must primarily avail themselves of the regular means of appeal that are still available to them. If an avenue of appeal is still open, the complainant is given guidance about it. Correspondingly, a complainant can be told about extraordinary means of appeal, such as a complaint about a judicial error or having a judgment quashed and the prerequisites for exercising these means.

If a matter is not included in the Ombudsman's remit, the complainant is told about other authorities that may have competence in the matter. For example, someone dissatisfied with an action on the part of a lawyer can be advised to turn to the Chancellor of Justice or the Finnish Bar Association and someone dissatisfied with an action by a telephone operator to turn to the Finnish Telecommunications Regulatory Authority.

The Ombudsman can not explain the content of decisions by authorities and especially by courts. If, however, a decision by an authority appears to be prima facie appropriate, the complainant can be given an explanation of the contents of the regulations applied in the case as well as their precursor documents and case law. This can help the complainant understand why the decision in question has been arrived at. That way, perhaps the complainant's trust in the actions of the authority in question can be restored.

CRITICISING

Many complainants are familiar with the Ombudsman's powers and know, for example, that he can not change decisions that authorities have made. Information about the Ombudsman's tasks and powers is widely available, for example on our web site.

In practice, it is not unusual for complainants to be aware that their cases are of a kind in which the Ombudsman can not provide concrete help. Instead, the complainant wants the Ombudsman to find that the authority's action has been erroneous and to criticize the authority for that. An investigation by the Ombudsman can in and of itself already lead to an authority admitting that it has made a mistake and, in the best case, expressing its regret for that. At the latest, a decision and rebuke by the Ombudsman can fulfil the complainant's expectation with respect to protection under the law. In these situations, a rebuke by the Ombudsman can be regarded as one means of helping a complainant.

WHY CAN THE OMBUDSMAN NOT ALWAYS HELP?

Unfortunately, the situation is rather often such that the Ombudsman can not help a complainant. This can be due first of all to the fact that the prerequisites for investigating the matter do not exist. The most typical reasons for this were written into the Parliamentary Ombudsman Act when it was amended during the year under review. The most common situation is one in which the matter to which the complaint refers is still pending before a competent authority or an appeal against a decision can still be sought through regular channels. Since the Ombudsman can not usually intervene in handling of matters that are still pending in an authority or especially before a court of law, complaints concerning them can not usually be examined. The situation is different if what the complaint concerns is a delay in handling of a matter or some other suspected erroneous procedure that cannot be intervened by using regular means of appeal.

If a complaint is non-specific or the matter does not fall within the Ombudsman's remit, a complaint can not lead to measures. In cases belonging to the former category, complainants are advised as to how they should complement their complaints and a complaint form, which can make it easier to make a specific complaint, is generally appended to the reply.

A priori, the Ombudsman does not deal with a complaint that refers to a matter over two years old. However, this does not prevent investigation of a complaint if the case is exceptionally of a kind in which the Ombudsman can still help. Nor does transferring a complaint to another competent authority exclude the possibility of the Ombudsman taking measures if it is perceived that there are grounds for them after another authority has reached a decision on the complaint.

In addition to the above-mentioned aspects, another basic prerequisite for investigating a complaint is that there are grounds in the matter to suspect that an unlawful action has taken place or that there is some other justification for an investigation. Another reason

of that kind is typically that there is a need in the case for the Ombudsman to express an opinion or issue guidance in order to promote fundamental and human rights. If neither of these basic requirements is met, the Ombudsman can not help. The Ombudsman can not, for example, intervene in a decision made within the scope of an authority's discretionary power if no need for guidance or the expression of an opinion is associated with it from the perspective of fundamental and human rights.

About one complaint in five leads to measures by the Ombudsman. The measures, in turn, lead almost as a rule to an action by an authority or a legal state being corrected. Unfortunately, it has not been possible to help specifically the complainant in all decisions involving measures. In the cases where this has been the outcome, the beneficiaries of the Ombudsman's help have been future clients of administration.

The broadening of the Ombudsman's discretionary powers with respect to investigating complaints that came into effect during the year under review has not led to complainants being deprived of the help that the Ombudsman can give. In actual fact, the effect has been the opposite. Now, the resources available for investigating complaints can be channelled into, among other things, precisely those cases in which the Ombudsman really can help the complainant in some way or other.

COMPENSATION AND MEDIATION

The Ombudsman's work has traditionally been after-the-fact oversight of legality. The growing importance of and emphasis on fundamental and human rights changed the nature of this work more towards guiding official actions and promoting these rights. Even when no unlawfulness has been observed in the actions of authorities, the Ombudsman has increasingly often expressed his opinion concerning how an authority could have, by acting differently, promoted implementation of fundamental and human rights even better. Correspondingly, the Ombudsman has increasingly often made proposals concerning promotion of fundamental and human rights to authorities and bodies responsible for legislative drafting. In general, however, these proposals have mainly had the aim of bringing about future change in the behaviour of authorities and legislation. The view generally taken has been that nothing can be done to help the person who has suffered the rights violation on which the proposal is based.

It is precisely in this that a change is happening. Now, whether the violation that the complainant has suffered could still be corrected or rectified, or if this is not possible, whether recompense could be made for the damage done to or the suffering experienced by the complainant is considered separately. The Constitutional Law Committee has deemed the Ombudsman's proposal concerning an agreed settlement in a matter or making recompense for a violation to be warranted in order to achieve a citizen's rights, find a conciliatory resolution and avoid unnecessary legal disputes. Examples of the Ombudsman's proposals concerning compensation are explained in chapter 3.4.3. of this annual report.

Recompense is one form of an agreed settlement of a case. At the Office of the Parliamentary Ombudsman we have been trying to develop also other methods aimed at a settlement between an authority and a complainant. At their simplest, these can involve a legal adviser at the Office quickly contacting the subject of the complaint. A contact of this kind can lead to the matter being immediately rectified or corrected, for example in cases where what is involved is passivity or neglect on the part of the authority or an obvious mistake. Secondly, it is possible that agreement has been reached while the complaint is being dealt with, whereby the authority can, for example, be asked to itself examine possibilities of resolving the matter by agreement as an alternative to having the matter investigated in the Ombudsman's complaint-handling procedure. Thirdly, what can be involved is an actual proposal for a resolution that the Ombudsman makes after normal investigation of a complaint.

There seem nevertheless to be rather few cases that lead to actual conciliation proposals by the Ombudsman, although mediation is internationally quite a typical working method by ombudsmen. One reason

for the paucity of cases suitable for mediation may be the fact that the access to court has been implemented quite comprehensively in Finland. Among other things, our system of legal remedies based on administrative courts is well developed in this respect. In most cases it is possible to refer a decision of an authority to a court to be dealt with. As already mentioned, the Ombudsman can not generally intervene in a matter that is pending before a court nor initiate measures aimed at an agreed settlement while the matter is still pending. As I understand it, in those countries where mediation is a very common form of work that ombudsmen do, it is not as extensively possible as in Finland to refer matters to a court of law. That being the case, more room is left for mediation by the Ombudsman than in Finland. In any case, recommendations by the Ombudsman that compensation be made have so far been more common in Finland than actual proposals for an agreed settlement.

Compensation need not always be in the form of money; in cases where the wrong is minor, for example, an apology may suffice. Often, it is enough for people that an authority admits its mistake and expresses its regrets for it. Even monetary compensation can often be symbolic in its amount. Likewise in the case law of the European Court of Human Rights, the sums awarded as compensation for violations are generally no more than a few thousand euro.

The possibility of recompense is important not only as a means of providing compensation, but also because it can have a preventive effect and be conducive to shortcomings being redressed. On the other hand, something that I have stressed is that making recompense for violations of rights must not be a means of using money to pay off those who have been affected, without having to address the causes of the violations. First and foremost, violations should be prevented. If success is not achieved in this, they should be rectified or corrected. But if not even that works, recompense should ultimately be made for violations. The possibility of compensation for all violations of fundamental and human rights must belong to the fundamental rights system of every state governed by the rule of law. Our national legislation is still imperfect in this respect. However, the legal foundation for the Ombudsman's compensation-related proposals, which are not binding on authorities, is adequate.

TOWARDS A CHANGE IN OFFICIAL CULTURE

Apology and compensation have been alien concepts in Finnish official culture. However, good experiences have been noted with the Ombudsman's proposals regarding compensation. Many authorities have already understood that acknowledging an error and apologising for it as well as, when necessary, paying a small monetary amount as compensation are correct and effective means of restoring citizens' trust in official actions.

The Ombudsman is trying to promote the emergence of this new kind of official culture. I believe the change has already begun.

JUSSI PAJUOJA

THE DEFENCE FORCES IN FLUX

A comprehensive restructuring of the Defence Forces is currently in progress, and in conjunction with it important strategic choices are being made: how many and what kinds of forces does a credible defence of Finland demand? In what kind of organisation and in what garrisons will the forces be trained?

These choices relating to the dimensioning and operations of the Defence Forces do not in and of themselves concern an overseer of legality. Efficiency and purposefulness criteria relating to national defence as well as economic resources are the primary considerations when choices of this kind are made.

On the other hand, legislation sets many boundary conditions for reforms. This comment piece is devoted to questions and problem points that have cropped up on inspection visits to the Defence Forces and in complaints concerning them. Some of them are such that they, in one way or another, affect also the ongoing comprehensive overhaul, whilst others are phenomena that must be arranged independently of the overhaul.

The duties of Deputy-Ombudsman Jussi Pajuoja include attending to cases concerning the police, social insurance, prosecution service, Defence Forces, transport and communications, data protection, education, labour and church.

HOW COMMON IS COMPULSORY MILITARY SERVICE?

All who have done their national service have a clear conception of what an army really is: service as a conscript is what they themselves have experienced it to be. This mental image does not necessarily change.

Today's decision makers belong to age cohorts in which the proportion of men who have done national service is 80–85% of each age cohort. Thus doing compulsory military service was statistically very common.

The situation has changed rapidly in recent years. It is estimated that two-thirds of the 1993 age cohort who were called up in 2011 will actually do national service.

The reason for the change is first and foremost more stringent health screening. Whereas in 2005 some 5% of those called up were exempted from national service in peacetime, the figure was 10% in 2011. Those exempted from national service in peacetime on medical grounds are placed in fitness-for-service category C. The proportion of those whose induction

for service is postponed for a specific period, i.e. whose fitness-for-service category is determined to be E, has likewise increased. The vast majority of also them will not do national service later, either.

The tighter health screening is due to the Defence Forces' own guidelines, the intention with which is to help prevent and reduce the number of conscripts who are discharged before completing their national service.

By contrast, the number who do not serve in the armed forces for reasons other than health has remained steady. They include, *inter alia*, persons who do alternative civilian service, Jehovah's Witnesses, men from the Åland Islands and persons with multiple nationality. Examples of members of the latter group are a Finnish citizen who has lived abroad for a long time, is a citizen of also the other country and has no factual ties to Finland, or a foreign national who has acquired Finnish citizenship and has done national service in his former homeland. All in all, seven per cent of an age cohort do not do national service for reasons other than health.

Thus the statistical share of those who do national service has declined. Although national service is not a statistical concept, statistics do reflect the future trend. It can be seen on the basis of the results of the 2011 call up that in some of Finland's municipalities the proportion of men who are to do their national service will, based on the present criteria, be no more than about a half of the age cohort. Municipalities like this are to be found in especially Eastern and Northern Finland. At the same time, how common national service is has become relative.

LENGTH OF NATIONAL SERVICE

The fact that greater numbers than in the past do not do national service at all is partly reflected in the attitude that is adopted to the length of service. The question of the length of service continually comes up in the confidential conversations with conscripts that take place during the Ombudsman's inspection visits. Conscripts are dissatisfied with being ordered, against their will, to serve for a longer period than they themselves would have wanted.

The Eduskunta's Constitutional Law Committee has on several occasions adopted a stance on the length of national service. The present three-level system was arrived at in 1998. Before that, the national service period was eleven months for those trained as reserve officers and non-commissioned officers and eight months for rank-and-file servicemen.

At the moment, the length of service for those training as officers, NCOs or to perform more demanding special tasks as rank-and-file servicemen is one year; it is nine months for rank-and-file members who perform tasks that demand special skill, such as military policemen and motor vehicle drivers, whilst ordinary rank-and-file personnel serve for six months. Just over 40% of those required to do national service spend 12 months in the forces, just under 20% nine months and slightly over 40% six months.

The intention with a reform currently under preparation at the Ministry of Defence is that all service periods will be reduced by two weeks with effect from the beginning of 2013. After this, the periods will be eleven and a half, eight and a half as well as five and a half months.

When the Constitutional Law Committee deliberated the length of national service in 1997, it adopted a stance on the different lengths of service from the perspective of equality. It accepted the reasoning that different lengths were needed in order to achieve the Defence Forces' training and operational objectives. However, the Committee took the view that the reasons for the different lengths of service should have been set forth in greater detail and more concretely in the Government Bill than had been done.

The Conscription Act was revamped in 2007. In that conjunction, Deputy-Ombudsman Jukka Lindstedt drew attention to the fact that the Government Bill still failed to include particularly detailed and concrete reasons in support of having different lengths of service.

Although many conscripts consciously want and seek, for example, training as an officer, it is also possible to be assigned to the long service period against one's will. That prompts many kinds of reactions in practice. In extreme cases, conscripts transfer to alternative civilian service or seek a discharge on health grounds. Most, however, are content to suffer in silence, with poor service motivation as the result. Since the Defence Forces' training and operational needs are the reason for the long service period, poor motivation will, naturally, not be conducive to achieving them.

There are also differences between different intake batches. Those who begin their service in January are less willing to serve for a long period than those belonging to the July intake batch. Correspondingly, the proportion who are assigned to longer service against their will is higher in the January batch. One reason for the difference between intake batches is that many who intend to begin studying in the autumn try to get into the July intake batch.

The Defence Forces have been trying to resolve the problem of different lengths of service. An example of a good practice is a solution involving conscripts willing to serve for the longer period being transferred from one unit to another when the unit itself has not had enough men willing to do a long period of service.

However, these measures can not fully resolve the fundamental problem, which is how a state of equilibrium between demand and supply could be achieved.

TAILORED CONSCRIPTION

Thus the length of national service is strongly differentiated, as is also the case with the content of service.

One of the matters examined in its report by a working group, headed by Risto Siilasmaa, that studied the question of national service was how civilian competence could be put to more effective use during national service. At present, it is mainly the special skills of doctors, pharmacists and clergy that are availed of during national service. According to the report, examples of others who could be selected as possessors of special competence could include information technology experts, chemists and economists. The idea would be that their training during national service would be oriented directly towards special tasks in exceptional conditions.

There does not seem to be any impediment in principle to a specialisation development of this kind, which would mean an even greater differentiation between the contents of the training that different groups of conscripts are given. After all, there are already significant differences between the contents of the training given to those performing special tasks in the Army, Navy and Air Forces.

By contrast, a point that continually comes up in conversations with conscripts in the course of inspection visits is that the information presented in the media about national service especially tailor-made for professional sportsmen is causing a sense of injustice. The impression is that both the chronological length of service and its content are determined on the terms of top-level athletics.

In the conversations that have taken place a conscript who is, for example, a self-employed entrepreneur or farmer in civilian life may have expressed his disappointment that he has been assigned to a long period of national service against his will. When the length of service has been prolonged, there has been a feeling that insufficient flexibility has been forthcoming to allow them to take care of their business affairs, although there has been a perception that the personnel have indicated that there would be.

All in all, the present national service system faces three major challenges from the perspective of equality. First, fewer men than in the past are serving in the armed forces. Second, the lengths of time that conscripts have to serve differ more from each other than was formerly the case. Third, there is pressure also towards the contents of service periods being differentiated more. Associated with this is a need to ensure that conscripts' service motivation is maintained at a high level throughout their time in the forces. I shall return to these questions towards the end of this article.

AMALGAMATION AND CLOSURE OF GARRISONS

The amalgamation and closure of garrisons are determined by considerations relating to the effectiveness and purposefulness of defence. However, the planned reforms also involve factors that have dimensions with a bearing on oversight of legality.

From the point of view of conscripts, a thinner network of garrisons means longer driving and travel distances. Of the large garrisons, long distances are accentuated in especially the case of the Kajaani-based Kainuu Brigade. To cater for weekend leave transport, dozens of buses are hired in addition to conscripts' private cars.

As garrisons are amalgamated, longer trips to and from home are a question of costs, traffic safety and time use from the perspective of conscripts.

Amalgamation of garrisons also poses operational challenges to the Defence Forces. There has long been a shortage of doctors and since garrisons were once numerous, the small unit size was part of the reason why not all posts for doctors could be filled.

There are about 70 doctors in the Defence Forces at the moment, but their numbers vary sharply from garrison to garrison. In Kajaani, for example, only one of the four posts for doctors has been filled, and not a single doctor has been recruited in Sodankylä, which has two posts for doctors.

Now that conscript training is being centralised, health care in the training units should be arranged on a sound basis. The fact that garrisons are often in remote locations is a problem. Doctors can not be enticed to take up positions as health centre physicians in these locations any more than they are willing to go to garrisons there. The commitment of supply doctors and their expertise in military medicine have likewise been called into question.

It is obvious that the shortage of doctors in garrisons will not be solved without additional financial inputs. Competent care of one of conscripts' key fundamental rights, their health, is a question of paramount importance. The prevailing situation is not satisfactory, and because redressing it calls for additional economic resources, they will if necessary have to be transferred from other of the Defence Forces' operational expenditures.

FIRING RANGES AND ENVIRONMENTAL PERMITS

Although environmental permits for firing ranges are primarily matters that the environmental authorities and courts deal with, some complaints relating to environmental matters have also been received by the Ombudsman.

A priori, an environmental permit is required for a firing range that is located outdoors. The Defence Forces currently have about 50 firing range areas. The considerations involved when an environmental permit is applied for are above all protection of the soil and groundwater as well as noise and its abatement. Especially where garrisons located in urban areas are concerned, noise-related questions are of key importance. For example, court proceedings concerning a permit for the Santahamina garrison in Helsinki are now in progress and firing has had to be restricted in Riihimäki. Firing with heavy weapons is likewise the subject of court proceedings concerning, *inter alia*, the Pohjankangas and Vuosanka firing ranges.

With restructuring of the Defence Forces in mind, the present situation contains risks. Problems may arise from, for example, the possibility that an environmental permit and the prerequisites for obtaining it ultimately determine the location of the firing ranges and exercise areas at the disposal of the Defence Forces. This can affect garrisons' ability to operate, influence their location and conflict with national defence objectives. In addition, the Defence Forces themselves must take also environmental aspects into consideration in their activities.

On inspection visits to the Defence Staff as well as to the headquarters of the ground forces and the air force in 2011, I pointed out that from the perspective of the Defence Forces it would be advisable for them

to apply for the necessary permits and build equipment meeting demands on their own initiative. Alone the environmental protection costs of firing ranges will be large, an estimated €25 million, if some of the firing ranges are abandoned at the same time.

CHALLENGES OF CONSCRIPT TRAINING

At its best, service as a conscript can be motivating and challenging, meeting national defence needs and at the same time developing conscripts' capabilities and promoting their success in society.

The men arriving to do their national service have received an education that ranks very high in international comparisons in comprehensive and upper secondary schools and vocational institutes; some already have university degrees or other third-level qualifications from polytechnics. One of the key challenges facing national service lies in this: conscripts place high expectations on their training in the Defence Forces.

Compared with the general educational system, the number of trainers relative to trainees is low. In a basic company, for instance, the total personnel strength varies from 150 to 200. Of them, the head and deputy head of the company have obtained third-level qualifications. The administrative side is the responsibility of the company sergeant major. Basic training is taken care of by 10–12 non-commissioned officers. In addition, there are 20–30 conscript leaders.

When these figures are compared with the equivalent ones for, e.g., a comprehensive school, a vocational institute or an upper secondary school, the number of trainers with third-level qualifications relative to the number of trainees is very low in a basic Defence Forces unit.

Compared with the general educational system, the trainers' work and training experience is also chronologically short. The age of a company head and deputy head is typically in the range 25–30. Most NCO trainers are at most of the same age.

Thus the Defence Forces differ from the learning environment that precedes their own. The features that are accentuated in the general educational system are third-level training for personnel, broad work experience and also in other respects a large number of well-trained persons relative to the number to be trained.

What is fundamentally at issue is that training in Finland is a very high-quality sector in which competition is intense. For this reason, a spirit of willingness to defend the nation and positive attitudes towards the Defence Forces are not enough on their own. Training must qualitatively meet the expectations of young people arriving to do their national service. Those are expectations that the general educational system has for good reason engendered in them.

MAIJA SAKSLIN

IMPLEMENTATION OF FUNDAMENTAL RIGHTS IN THE EUROPEAN UNION

FUNDAMENTAL RIGHTS IN THE EUROPEAN UNION

The European Union and its Member States are obliged to observe the fundamental rights safeguarded in the European Union Charter of Fundamental Rights when they operate within the area of application of the treaties. In addition to the fundamental rights safeguarded in the Charter, the sources of the Union's fundamental rights are the general principles developed by the Court of Justice, the Member States' constitutional traditions as well as the human rights conventions to which the Member States or the Union have acceded. The importance of fundamental rights in the activities of the Union has strengthened in many different ways especially since the Charter became legally binding. Cooperation between national ombudsmen and the Union's institutions and agencies in the implementation of fundamental rights has also intensified. Oversight of compliance with the Charter is the responsibility of a national ombudsman when a national official, a national authority or other party exercising public power applies Union law. The Charter has become an important instrument in the promotion of fundamental rights.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

The European Union Agency for Fundamental Rights began its work in March 2007 and has thus been active for five years. Its foundation was part of a more general endeavour to institutionalise and mainstream fundamental rights as a component of European Union law and policy. The Agency promotes respect for fundamental rights throughout the EU.

Deputy-Ombudsman Maija Sakslin's duties include attending to cases concerning social welware, local-goverment, enforcement, agriculture and forestry, environmental authorities, immigration, customs, taxation and children's rights.

The purpose of the Agency is to provide the Union's institutions and agencies as well as the Member States with advice and expertise in relation to fundamental rights as well as to assist them in the implementation of fundamental rights. It is tasked with compiling and analysing data, providing advice and statements based on research as well as raising awareness of fundamental rights. The Agency publishes a variety of reports, manuals, educational materials, newsletters and media bulletins. In addition to printed publications, it uses a wide range of online communication tools. Good examples of its sources of online information relating to fundamental rights are its *S´Cool Agenda*, which is intended for children, a case law

database meant especially for decision makers and experts as well as *Charterpedia*, which contains material relating to the Charter.

The Agency publishes an annual report on the development of fundamental rights in the Member States.

The Agency does not examine individual complaints and can not comment on the compatibility of Union legislation with fundamental rights. Nor does it have any power to comment on whether the Member States are complying with the rights safeguarded in the Charter. The Commission ensures that the Charter is respected when Member States implement EU Law. The Court of Justice has the competence to rule on the implementation and interpretation of the Charter.

The Agency has a Management Board, which defines its priorities, monitors the Agency's work and decides on its finances and administration. Its members are independent experts nominated by the Member States and they serve for one five-year term. They can not be nominated for a second term. There are also two representatives of the Commission and an independent expert nominated by the Council of Europe. An auxiliary and preparatory body that serves the Management Board is the Executive Board, which also supports and advises the Director of the Agency. Deputy-Ombudsman Maija Sakslin is a member of the Management Board, the Executive Board and the Budget Committee.

To ensure the quality of the research done by the Agency, it has an 11-member Scientific Committee appointed by the Management Board. The members of this committee are persons who have distinguished themselves in the area of fundamental rights. The Director, whose term is five years, is the head of the Agency.

The Agency cooperates closely with the Council of Europe to avoid overlapping and ensure added value.

An essential part of the Agency's work is partnership and cooperation with civil society, national human rights institutions and other actors. The Member States have national liaison persons, with whom the Agency has regular meetings and intense exchanges of information.

The Agency's activities are determined within a five-year framework, which the European Council approves on the proposal of the Commission and having regard to the opinion of the European Parliament. When the Commission is preparing its proposal, it consults the Agency's Management Board. The Agency may operate only within the thematic areas set forth in the Multi-annual Framework. However, the Parliament, the Council or the Commission may ask the Agency to work also outside the thematic areas. The purpose of the framework is to ensure that the work done by the Agency complements the Union's other activities and takes into consideration the policies that the European Parliament and Council have formulated for the area of fundamental rights.

The present framework covers the period up to the end of 2012. The thematic areas in it are: racism, xenophobia and related intolerance, discrimination based on various grounds, compensation of victims, the rights of the child, including the protection of children, asylum, immigration and integration of migrants, visa and border control, participation of the citizens of the Union in the Union's democratic functioning, information society and in particular respect for private life and protection of personal data as well as access to efficient and independent justice. At time of writing, the Council has not yet adopted the framework for operations in the period 2013–17.

In only a brief period the Agency has become a significant actor in the area of fundamental rights in the EU. However, the EU Charter of Fundamental Rights and the work done by the Agency remain little-known in Finland. One reason for this is probably the fact that the range of languages used by the Agency is limited and only a few of its publications are available in Finnish and Swedish, not to mention Sámi and Romany. There would be a need to find ways and means to make the publication in also our national languages possible. The Human Rights Centre that has been created under the aegis of the Office of the Parliamentary Ombudsman offers excellent opportunities for an intensification of cooperation with the Agency. Hopefully also Finnish NGOs will participate more broadly in the activities of the Agency.

IMPLEMENTATION OF THE EU CHARTER OF FUNDAMENTAL RIGHTS MADE MORE EFFECTIVE

The visibility of fundamental rights in the activities of the European Union increased markedly during the year under review. The change has been evident in several different ways. The nature of the Union can be assessed as having changed from economic co-operation to cooperation that is founded increasingly on the rights of its citizens.

Once the Lisbon Treaty had entered into force and the Charter of Fundamental Rights had become legally binding in December 2009, the Commission adopted a strategy on implementation of the Charter. In May 2011 the Commission approved operational guidelines on taking account of fundamental rights when it carries out impact assessment of legislative proposals. In accordance with the guidelines, the Commission assesses the effects that its proposals will have on fundamental rights before it proposes new legislation. For this purpose, it has carried through also structural reforms and established an inter service group to share knowledge and experience. The Charter is binding on also the Member States when they apply EU legislation. Therefore the Commission strives also to ensure that the Charter is respected when the Member States implement and apply EU legislation.

In February 2011 the Council adopted Conclusions in which it affirmed that it has a key role in ensuring effective implementation of the Charter. It undertook to evaluate the effects that changes to the factual contents of the Commission's proposals have on fundamental rights. In addition, the Council approved the outlines of a procedure for ensuring compatibility with fundamental rights. In these it undertook a commitment to ensure that when Member States suggest changes to the Commission's proposals or present their own legislative initiatives, they assess the effects of the proposals on fundamental rights. In May the Council also drafted a summary of the measures that it intends to take to facilitate implementation of the Charter.

The Court of Justice of the European Union has been referring to the Charter increasingly often. References of this kind were made in 27 judgments in 2010 and the number had already increased to 42 the following year. In 2010 the Charter was referred to 18 times in requests for preliminary rulings that national courts made to the Court of Justice, and 27 times the following year.

A noteworthy decision among several important judgments made by the Court of Justice concerned gender equality. The Court found that EU legislation was in breach of fundamental rights when it allowed insurers to determine different premiums and benefits for men and women. This decision may have important ramifications in Finland. Other judgments by the Court with a bearing on fundamental rights concerned, *inter alia*, inhuman and degrading treatment in handling asylum applications, protection of personal data, human dignity and discrimination on the ground of age. The Court of Justice has become a court of human rights. Through its work, the importance of fundamental rights is becoming visible, their contents are being explicated and the uniformity with which they are applied is increasing.

WHERE TO TURN FOR HELP IF FUNDAMENTAL RIGHTS ARE VIOLATED?

The results of a Eurobarometer survey indicated that two-thirds of respondents were interested in finding out more about their rights under the Charter and where they would obtain help if their rights had been violated. Respondents stated that they would turn to a national court or an ombudsman or to an EU institution if their fundamental rights as guaranteed in the Charter were to be breached. The survey revealed that in reality citizens have little knowledge about what the Charter actually contained and when it is applied. More than half of the letters about fundamental rights that the Commission received concerned questions that are not within the scope of the EU's competence.

To help citizens, the Commission published new fundamental right pages on the European *e-justice* portal, which it had designed in cooperation with the Member States. It contains information on where citizens can make a complaint when they consider that their fundamental rights have been violated. The portal provides information about, for example, national ombudsmen and human rights institutions. To promote effective implementation of children's rights and protection of children, the Commission also opened its *kids-corner* Internet service, where children are told about their rights using texts drafted to be easily understood as well as games and competitions.

The objective is to help citizens also by stepping up cooperation both on the EU level and on the national level with various institutions. In October 2011 the Commission arranged a seminar for national ombudsmen and special ombudsmen to discuss practical handling of complaints concerning fundamental rights and the question of whether the Commission could transfer a complaint to a national ombudsman. The intention is to continue cooperation. By contrast, the question of the possibility of transferring a complaint received by a national ombudsman to the Commission is open. A problem that could arise in practice in national oversight of application of the Charter is the fact that in a situation where interpretation of Union law is not clear and undisputed, national ombudsmen do not have the right to ask the Court of Justice for a preliminary ruling.

The European Ombudsman drafted an interactive guide with the aid of which citizens can find the body to turn to when a shortcoming in administration occurs. The guide was published in all of the Union's languages and has proved very effective in practice. The European Ombudsman had earlier made agreements with some national ombudsmen providing for matters to be transferred to them.

There have been calls for also national actors, such as ombudsmen, to draft guides with the aid of which citizens will find their way to the right body to deal with their case and understand better when the Charter must be applied and what matters fall within its scope. This could be done, for example, in collaboration with the EU Agency for Fundamental Rights.

The Commission tries to get violations of Union law to end quickly, even though it can not directly compensate for damage that has been caused to an individual. National courts and ombudsman, in turn, are responsible for opportunities to obtain redress. An effective way of preventing and ending breaches is to inform of the right to receive redress for the damage caused by violations of Union law. The Commission has asked ombudsmen to inform the public of this possibility.

ACCESSION OF THE UNION TO THE CHARTER

In accordance with the Treaty on European Union, the Union will accede to the European Convention on the Protection of Human Rights and Fundamental Freedoms. Accession must be implemented in a way that it preserves the specific characteristics of the Union and does not affect the competences of the Union or the powers of its institutions. The Lisbon Treaty requires that the Union accedes to the Convention. The Treaty did not earlier contain such legal basis on the basis of which the Union could have adopted legislation on human rights or acceded to an international human rights convention.

The European Human Rights Convention has likewise been amended in a way that makes it possible for the Union to accede to it. Earlier, only states could be parties to the Convention. Several questions, perhaps the most significant of which is how to arrange the relationship between the European Court of Human Rights and the Court of Justice, are associated with the Union's accession to the Convention. A draft accession agreement was completed in 2011, but the negotiations on accession have still not been concluded. The Union's accession can not be regarded as merely symbolic, because the Union's actions can be subjected to evaluation by an outside instance in the future. A commitment to the Human Rights Convention will probably add momentum to many projects that have been launched to implement the EU Charter of Fundamental Rights.

2 The Ombudsman institution in 2011

The year 2011 was the Finnish Ombudsman institution's 91st year of operation. The Ombudsman began his work in 1920, making Finland the second country in the world to adopt the institution. The next countries to follow the example were Denmark in 1955 and Norway in 1962. The Ombudsman institution originated in Sweden, where the office of Parliamentary Ombudsman was created by the Riksdag in 1809.

The International Ombudsman Institute, IOI, currently has about 160 members. However, some ombudsmen are regional or local; Germany and Italy are examples of countries that do not have parliamentary ombudsmen. The post of European Ombudsman was created by the EU in 1995.

2.1 TASKS AND DIVISION OF LABOUR

The Ombudsman is a supreme overseer of legality elected by the national parliament, the Eduskunta. He or she exercises oversight to ensure that those who perform public tasks obey the law, fulfil their duties 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 examine the Eduskunta's legislative work, the activities of parliamentarians or the official actions 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 oversight of lawyers, which is the sole responsibility of the Chancellor of Justice. Only the Ombudsman or the Chancellor of Justice can decide to bring a prosecution against a judge for an 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 without their consent as well as for deprivation of freedom as regulated by the Coercive Measures Act has been centrally entrusted to the former. He or she is also responsible for matters concerning the Defence Forces, the Border Guard, peacekeeping personnel and courts martial.

The Ombudsman is independent and acts outside of the traditional tripartite division of the powers of the 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 oversight of legality. The objective is, *inter alia*, to ensure that various administrative sectors' own systems of legal remedies and internal oversight mechanisms operate appropriately.

The Ombudsman gives the Eduskunta an annual report 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 shown in Annex 1 of this report.

In addition to the Ombudsman, the Eduskunta 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.

The members of the management team at the Office of the Parliamentary Ombudsman at the end of the year were (from left) Secretary General Päivi Romanov, Deputy-Ombudsman Maija Sakslin, Deputy-Ombudsman Jussi Pajuoja and Ombudsman Petri Jääskeläinen. In December, Sirpa Rautio (right), LL.M. with court training, was appointed Director of the Human Rights Centre established under the aegis of the Office.

In 2011 Ombudsman Jääskeläinen dealt with cases involving questions of principle, the Council of State (i.e. Government) and other of the highest organs of state. In addition, his oversight included matters relating to courts and administration of justice, the prison service, health care and language.

The matters for which Deputy-Ombudsman Pajuoja was responsible included police, the prosecution service and the Defence Forces, education, science and culture as well as labour affairs and unemployment security. Deputy-Ombudsman Sakslin dealt with matters pertaining to, for example, social welfare, children's rights, taxation, customs, regional and local government, the environment as well as distraint and foreigners.

When the Parliamentary Ombudsman Act was amended, the changes included one affecting the provision concerning a substitute for a Deputy-Ombudsman to the effect that the Ombudsman can invite a substitute for a Deputy-Ombudsman to perform the Deputy-Ombudsman's tasks on a basis of real need irrespective of whether the impediment to the Deputy-Ombudsman performing his or her duties is a long- or short-term one. Having elicited the opinion of the Constitutional Law Committee on the matter, the Ombudsman chose Principal Legal Adviser Pasi Pölönen as a substitute Deputy-Ombudsman on 14.12.2011.

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.

In conjunction with a revision of the fundamental rights provisions of the Constitution in 1995, the Ombudsman was given the task of overseeing implementation of fundamental and human rights. This changed the perspective from that of the obligations which the authorities must meet to that of implementing people's rights. Since the constitutional provisions were revised, fundamental and human rights have come up in nearly all of 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 tasks statutorily assigned to the Ombudsman provide a foundation also 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 values of the Office of the Parliamentary Ombudsman were confirmed in 2009. The key values that guide the Office of the Parliamentary Ombudsman have been examined from the perspectives of clients, authorities, the Eduskunta, the personnel and management.

The values and objectives of the Office can be summed up as follows (see table on the next page).

2.3 MODES OF ACTIVITY AND AREAS OF EMPHASIS

Investigating complaints is the Ombudsman's central task and activity. In accordance with the legislative amendment effected in 2011, 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, he takes the measures that he deems justified from the perspective of observance of the law, legal protection 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 or she has a special duty to oversee the treatment of inmates of prisons and other closed institutions as well as the treatment of conscripts doing their national service. Inspections are also conducted in other institutions, especially those in the social welfare and health care sector. Oversight of implementation of children's rights is likewise one of the areas of emphasis in his work.

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. This report contains a separate Chapter 3, which deals with fundamental and human rights.

In addition, the Ombudsman must oversee the use of so-called coercive measures affecting telecommunications – listening in on telecommunications, telesurveillance and technical eavesdropping. The use of these measures generally requires a court order, and they can be used primarily in the investigation of serious crimes. The use of coercive measures often involves intervening in constitutionally guaranteed fundamental rights, such as privacy, confidentiality of communications and protection of domestic peace. The Ministry of the Interior, the Customs and the Defence Forces

THE VALUES AND OBJECTIVES OF THE PARLIAMENTARY OMBUDSMAN

Values

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

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.

are required by law to report annually to the Ombudsman on their use of coercive measures affecting telecommunications.

The law gives the police the right, subject to certain preconditions, to engage in covert activities to combat serious and organised crime. Through covert operations the police are able to acquire intelligence on criminal activities by, for example, infiltrating a criminal gang. The Ministry of the Interior must give the Ombudsman an annual report on also the use of covert methods.

An emphasis on fundamental rights is reflected also otherwise in determining the thrust of the Ombudsman's activities. In addition to overseeing observance of fundamental and human rights, his duties also include actively promoting them. 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. The special theme in oversight of fundamental and human rights in 2011 was language rights and the requirement that clear and precise language be used. The content of the theme is outlined in Sub-Chapter 3.5 dealing with fundamental and human rights.

2.4 REVISED LEGISLATION AND PROJECTS FOR REFORM

The amendments to the Parliamentary Ombudsman Act that relate to handling complaints entered into force on 1.6.2011. The criterion concerning the threshold for investigating complaints has been replaced with a formulation that facilitates case-by-case consideration more effectively than in the past. The Ombudsman's power of discretion and the range of actions that he can take were increased under the amendment and an emphasis was placed on the citizen perspective. The time within which complaints can be made was reduced from five to two years. The purpose of the reforms is to make oversight of legality more effective. The Ombudsman intends to develop procedures and improve the impact of his work in the manner that the revised legislation presupposes. The aim is to help the complainant, if possible, by for example recommending that an error that has been made be rectified. In his comment piece in the beginning of this annual report, Ombudsman Jääskeläinen deals in greater detail with the question of whether and in what way the Ombudsman can help a person who has made a complaint.

The amended legislation on the Ombudsman provided also for the creation of a Human Rights Centre and a Human Rights Delegation. In 2011 preparations for the launch of the Human Rights Centre's work in the early part of 2012 were made in the Office of the Parliamentary Ombudsman. The preparatory measures included the creation, by decision of the Eduskunta's Chancellery Commission, of posts for the Director of the Human Rights Centre and two experts and the appointment of the Director in December 2011. On 21.12.2011, having elicited the opinion of the Constitutional Law Committee, the Ombudsman appointed Sirpa Rautio, LL.M. with court training, as Director of the Human Rights Centre and she took up her post on 1.3.2012.

Preparations for ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) were still under way at the Ministry for Foreign Affairs during the year under review. Ratification presupposes the creation of a national monitoring body. The OPCAT Working Group, which is doing the preparatory work, recommends that the Ombudsman act as this monitoring body. The monitoring body would be tasked with, *inter alia*, inspecting places where people who have been deprived of their liberty are held or can be held, such as prisons, police cells and psychiatric hospitals. This task will bring new reporting obligations and will require an expansion of the Ombudsman's inspections, development of their contents and the use of experts from outside the Office. The OPCAT Working Group concluded its task in March 2011 and the intention is that a Government Bill proposing legislation on the matter will be introduced in the Eduskunta in 2012.

2.5 COMPLAINTS AND OTHER OVERSIGHT OF LEGALITY MATTERS

The number of complaints received in 2011 was 4,185 or about 100 more than in the previous year. The number of complaints resolved during the year was 4,385, representing an increase of over 400 on the previous year.

The number of complaints arriving by post or telefaxed or delivered personally has been declining in recent years and, correspondingly, the number received via e-mail has substantially increased. About 57% of complaints arrived by the electronic route in 2011. The corresponding figure for 2010 was 54%.

Complaints that have reached 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 e-mail is sent immediately.

Some complaints are dealt with through an accelerated procedure. About 800 complaints, or around 18% of the grand total, were dealt with this way in 2011. The purpose in dealing with complaints through the accelerated procedure is to ensure already at the reception stage that those matters recorded as complaints that do not require closer examination are preliminarily separated. 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 not suit-

Complaints received and resolved in 2001–2011

able for accelerated handling after all, it is returned to the ordinary complaints category, and a notification letter is sent to the complainant from the Registry. 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 legal officer taking care of the matter.

Letters of an enquiry nature received from citizens, clearly unfounded communications or those that concern matters that are not within the Ombudsman's remit or are non-specific in their contents as well as unanimous letters 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 to the Secretary General, who distributes them to the notaries and inspectors. The person who has sent a letter of also this kind receives a reply, and reply concepts for this category of matters are examined by the Secretary General. In 2011 there were 237 communications belonging to this register category.

Letters that are received for information only are likewise recorded, but not replied to. However, the Secretary General examines them. Contacts that are made using the feedback form on the web site are dealt with in accordance with these principles. In 2011 nearly 800 communications intended for information were received.

In 2010 the ten biggest categories of cases accounted for 80% of complaints. The numerical data for the ten biggest categories are shown in Annex 2.

A total of 64 matters were investigated on the Ombudsman's own initiative in 2011. Of these, 48, or 75%, led to measures by the Ombudsman. Of the own-initiative matters in 43 cases an authority was asked for a report or statement. Of these, 36, or just over 84%, led to measures by the Ombudsman.

The Office of the Parliamentary Ombudsman has set itself the goal of ensuring that all complaints are dealt with within a maximum of one year. The goal has been gradually approached in the course of recent years. Since 2008, not a single complaint that has been pending for longer than two years has been transferred to the following year at year's end. As 2011 was ending, 126 complaints that had been pending for longer than a year and a half and 279 that had been pending for over a year were transferred to the following year. The latter figure represented a reduction of about 22% compared with the previous year.

▮ received ▮ resolved	2010	2011
Complaints	4,034 3,960	4,147 4,385
Transferred from the Chancellor of Justice	45	38
Taken up on own initiative	63 52	82 64
Requests for submissions and attendances at hearings	60 58	37 42
Other written communications	290 290	239 237
Total	4,492 4,360	4,543 4,728

Oversight-of-legality matters received and resolved in 2010–2011

The average time taken to deal with complaints was 6.0 months at the end of the year, which was the same as the previous year (see table on the next page).

2.6 MEASURES

The most important decisions 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 or a proposal. 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.

Average time taken to deal with complaints in 2001–2011

A prosecution for breach of official duty is the most severe sanction at the Ombudsman's disposal. However, if he 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 aspects 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 828 in 2011, which represented nearly 19% 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 1,437 cases, or just over 32% of all cases. About 44% of cases that were investigated fully led to measures by the Ombudsman.

In about 45% of cases, i.e. around 2,000, 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 identified in 493 cases, i.e. about 11%. The complaint was not investigated in 25% of cases (1,117).

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 matter that is being dealt with in an appeal instance or other authority. Pending matters that were not investigated represented 12% of cases (517) 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 (over five years old until 1.6.2011) were not investigated.

MEASURES TAKEN BY PUBLIC AUTHORITIES

Public authority	Measure							Total number of decisions	Percentages*
	Prosecution	Reprimand	Opinion	Recommen-dation	Rectification	Other measure	Total		
Social security		6	170	1	10	1	188	878	21,4
- social welfare		5	137	1	3	1	147	579	
- social insurance		1	33		7		41	299	
Prisons		8	84	12	6	26	136	423	32,2
Police		3	109	2	2	1	119	742	16,0
Health care		10	74	8	3	13	108	481	22,5
Labour		3	32		2		37	186	19,9
Courts			31	1		3	35	258	13,6
- civil and criminal			22			3	25	221	
- special									
- administrative			9	1			10	37	
Other subjects of oversight		1	21	4	2	4	32	130	24,6
Education			14	1	6	1	22	175	12,6
Distraint	1		15	3		2	21	103	20,4
Local government		4	12	1	2	1	20	152	13,2
Asylum and immigration		1	4	1		14	20	82	24,4
Environment		2	11		1	3	17	136	12,5
Guardianship			9	3	1	3	16	102	15,7
Agriculture and forestry			10			1	11	79	13,9
Taxation		1	6	2		1	10	99	10,1
Prosecutors			7		3		10	89	11,2
Defence administration			6		3		9	57	15,8
Transport and communications			4	2	2		8	100	8,0
Customs			6				6	30	20,0
Church			3				3	29	10,3
Highest organs of state								59	
Public legal counsels								50	
Private parties not subject to oversight								9	
Total	1	39	628	41	43	76	828	4 449	18,6

* Percentage share of measures in decisions on complaints in a category of cases and measures investigated on own initiative

If complaints that were not investigated are excluded from the examination, the share of all investigated complaints represented by those that led to measures was 24%.

One prosecution for a breach of official duty was ordered in 2011. 39 reprimands were issued and 628 opinions expressed. Rectifications were made in 43 cases in the course of their investigation. Decisions categorisable as proposals totalled 41, although stances on development of administration that in their nature constituted a proposal were included in also other decisions. Other measures were recorded in 67 cases. In actual fact, the number of measures is greater than the figure shown above, because only one measure is recorded in each case, although sometimes several have been taken.

CASES LEADING TO CRIMINAL PROSECUTIONS AND CONSIDERATION OF CHARGES IN 2011

A Deputy-Ombudsman ordered one prosecution during the year under review (2422/2/11). What was involved in the case was that a district distraint officer had not been personally present when an eviction was carried out and had attempted in a telephone conversation with the party seeking the eviction to ascertain the quality and value of the property in the premises. In addition, the protocol drafted to describe the execution of the eviction contained incorrect and misleading information. In the opinion of the Deputy-Ombudsman, there were probable reasons in the case supporting the view that the distraint officer had been guilty of a breach of official duty. A state prosecutor laid charges and in a judgment that acquired the force of law on 14.3.2012 the Kanta-Häme District Court imposed a penalty of 20 day-fines on the defendant.

The Ombudsman or a Deputy Ombudsman ordered pre-trial investigation to be carried out in two cases. In one, a suspicion of an error in the discharge of official duty was focused on a decision by a police service to grant a driving licence to a person who had been banned from driving. A criminal investigation revealed that the holder of the driving licence had only requested a duplicate of the driving licence due to a change of name. A new permission to drive is not requested when a duplicate of a driving licence is applied for. The applicant's original driving licence and the new one were both in the police's possession. The person had not been granted the right to drive; he will receive that only when the driving licence is returned when the ban period has expired. The investigation revealed that there was no reason to suspect that improper procedure had been followed in the matter (3263/2/11). In the other case, the Ombudsman ordered a criminal investigation into claims about a judge's procedure in the course of a preliminary hearing (560/4/11). In the consideration-of-charges decision that he subsequently issued, the Ombudsman took the view that there was no evidence in the case that the district court judge had acted unlawfully.

Two cases in which the Ombudsman ordered criminal investigations as long ago as 2010 were still pending, in various stages of the criminal process, at the end of the year under review. One of them involves an incident in which a person was found dead in his cell in a prison. The Ombudsman asked for a further additional examination of the matter in early 2012. The other matter had been transferred to the Helsinki police service for evaluation and a decision as to whether the conduct of a criminal investigation was warranted in the matter. The Ombudsman requested that, in the event of a decision being made to conduct a criminal investigation, a notification would be made, in accordance with Section 15 of the Criminal Investigations Act, to a competent prosecutor. The criminal investigation was subsequently concluded and in March 2012 a district court prosecutor forwarded two applications for summonses in the matter to the Helsinki District Court.

In one case, a decision by a Deputy-Ombudsman on a complaint concerning the suspension of a criminal investigation led to the police continuing the investigation (2288/4/11).

2.7 INSPECTIONS

Inspection visits to 118 places were made during the year under review. That was nearly twice as many as in the previous year (68). A list of all inspections is shown in Annex 3.

Two-thirds of the inspections were conducted under the leadership of the Ombudsman or the Deputy-Ombudsmen and the remainder by legal advisers. A total of 43 unannounced inspection visits were made during the year.

Persons confined in closed institutions and conscripts are always 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 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.

2.8 COOPERATION IN FINLAND AND INTERNATIONALLY

EVENTS IN FINLAND

The Parliamentary Ombudsman's annual report for 2010 was presented to the Speaker of the Eduskunta on 8.6.2011.

The Ombudsman's annual report for 2010 was presented to the Speaker of the Eduskunta on 8.6.2011. Pictured are (from left) Deputy-Ombudsmen Jussi Pajuoja and Maija Sakslin, Ombudsman Petri Jääskeläinen and Speaker Ben Zyskowicz.

Numerous groups from Finland visited the Office of the Parliamentary Ombudsman and discussions with them focused on topical matters and the Ombudsman's activities. The Eduskunta's Human Rights Group visited the Office on 17.11. Officials from the Åland Government paid a visit on 23.11.

The Ombudsman, the Deputy-Ombudsmen and members of the Office staff paid visits to familiarise themselves with the activities of other authorities, made presentations and participated during the year in numerous formal hearings and other events. Ombudsman Jääskeläinen spoke at, among other events, a seminar for lawyers, a Foreign Ministry international affairs training course, a familiarisation event for new parliamentarians and a seminar and hearing event that was part of the national human rights programme of action. Deputy-Ombudsman Pajuoja spoke about undercover operations at the autumn meeting of the Finnish Association of Criminologists. The events at which Deputy-Ombudsman Sakslin spoke included a seminar organised by ITLA (the Finnish Independence Jubilee Year Children's Fund Foundation) and a seminar on jurisprudence.

Deputy-Ombudsman Sakslin and her staff familiarised themselves with the work of the National Audit Office (VTV) and especially its allocation and implementation methods of scrutinising effectiveness as well as the content of oversight of legality. The development of forms of cooperation between the Office of the Parliamentary Ombudsman and VTV in the conduct of inspections was discussed at the event.

INTERNATIONAL CONTACTS

The Office received several international visitors during the year. The Governor-General of New Zealand Sir Anand Satyanand and his country's Ambassador Mr. George Troup paid a visit on 4.5. The President of the Peruvian Constitutional Court Mr. Carlos Mesía Ramírez, Magister Mr. Fernando Calle Hayen and a representative of the Peruvian Embassy were received on 9.6. and the Director of the European Union Agency for Fundamental Rights Morten Kjaerum on 12.10.

Representatives of parliaments and other guests from, among other countries, Japan, Denmark, Russia, Kyrgyzstan and Afghanistan also visited the Office.

The International Ombudsman Institute's European region seminar "OPCAT and Ombudsman" was held in Warsaw on 13–14.9.2011. Ombudsman Jääskeläinen and Senior Legal Adviser Juha Haapamäki attended.

The Parliamentary Ombudsman belongs to the European Ombudsmen Network, 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 arranged every other year by the European Ombudsman together with a national or regional colleague. Ombudsman Jääskeläinen and Deputy-Ombudsman Pajuoja participated in a meeting arranged by the European Ombudsman for ombudsmen from the EU region in Copenhagen on 20–23.10.2011. The liaison persons, who serve as the network's nodal points on the national level, meet in Strasbourg every other year.

The Parliamentary Ombudsman has belonged to the cooperation network involving the Council of Europe's Commissioner for Human Rights and national human rights actors (National Human Rights Structures) since its foundation in 2007. The main activities are direct exchanges of information between members, thematic workshops as well as a newsletter about Council of Europe functions that is published at approximately fortnightly intervals. The annual meeting of liaison persons has been arranged in Strasbourg or Budapest.

The cooperation network's 2011 "round table" conference was arranged in Madrid on 21–23.9. It was attended by Ombudsman Jääskeläinen and Legal Adviser Pasi Pölönen. One of the themes at the conference related, as was the case the previous year, to a resolution adopted at a high-level conference that took place in Interlaken in February 2010 to deliberate the future of the European Court of Human Rights. The intention with the resolution is to disseminate, on the national level and in collaboration with national human rights actors, objective and comprehensive information about the European Human Rights Con-

vention as well as the legal praxis and procedures followed by the European Court of Human Rights.

The annual meeting of liaison persons belonging to the above-mentioned cooperation network was held in Ljubljana on 8.12.2011. The network's newsletter Regular Selective Information Flow, which deals with judgments by the European Court of Human Rights and Council of Europe functions will be continued and developed. Otherwise, how activities will continue is an open question owing to the organisational restructuring that the Council of Europe is undergoing. A variety of Council of Europe projects intended to shift the main thrust of safeguarding implementation of human rights more to the national level will in any event be continued.

Deputy-Ombudsman Maija Sakslin has been a member of the Management Board of the European Union Agency for Fundamental Rights (FRA) since 2010. At a conference of the Management Board on 19–20.5.2011, she was elected also to its Executive Board for a five-year term. She attended a meeting of the Management Board on 19–20.5 and 5.12.2011, meetings of the Executive Board on 23.9 and 5.12.2011 as well as of the Budget Committee on 18.5 and 5.12.2011.

Legal Adviser Jari Pirjola was chosen as Finland's representative on the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment for a four-year term from December 2011. The Committee oversees the rights and treatment of persons who have been deprived of their freedom in the Council of Europe member states and strives to improve protection of these persons by visiting closed institutions, such as prisons, police stations and psychiatric hospitals.

During the year, the Office of the Parliamentary Ombudsman replied to several requests from international bodies and other cooperation partners for information on human rights or the Ombudsman's activities.

2.9 SERVICE FUNCTIONS

SERVICES TO CLIENTS

We have tried to make it as easy as possible to turn to the Ombudsman. We have drafted a brochure, which contains a complaint form, outlining the Ombudsman's tasks and how to make a complaint. A complaint can be sent by post, fax or by filling in the electronic complaint form on our web site. The Office provides clients with services by phone, on its own premises or by email.

Two lawyers at the Office are tasked with advising members of the public on how to make a complaint. They dealt with some 1,900 telephone calls last year and about 120 people visited the Office in person.

The Registry at the Office receives complaints and replies to enquiries about them, in addition to responding to requests for documents. Last year, the Registry received about 2,500 telephone calls. There were around 240 personal visits by clients and 230 requests for documents. The records clerk mainly provides researchers with services.

COMMUNICATIONS

The media are informed of those decisions by the Ombudsman that are deemed to be of special general interest. 27 bulletins outlining decisions made by the Ombudsman or a Deputy-Ombudsman were issued in 2011 and a brief so-called network tip in 23 cases. The bulletins are also posted on the Internet in Finnish, Swedish and English.

In addition, decisions of considerable legal significance are posted on the Internet. About 220 of them were posted during the year. Publications, such as annual reports, are likewise posted on our website.

The Ombudsman's web pages in English are at the address: www.ombudsman.fi/english, in Finnish at: www.oikeusasiamies.fi and in Swedish at: www.om-

budsman.fi. At the Office, information needs are also the responsibility of the Registry and the referendaries (legal advisers).

An intranet planning and inauguration project was completed in the Office in October 2011 and the intranet is now in use.

2.10 THE OFFICE AND ITS PERSONNEL

The Office of the Parliamentary Ombudsman is in the Pikkuparlamentti annex building at the street address Arkadiankatu 3.

The regular staff totalled 57 at the end of 2011. The number of regular posts increased by one compared with the previous year when a notary's fixed-term employment contract was made permanent with effect from 1.1.2011. Three posts were created in the Human Rights Centre with effect from 1.1.2012.

In addition to the Ombudsman and the Deputy-Ombudsmen, the regular staff of the Office comprised the Secretary General, 10 principal legal advisers, 8 senior legal advisers and 11 legal advisers and 2 lawyers with advisory functions. There were also an information officer/an online information officer, 2 investigating officers, 4 notaries, a records clerk, a filing clerk, an assistant filing clerk, 3 departmental secretaries and 7 office secretaries. With effect from the beginning of December, a change in some official titles was effected after the Chancellery Commission had on 1.12.2011 approved the change proposed by the Ombudsman. The change brought the titles more into line with the degree of demandingness enshrined in the remuneration system used in the Office. A list of the personnel is shown in Annex 4.

In accordance with its rules of procedure, the Office has a management group comprising, in addition to the Ombudsman, the Deputy-Ombudsmen, the Secretary-General and three representatives of the personnel. Discussed at meetings of the management group are matters relating to personnel policy and the development of the Office. The Management Group met 12 times in 2011. A cooperation meeting for the entire staff of the Office was held on two occasions.

3 Fundamental and human rights

The most important observations concerning implementation of fundamental and human rights that were made in oversight of legality during the year under review are compiled in this section.

By fundamental rights is meant the rights that are guaranteed everyone in Chapter 2 of the Constitution. Human rights, in turn, refer to the rights of a fundamental nature to which all are entitled under international conventions that are binding on Finland under international law and have been transposed into national legislation. In Finland, national fundamental rights and international human rights complement each other to form a legal protection system.

This review begins from the international level with a summary of the year's human rights events. Most of this section is devoted to a review, articulated by fundamental rights, of decisions by the Ombudsman in 2011 that involved implementation of one or several fundamental and human rights.

3.1 HUMAN RIGHTS EVENTS

The fundamental rights dimensions of the European Union legal system have developed over the years. The latest document revising EU treaties is the Lisbon Treaty, which was signed on 13.12.2007 and entered into force on 1.12.2009.

With the adoption of the Lisbon Treaty, the EU became a legal person. It is stated in Article 6 of the Convention that the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Negotiations on the accession of the EU to the Convention are continuing.

With the Lisbon Treaty, the Charter of Fundamental Rights of the European Union acquired the status of a legally binding document on an equal footing with the Founding Treaties. The purpose of the Charter is to bring the fundamental and human rights that are recognised in Union law more clearly to the awareness of citizens and thereby strengthen the protection that citizens enjoy under the law. The EU institutions must observe the fundamental rights mentioned in the Charter when they are drafting Union legislation. The Charter has significance also in various sub-sectors of EU policy. It is binding on the Member States when they apply and implement EU legislation.

The Court of Justice has in several of its judgments taken into consideration the fact that the rights enshrined in the Charter are legally binding. It has often made reference to, in addition to the Charter, also the general principles on which Union law is founded as well as other fundamental and human rights documents, especially the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In December 2009 the European Council adopted a new programme of work in the field of justice and home affairs for the years 2010–2014 (the Stockholm Programme). It is a follow-on to the Tampere and Hague programmes. A central objective of the Stockholm Programme is to ensure implementation of citizens' fundamental rights and strengthen their security. The Programme comprises seven chapters: an introduction, citizens' rights, a Europe of law and justice, a Europe that protects, access to Europe in a globalised world, migration and asylum matters, and the external dimension of freedom, security and justice. The aim with the Stockholm Programme is to strengthen a Europe of law and justice.

The Vienna-based Human Rights Agency began its work on 1.3.2007. The Agency's first operational framework for a five-year period was confirmed in February 2008. It specifies the target areas in which the Agency can, in accordance with its founding decree, collect, analyse and distribute information as well as draft reports and make submissions. The areas of emphasis that have been chosen for the Agency's work include questions relating to opposing racism and discrimination, children's rights as well as to asylum-seekers and migrants. In 2011the Agency published several research reports (on, *inter alia*, the rights of illegal immigrants, discrimination, human rights education and protection of minorities). Deputy-Ombudsman Maija Sakslin was elected to the Executive Board of the Agency for a five-year term beginning in July 2010. She is also a member of the Management Board and of the Budget Committee.

In spring 2011 the Eduskunta passed an Act under which an autonomous and independent Human Rights Centre, which has a Human Rights Delegation, was created under the aegis of the Office of the Parliamentary Ombudsman on 1.1.2012. The Ombudsman appointed Sirpa Rautio, LL.M. with court training, to the post of Director of the Human Rights Centre with effect from 1.3.2012. The intention is that the Human Rights Centre, its Delegation and the Ombudsman will together form, in accordance with the UN-approved so-called Paris Principles, a national human rights institution which will strive to promote fundamental and human rights. The reform creates an umbrella-like institutional structure, which has synergetic effects on the existing fundamental and human rights structures as well as on work in the field of these rights. The aim is to create a framework for better harmonisation of fundamental and human rights matters as well as to promote exchange of information and cooperation in these matters.

Finland signed the Council of Europe Convention on preventing and combating violence against women and domestic violence in May 2011. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse entered into force nationally in October 2011. In November, a Government Bill (HE 122/2011 vp) to ratify the Convention on Action against Trafficking in Human Beings was presented to the Eduskunta. Finland's sixth report on implementation of the revised European Social Charter was submitted to the Council of Europe in February 2011. Finland responded in April 2011 to a report on this country issued by an advisory committee that monitors implementation of the Convention for the Protection of National Minorities.

In December 2011 the UN General Assembly approved a new Optional Protocol, dealing with complaints by individuals or states and investigation methods, to the Convention on the Rights of the Child. In July 2011 Finland gave its sixth periodic report to the UN committee that oversees economic, social and cultural rights. In August Finland gave its report to the UN Human Rights Committee, which monitors civil and political rights. Finland's combined 20th, 21st and 22nd periodic reports on implementation of the UN Convention on Elimination of All Forms of Racial Discrimination were given to the UN Committee on the Elimination of Racial Discrimination in November.

In June 2011 Finland participated in two formal hearings arranged by UN bodies that oversee compliance with conventions. The Committee against Torture dealt with Finland's combined fifth and sixth periodic reports on implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the other hearing, the Committee on the Rights of the Child dealt with Finland's fourth periodic report on implementation of the Convention on the Rights of the Child.

A working group appointed by the Ministry for Foreign Affairs as long ago as September 2006, and which includes also a representative of the Office of the Parliamentary Ombudsman, continued to study the prerequisites for ratification of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It has been proposed in conjunction with the preparatory work on the matter that the Parliamentary Ombudsman be appointed as the national oversight body that the Optional Protocol presupposes. The report drafted by the working group was sent on an extended round of submissions in spring 2011. A Government Bill will probably be introduced in the Eduskunta in 2012. The Ombudsman has drawn attention to the length of time that the process of ratifying the OPCAT Optional Protocol is taking. Finland

signed the Optional Protocol already in 2003, but preparatory work on the matter had still not been completed at the beginning of 2012.

In March 2007 Finland signed the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol. On 16.5.2011 the Ministry for Foreign Affairs appointed a working group tasked with the preparatory work for the measures necessary for ratification of the Convention and Optional Protocol, including the monitoring mechanisms provided for in Article 33 of the Convention. The working group includes a representative of the Office of the Parliamentary Ombudsman. The working group has until 31.12.2013 to complete its task. When the Convention comes into effect, it will mean additional oversight tasks for the Ombudsman.

3.2 COMPLAINTS AGAINST FINLAND AT THE EUROPEAN COURT OF HUMAN RIGHTS IN 2011

In 2011 a total of 433 new cases (377) against Finland were registered at the European Court of Human Rights. A Government response was requested arising from 24 complaints. At the end of the year, decisions were pending in 491 cases (551).

The latest additional protocol, the 14th, to the Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on 1.6.2010. Its purpose is to safeguard the prerequisites for the effective functioning of the European Court of Human Rights by improving the efficiency with which complaints are screened and handled. The protocol facilitates more extensive handling of simpler matters in a slimmed-down composition (a new single-judge formation and greater powers for the committee formation), and with this a new admissibility criterion ("significant disadvantage") was adopted. In addition, the term of office of judges of the Court was extended to nine years, but can not be renewed. At the same time, the Council of Europe Commissioner for Human Rights was given the right to intervene by submitting written comments and taking part in oral hearings before all Chambers or the Grand Chamber.

A very large proportion, about 95%, of the complaints made to the European Court of Human Rights are ruled inadmissible. This is done either in a single-judge formation or through a so-called Committee decision (3 judges). The respondent State is not informed of this decision; instead, notification is made, in writing, only to the complainant. Thus the matter does not call for measures with respect to the State. In 2011 a complaint was ruled inadmissible or was struck from the list of cases in 485 (214) cases.

A decision that a complaint satisfies the prerequisites for admissibility is made by the Court either in Committee formation (3 judges) or in Chamber formation (7 judges). A decision confirming a friendly settlement can also be made, whereby the complaint is struck from the Court's case list. The remaining judgments are given either in Committee or Chamber formation or by the Grand Chamber (17 judges). In its judgment, the Court resolves a case concerning an alleged violation of human rights or confirms a friendly settlement.

The Court issued 17 judgments concerning Finland during the year under review. Since two of the judgments concerned only compensation to be determined as a result of earlier judgments, the actual number of new judgments issued was five.

In addition to judgments, the European Court of Human Rights issued 16 (31) decisions in Chamber formation. Of these, 2 (14) ended in a friendly settlement after the complainant and the government had reached agreement and one (6) case was struck from the Court's agenda after Finland had conceded that a violation of a human right had occurred. In 13 Chamber-formation decisions no violation of a human right was established, or the complaint was ruled inadmissible on processual grounds. The European Court of Human Rights issued 17 (201) new interim measures relating to foreigners.

By the end of 2011 Finland had received a total of 158 (151) judgments from the Court, and 77 (74) complaints had been decided on (through a decision or a judgment) as a result of a friendly settlement or a unilateral declaration by the Government. The number of times that the Court found against Finland in the

period 1.11.1998–31.12.2011 is strikingly large, at 124 (119). In the same period, the total number of times that all of the other Nordic countries have been found guilty is 91 (89) (in 2011 the other Nordic countries were the subject of a total of 11 judgments, in only two of which the Court found against them).

LEGISLATION ON HOUSE SEARCHES FOUND TO BE IN CONTRAVENTION OF ARTICLE 8

In the cases *Heino* and *Harju* (both 15.2.2011), the breach of Article 8 was based on the fact that the power of the authorities who conducted the house search to decide on the purposefulness and scope of the search had been too unlimited. In addition, since the house search had not been based on a decision by a court, an after-the-fact legal remedy should have been available to the complainants. In the *Heino* case, which related to a house search and seizure made in a law office, the Court ordered the State to pay €4,000 compensation for suffering and €2,500 for costs. In the *Harju* case, the corresponding compensation sums were €3,000 and €2,500.

Arising from the judgments, the Coercive Measures Act was quickly amended so that, with effect from 1.8.2011, it has been possible for the party on whose premises a house search has been conducted to have a court assess whether the prerequisites for a house search had been met and if the procedure followed in the course of it had been in accordance with the Coercive Measures Act.

VIOLATION OF FREEDOM OF SPEECH

In the case *Reinboth et al.* (25.1.2011) the Court found that a violation of freedom of speech could be attributed to the State. The case involved a newspaper having published two articles about a fine imposed by a district court on another newspaper as the penalty for a breach of privacy (a process that ended with a precedent decision (2005:82) by the Supreme Court, which the European Court of Human Rights found to be in violation of the freedom of speech in the *Saaristo et al.* judgment in 2010; see page 46 of the Ombudsman's report for 2010). The domestic courts took the view that this news reporting concerning another newspaper had violated the privacy of the same person and imposed fines on the newspaper and some of its journalists in addition to ordering them to pay compensation.

The European Court of Human Rights found that what had been involved had been reporting the same facts that had been discussed already in the circumstances of the *Saaristo et al.* case and that the information had come from public trial material. The name of the person in question had not even been mentioned in the latter article. The Court took account also of the severity of the sanctions imposed on the journalists and the newspaper (requiring them to pay over €27,000 in all). A further matter pointed out by the Court was that the possibility of a sentence of imprisonment in news reporting by the media can be acceptable, from the perspective of the freedom of speech that journalists are guaranteed in Article 10 of the European Human Rights Convention, only in exceptional circumstances, such as in cases of hate speech or incitement to violence. The Court referred to recommendation 1577(2007) of the European Parliament to the effect that sentences of imprisonment for persons convicted of libel be ended. It ordered the State to pay the complainant company over €29,000 for the economic losses that it had incurred and court costs of €8,000.

TWO COMPENSATION JUDGMENTS

The Court issued two judgments that concerned questions of compensation for material damages during the year: they were in the cases *Backlund* and *Grönmark* (both 12.7.2011). The Court had found in judgments that it issued in 2010 that the period within which an action for confirmation of paternity had to be brought meant a violation of the right to privacy that is safeguarded in Article 8 (see page 46 of the Ombudsman's report for 2010). Since the Court had not adopted a position on the actual paternity ques-

tion in its judgment, it confined itself now to ordering the State to pay compensation of €500 to both complainants for costs.

Arising from the judgments, the Supreme Court changed its legal praxis through its full-panel decision KKO 2012:11 in January 2012. It confirmed that, despite the period within which an action for confirmation of paternity had to be brought having ended, it would give precedence to the provisions of the Constitution.

JUDGMENTS CONCERNING UNDUE DELAY IN TRIALS

The legal remedies against delays that were adopted in general courts of law on 1.1.2010 have led to the European Court of Human Rights subsequently ruling Finnish complaints about trial delays inadmissible on a fairly systematic basis. Nevertheless, some judgments concerning violation of the right to a trial within a reasonable period were issued during the year under review:

- *Seppälä* (11.1.2011): a trial concerning an economic crime lasted about 8 years; the State was ordered to pay the complainant compensation for suffering of €3,000.
- *Kalle Kangasluoma* (15.2.2011): a trial concerning an economic crime lasted over 6 years and 4 months in one court instance; the State was ordered to pay €5,000 as compensation for suffering and €1,683 to cover court costs.

CASES THAT ENDED IN FRIENDLY SETTLEMENTS OR WITH A UNILATERAL DECLARATION

In two of the cases that ended in friendly settlements the complainant had withdrawn the complaint to the European Court of Human Rights after the State of Finland had offered to make recompense and pay the costs of legal proceedings. One (6) ended with a unilateral declaration by the Government, i.e. an admission that a breach of human rights had occurred (marked with an asterisk * in the table). All of the cases that ended in this way during the year under review concerned the duration of legal proceedings.

Valo (25.1.2011)	length of criminal proceedings	€9,000
Koio (25.1.2011)*	length of criminal proceedings	€2,000
P.J. (3.5.2011)	length of civil proceedings	€8,500

Agreed settlements in cases concerning length of proceedings

COMPLAINTS OTHERWISE RULED INADMISSIBLE BY CHAMBER DECISION

In addition, 13 (11) complaints dealt with in Chamber formation were ruled inadmissible on the ground that no breach of a right was established or on a variety of processual grounds.

Failure to avail of domestic legal remedies led to the European Court of Human Rights declining to examine the *Sormunen* complaint (4.1.2011) concerning the prohibition on dual punishment in a situation where increased tax and a sentence of imprisonment were combined with each other. The *Vainio* complaint (3.5.2011) alleging unfairness in legal proceedings to quash a judgment in a tort case was ruled inadmissible as having been made too late in contravention of the so-called six months rule. A complaint in the *Kolu* case (3.5.2011) relating to a tort case concerning road easement was ruled inadmissible on the same ground. In the case *Lönnberg* (6.9.2011) allegations of deprivation of liberty as well as the conduct of a personal search and opportunities for an appeal in the latter matters were ruled inadmissible as manifestly unfounded and partly due to failure to avail of national legal remedies.

The Court took the view that in the case *Yleisradio Oy* (the Finnish Broadcasting Company) *et al.* (8.2.2011) no violation of freedom of speech had been involved. It deemed the grounds presented by the Supreme

Court in its precedent judgment KKO 2009:3, concerning interference in freedom of speech in a case in which matters relating to an incest trial that had been declared secret had been revealed in an interview in a TV current affairs programme, to be acceptable. There was likewise no violation of freedom of speech in the *Karttunen* (10.5.2011) case, in which the complainant had been found guilty of a criminal offence in relation to his Neitsythuorakirkko ("Virgin Whore Church") installation.

In the case *Heikkinen* (22.3.2011), the Court rejected the complainant's claims of violations of Articles 2 and 3 as manifestly ill-founded in a case in which a policeman in a situation of self-defence had used a firearm against the complainant, who was fleeing in a car, so that one shot had hit him in the shoulder. In the case Launiala (13.9.2011), the Court found the complainant's claims that his trial for breach of official duty had been unfair and that the principle of legality in criminal law had been violated to be manifestly ill-founded.

Some deportation cases in which violations of Article 3 were alleged were struck from the Court's list on the ground that circumstances had changed. In the cases *D.H.* (28.6.2011), *M.* (6.9.2011) and *F.S.* (13.12.2011), the complainants had been granted residence permits in Finland while the complaint process to the Court was still in progress. In the case *Shakor et al.* (28.6.2011), complaints by a total of 49 persons were struck from the list when the Finnish Government announced, after the Grand Chamber judgment (*M.S.S. v. Greece and Belgium*) concerning the circumstances of asylum-seekers and refugees in Greece, that the cases of the complainants who had been ordered to be returned to Greece would be taken up for re-examination in Finland. In the case *Duma* (29.11.2011) the reason for it being struck from the list was that the complaint was withdrawn by the complainant.

COMPENSATION AMOUNTS

In the cases where the finding went against it, the State of Finland was ordered to pay the complainants compensation totalling €59,700 (about €313,000 in 2010). Cases that ended with friendly settlements or unilateral declarations incurred a payment obligation of over €19,500 (€154,000). Thus complaints about breaches of human rights cost the State of Finland a total of over €79,000 (€463,000) in payments ordered during the year under review.

NEW COMMUNICATED COMPLAINTS

A response from the Government was requested in relation to 17 (30) new complaints. One of the communicated cases (no. 5556/10) concerns the annual report judgment KHO 2009:83 issued by the Supreme Administrative Court in the so-called asphalt cartel case (a response has been requested to alleged opportunities to defend against hearsay testimony, the threshold of proof applied and the presumption of innocence). The fairness of a trial is involved also in a case in which a court of appeal had changed the complainant's criminal sentence to his disadvantage without arranging an oral hearing, in the same way as in a case that applied to granting legal aid to the defendant in a criminal case.

What is involved in three cases is implementing protection of family life in a situation where a child has been taken into care, family unifications and arrangements for meetings with children. One case concerns the protection of correspondence that Article 8 safeguards, in a situation where an e-mail sent by a legal representative to his client had been held in a remand prison. The issue in two cases is implementation of freedom of speech because of criminal processual measures directed against reporters.

Seven communicated cases concern the compatibility of deportation (to Nigeria, Italy, Iran, Russia) with the prohibition on returning that is enshrined in Article 3; in two cases also the issue of effective remedies (with suspensive effect) in the meaning of Article 13

arose. Article 3, which prohibits inhuman treatment, is involved also in a case involving the use of observation jumpsuits in a prison.

3.3 THE OMBUDSMAN'S OBSERVATIONS

3.3.1 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. The observations are 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 presentation below is not intended to be the Ombudsman's overall view of the state of affairs regarding fundamental and human rights in Finland. Only a limited sample of information describing the effectiveness with which administration functions is revealed through complaints.

The purpose of the section is to outline a general picture of implementation of fundamental rights in administration and other activities that fall within the Ombudsman's powers of oversight. The feature of the decisions that is specifically highlighted here is their key fundamental and human rights-related content. It has not been possible to include here all of the decisions that are of significance from the perspective of fundamental and human rights.

3.3.2 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 obligation on the public authorities to promote real equality in society was underscored in conjunction with the revision of the fundamental rights provisions of the Constitution. Equality-related aspects are often invoked in complaints that the Ombudsman receives.

In order for equality of the visually impaired relative to others to be implemented in reality in administrative procedures, the initiative that authorities themselves demonstrate in making a positive contribution in various stages of these procedures is of accentuated importance. At least in situations in which, when an involved party's visual handicap has come to an authority's notice during handling of a matter that has been set in train on the authority's initiative, it is reasonable to expect that the authority would demonstrate initiative also in the stage where a decision or other document is being issued rather than just waiting for the client to make contact in order to obtain additional information. Although the Administrative Procedure Act does not mention oral provision of information, looking at the matter from the perspective of notification and obligations relating to interpretation, service and provision of advice, an authority could contact, for example, a visually impaired client by telephone and tell him or her that a decision or other document with such and such a content can be expected in written form in the near future (1461/4/10).

When a health service is purchased from an outside source, the same fee must be charged the client as when the service is a municipal one (3844/4/09).

A child welfare department had acted unlawfully when it failed to invite the children's father to client plan negotiations and discussions, failing to deliver client plans and decisions concerning a child, with instructions for appealing against the decision, without a separate request as well as giving the father guidance on how to appeal against decisions if necessary. The father of the children, who were in joint custody, is an interested party in matters to do with child protection in the same way as the mother is, and the father's views must be heard in matters pertaining to the children (245/4/10).

A prohibition, imposed by the Director of a regional council on a movie maker, on filming an information event relating to protection of the Saimaa ringed seal was contrary to the requirement of equal treatment in that the Director saw no impediment to the actions of a reporter from the local paper who was present at the same time and had photography equipment with him (4314/4/09).

It was not possible to invoke the demand for equal treatment as justification for the right of a prisoner who had been transferred to a hospital to use the phone being limited in a comparable way to the right of a prisoner in a closed prison, because the factors that are of significance from the perspective of the right to restrict were not the same in the two situations (1686/4/11).

The treatment of female and male prisoners should be equal if with respect to their placement in sections they are of mutually comparable statuses and no acceptable reason for treating them differently can be presented (4010/4/09). The Ombudsman stressed the importance of cooperation and exchange of information between the Valuation Centre organisation and prisons in order to promote equality when considering the placement in prison of a prisoner with limited mobility (3610/4/10). The regulations applying to occupation of prisons representing the same type of institution should a priori be uniform (4442/4/10).

PROHIBITION ON DISCRIMINATION

The prohibition on discrimination enshrined in Section 6.2 of the Constitution complements the equality provision. It requires that no one may, "without an acceptable reason", be placed in a more or less favourable position than others.

If the Swedish-speaking units of health centres are available only to those who are registered as speaking Swedish as their mother tongue, the rights of those who in their own assessment have a command of Swedish and wish to use it, but are registered as speakers of the other national language or some other language, are violated (661/4/10).

Metsähallitus (a state enterprise that administers state forests and national parks) had an acceptable reason when it granted only locals permits to drive snowmobiles in a national park other than following pre-existing ruts or official routes (1966/4/09).

When it determined that the personnel of an outsourced traffic service could not be appointed to other posts or tasks within the city system while the business operation deal was in progress, a city had, without an acceptable reason, placed these persons in a disadvantaged position relative to other employees and office-holders. A person's employment relationship or tenure of an official post with any functional part of a city that may be the subject of handover of a business or reasons of business economics cited by the city were not, from the perspective of the system of fundamental rights, an acceptable reason for a ban on recruitment (3920/4/09*).

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.

It is especially important that progress in a criminal investigation is expeditious when what is involved is safeguarding the bodily integrity of a child. It was not reasonable that no investigative measures were taken although over a year had passed since sexual abuse of a child had been reported (2309/4/10).

Handling of a case concerning the care of a two-year-old child and related matters had taken longer than thirteen months in a district court. The Ombudsman found that from the perspective of a child of this age, prolonging handling of the case had an especially

great significance. Special attention should be paid to the times taken to handle matters to do with care of a child and visitation rights (1135/4/10).

3.3.3 THE RIGHT TO LIFE, PERSONAL LIBERTY AND INTEGRITY, SECTION 7

A central objective of the State is to safeguard integrity in accordance with human dignity in society. This is the starting point for all fundamental and human rights. The prohibition on treatment that offends against human dignity applies to both physical and mental treatment. It is intended to cover all cruel, inhumane or degrading punishments or other forms of treatment.

Protection of fundamental rights applies to the individual's life and liberty as well as to personal integrity and security. There are two dimensions to safeguarding physical fundamental rights: on the one hand, the public authorities must themselves refrain from breaching these rights and, on the other, they must create the conditions in which these fundamental rights enjoy the best-possible protection against also private violations. The latter dimension is involved when, for example, people are protected against crime.

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. Special attention has been paid on inspection visits to putting an end to the tradition of bullying in the military. Personal liberty and integrity have also featured centrally in inspection visits to psychiatric hospitals, police stations, prisons and units of the Defence Forces. A focus of special attention on inspections of police facilities has been the use of coercive measures, such as arrest and detention, that impinge on the right to personal liberty, but remain beyond the control of the courts.

PERSONAL INTEGRITY AND SECURITY

Section 7.1 of the Constitution guarantees everyone the right to life, personal liberty, integrity and security. Section 7.3 prohibits violation of the personal integrity of the individual as well as deprivation of liberty arbitrarily or without a reason prescribed by an Act. The latter sub-section contains explicatory rules concerning intervention in personal integrity and deprivation of liberty. They apply to both the legislator and those who implement the law. All deprivations of liberty and interventions in personal integrity must be founded on laws enacted by the Eduskunta, and they must not be arbitrary. Personal liberty is a general fundamental right, one that protects not only a person's physical freedom, but also his or her freedom of will and right of self-determination.

Personal integrity and safety in health care and social welfare

The right of a complainant sent involuntarily for psychiatric treatment under the Mental Health Act to have his deprivation of freedom examined by a court without delay was violated when his appeal took longer than three months to deal with in an administrative court. The hospital ended his deprivation of freedom before the administrative court got round to arranging an oral hearing in the matter (1901/4/10*).

The regulations on medicating a patient irrespective of whether he or she consents to this must be interpreted narrowly. It is essential that when deciding to give a medicine, a doctor at the same time adopts a position, in accordance with the Mental Health Act, on also the restraint measures to be taken in conjunction with administering the medicine (3296/4/09).

The protection under the law of a person sent for determination of the state of his or her mental health presupposes that the law indicates clearly when the Detention Act is applied to a person sent for psychiatric examination. The Ombudsman made a proposal that the legislation be explicated (3022/4/09 and 2011/2/11).

When a patient was admitted as a voluntary patient to a closed section in a psychiatric hospital, he should have been given a precise explanation of his legal status and his express consent for restraint measures should have been obtained (3692/4/09).

A decision to give a swine flu vaccination to a child can be made a priori only by its guardians together. What is involved is not the kind of routine measure for which the consent of only one guardian would suffice (4640/4/09).

Intervention by the police in personal liberty and integrity

Customarily a large proportion of the complaints that come under the heading of Section 7 of the Constitution concern police measures against the liberty of an individual person. The criticism in the complaints is either that there has been no legal foundation for the police action or that it has been contrary to the proportionality-emphasising principles that the legal provisions enshrine. Something to which attention has constantly been drawn on visits to police units is that the reasons for depriving people of liberty must be appropriately recorded. This requirement is associated with the obligation to provide reasons that derives from Section 21 of the Constitution, which will be explained later in this chapter.

The way one dresses is a matter of personal freedom. Interference in a person's choice of dress must be evaluated as an intervention in his or her sphere of liberty and needs reasons derived from an Act. The police did not have a legal right to order a person at a motorcycle fair to remove the biker gang vest that he was wearing, because wearing the vest did not cause any threat to the event (2740/4/09*).

A person who had been summoned as a witness in a criminal investigation had been unlawfully placed in a locked room while awaiting questioning, although under the law this can be done only with persons who are suspected of a crime (380/4/10).

There was no justification for taking a wanted person, with respect to whom only a request for information on his whereabouts and a summons to turn up for questioning were contained in the wanted notice, straight from a police station to police cells (1065/4/10*).

The police did not have a legal ground to require three persons they had met to accompany them immediately to a police station to ascertain whether one of them was the person suspected of an aggravated assault who had been caught on CCTV. The lawful procedure would have been to summon them to a police station for a criminal investigation (2361/4/10).

A body search is an intervention in the constitutionally protected personal integrity of the person being searched. This must be taken into consideration when considering conducting a body search and when comparing, for example, the ground-for-suspicion threshold that is the reason for carrying out the search and the use of coercive measures of a kind that presuppose "due cause" (3625/4/09).

A security check by the police is possible only in conjunction with measures affecting liberty that are specifically mentioned in an Act. The law does not make it possible to conduct a security check even though grounds for an arrest exist, but no arrest is nevertheless made. Nor may it be conducted as some kind of contingency measure for the event that the person in question might later be arrested, for example on the basis of what is found during the security check. Something that especially must be rejected is that the police would routinely conduct a security check of a person who is the object of an official measure (3655/4/10). A prerequisite for a security check is that a decision to arrest the person has been made already before the measure is taken (1966/4/10).

What is ultimately involved when monitoring of persons kept in police detention facilities is evaluated is the authorities' duty proactively to safeguard implementation of fundamental and human rights, in these cases generally the right to life and personal safety. The State also has responsibilities associated with the European human rights system. In extreme situations, such as in cases of deaths in police detention cells, the State's obligations to protect life can make the material responsibility specified in Article 2 of the European Convention on Human Rights of topical relevance (4217/4/10).

Safety

The situation in a nursing home for the elderly was cause for concern, because the fire safety problems that had been known since at least January 2010 had not been tackled quickly. In addition, it had been agreed with the fire safety authorities that a sprinkler system would no longer be installed, because replacement premises would be completed in late 2012 or early 2013. The lack of an extinguishing system was acceptable only because the nursing home is closing down by the end of 2012 (1572/4/10).

Conditions of persons who have been deprived of their liberty

The last sentence of Section 7.3 of the Constitution contains a constitutional imperative which means that the treatment afforded a person who has been deprived of freedom must meet the demands of, *inter alia*, international human rights conventions. One of the special focuses in the Ombudsman's oversight of legality is on the rights that persons who have been deprived of their liberty for reasons that are in and of themselves legal enjoy while they are deprived of liberty. Numerous cases concerning these matters are resolved each year. The fundamental rights of persons who have been deprived of freedom must not be limited without a reason founded in law.

The general goal that has been set in the Prison Act of preventing crimes from being committed during imprisonment is not an empowerment provision on the basis of which a prisoner's rights could be restricted (3412/4/09).

The restrictions on rights that are associated with deprivation of liberty must be founded in an Act. The rights of a prisoner who is being kept separate from others while a breach of rules is being investigated must not, according to the law, be more limited than those of a prisoner who is serving a penalty of solitary confinement (370/4/10 and 446/4/10).

The substitute Deputy-Ombudsman criticised a prison for its action in refusing to give a prisoner who had been placed under observation the property that he had requested. Observation does not as such include restrictions on possession of property. On the other hand, it is possible that placement under observation in itself causes demands that in fact and justifiably presuppose a different attitude to the possession of property than placement in an ordinary accommodation section would (1804/4/10).

There are no separate regulations on telephone calls between prisoners housed in different prisons, and the statutory foundation is open to interpretation in this respect. Arguments can be made to the effect that also prisoners in different prisons should in some situations have a right to take care of their mutual business by phone. This possibility is indeed sometimes arranged, although there are no specific regulations on the matter. The Ombudsman proposed to the Ministry of Justice that it consider whether there is a need to complement the legislation with regulations on telephone calls between prisoners (1658/2/11).

A prison governor acted unlawfully when he required a prisoner and his visitor to provide urine samples as a condition for a visit, which was supervised, although the law states that a sample can be demanded only if the meeting in question is unsupervised (908/4/11).

A prisoner refused to put on the warm clothing that was offered for a transport from Riihimäki to Turku in December, and the heater in the passenger compartment of the van was not on. Nor did the prisoner request during the trip that the heater be switched on. Despite these facts, in the Ombudsman's view, it should have been ensured that the transport took place appropriately and that the heating was on (1774/4/11).

Implementation of technical monitoring is such an important matter from the perspective of protecting the safety and privacy of both prisoners and personnel that the Criminal Sanctions Agency should, in the Ombudsman's opinion, consider issuing guidelines concerning the location and use of, for example, monitoring devices and the preservation of recordings (2397/2/08).

The effect that violating the terms on which temporary releases are granted has on the length of the punish-

ment period was dealt with in some of the Ombudsman's decisions on complaints. He found that in situations in which the time that a person's deprivation of liberty lasts is extended, even though the person concerned has had no possibility of influencing the events that led to the temporary release period being extended, may involve an arbitrary deprivation of liberty (3350 and 3584/4/09 as well as 811/4/10).

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. The prohibition on treatment that offends human dignity applies to both physical and mental treatment and is intended to cover all cruel, inhuman or degrading forms of punishment or other treatment. The 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 importance of treatment respecting human dignity can arise in quite many different kinds of situations. The Ombudsman is required by the Parliamentary Ombudsman Act to conduct inspections in prisons and other closed institutions to oversee the treatment of persons confined there. The requirements of human dignity sometimes arise in the course of these inspections.

A patient isolated in a psychiatric hospital had to answer all calls of nature on the floor of his isolation room and had had to wait even long times for the substances to be cleaned up. The patient's treatment was humiliating and violated human dignity. The treatment that also a threatening and violent patient is given must be arranged in such a way that he or she is given the opportunity to perform bodily functions without loss of human dignity (4181/4/09*).

Transferring aged people from one service unit to another without they or their relatives having any input into the decision making offends the old peoples' human dignity (658/4/10).

3.3.4 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. This is called the principle of legality in criminal law. Problems relating to this only rarely need to be evaluated by the Ombudsman.

3.3.5 FREEDOM OF MOVEMENT, SECTION 9

The various dimensions of freedom of movement were regulated in greater detail when the fundamental rights provisions of the Constitution were revised. Finnish citizens and foreigners legally resident in Finland have the right to move freely within the country and to choose their place of abode. 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. Various forms of social assistance that depend on place of residence may also lead to problems from the perspective of freedom of movement.

3.3.6 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. In protecting these rights difficult comparisons of interests often have to be resolved with a view to safeguarding other fundamental rights, such as freedom of speech and the associated principle of publicity or the publicity of administration of the law, which demand a certain degree of intervention in privacy or the revelation of facts associated with it.

The provision in the Constitution concerning protection of privacy also mentions protection of personal data as a part of protection of privacy. The provision refers to a need to safeguard, through legislation, the individual's protection under the law and his or her privacy when personal data are being processed, registered or used.

RESPECT FOR THE PRIVACY OF HOME

House searches conducted by the police

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.

The Coercive Measures Act was amended with effect from 1.8.2011. The change means that the party on whose premises a house search has been conducted can refer the preconditions for the search or the actions during it to a court for examination. This will probably affect to some degree the number of complaints about house searches that the Ombudsman is asked to investigate.

Arising from the above-mentioned legislative amendment, a Deputy-Ombudsman took the view that the police must announce that it is possible to have the legality of a house search evaluated by a district court. The procedure should be enshrined in an Act, but before the legislative amendment is effected, the situation should be taken care of by means of guidelines (3229/2/11*).

A person who was arrested at home should have been given an opportunity to be present at the house search that was conducted immediately after the arrest (1230*, 1288*, 3586* and 4332/4/10*). A notification of a house search together with contact particulars could have been left in the place where the search was conducted when no one was present at the search (1658/4/10*).

A Deputy-Ombudsman issued a reprimand to a detective inspector for house searches that had been conducted in secret. They had been intentionally done in such a way that not even an effort had been made to give the tenant of the dwelling, the person who paid the rent or the persons who used the premises the opportunity to be present at the house searches. On the contrary, the police had carefully ensured, *inter alia* through surveillance, that the parties would not find out about the searches. Nor was anyone informed of the searches immediately afterwards, but instead only five months later (3165/2/10*).

A detective superintendent was criticised for failing to give the occupant of a dwelling the opportunity to be present at a house search. In the same case, a senior constable was criticised for having conducted an inspection under the Animal Welfare Act although it had not been demonstrated that there were grounds to suspect that the owner or custodian of an animal had committed an act that contravened the Animal Welfare Act and for which a statutory penalty had been proscribed (846/4/10).

The reasons given for the house search were not convincing, since the Deputy-Ombudsman had, on the basis of the reports he had received, been hardly able to evaluate the reliability of the information that the police had received in the form of tip-offs. In addition, it was pointed out that facts relating to the investigation do not justify delay in making notification of the house search and that a written order is the general rule (1261/4/09).

The police should not, while performing a monitoring task under the Aliens Act, have entered a dwelling and failed to comply with a request to leave, because a power of this kind has not been provided for in an Act (3695/4/09).

It was contrary to the principle of least harm that when a police dog had knocked over a rubbish bucket and spilled its contents on the floor, it had not been cleaned up and also the bed had been lifted onto its side. The dwelling should have been left in a state closer to what it had been in before the search (4149/4/10).

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.

There are no separate regulations dealing with a prisoner's opportunity to maintain contact with relatives during temporary hospital care and examination. When the regulations on a prisoner's right to use the phone are applied and the right to use the phone is being restricted, something that must be taken into consideration is that a right that belongs to the sphere of protection of family life and privacy is involved (1686/4/11).

A Deputy-Ombudsman considered it possible that, based on the information provided by a grandparent in his complaint and other documentary material, there was a personal tie between the grandparent, who acted as fiduciary, and the grandchild, who was of age and mentally handicapped, of a kind that belonged in the sphere of protection of family life and privacy (3096/4/09).

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.

Often, the limits of the protection of the confidentiality of communications arise when authorities are conducting criminal investigations and in communications to and from persons in closed institutions. Confidentiality of prisoners' communications is in many cases important also to ensure that the right to a fair trial is implemented.

The fact that a person is serving a sentence does not justify a general right to violate protection of confidential communications for any purpose whatsoever that relates to a criminal investigation and is not connected with a prison. Nor may reading a confidential message for any reason other than preventing or solving crimes committed during the period of imprisonment be justified by invoking the section of the Prison Act that deals with reading correspondence (3447/4/09).

A letter sent by a law office to a prisoner had been inadvertently opened in a prison, which jeopardised protection of confidentiality of communications (186/4/10). Since the grounds for reading a prisoner's letters did not appear from the inmate information system or anywhere else, it was not possible in the case to demonstrate a legal basis for reading the letters and the practice of reading prisoner's correspondence was not in accordance with the provisions of the Prison Act (3731/4/10).

Placing a telephone for prisoners in a warder's office meant in practice that the phone was being listened in on in a manner that bypassed the prerequisites enshrined in the Prison Act (3507/4/10, likewise 2813/4/11).

Looked at from the perspective of confidentiality of communications and protection of privacy, Chapter 13, Section 2 of the Prison Act did not with sufficient precision provide authority to conduct the kind of video monitoring that records the conversation between a prisoner and a visitor in detail during a supervised visit (4107/4/09).

A security guard with a police service had by mistake opened a letter received by a prison inmate, who was being kept in a police prison while on his way to a district court hearing, from his legal adviser. A Deputy-Ombudsman found that because what is involved is protection of communications as safeguarded by the Constitution and further correspondence between a client and his legal adviser, which enjoys special protection, special diligence and awareness can be expected of an official applying the law in practical situations (4439/4/10).

PROTECTION OF PRIVACY AND PERSONAL DATA

The opportunity to be admitted to follow a public trial may not presuppose being subjected in conjunction with a security check at the courthouse to information that belongs in the sphere of protection of privacy being disclosed to outside parties. Structural spatial arrangements in a courthouse or the lack of them can not be acceptably used as an argument in favour of conducting security checks in a way that violates protection of privacy (4250/4/09*).

A search of a car by the police violated protection of privacy, because the ground for the search was a gas spray that had been observed in the car, but possession of an unlicensed gas spray is not a firearm offence (1065/4/10*).

A Deputy-Ombudsman drew the attention of the police to the fact that if there are no legal grounds for a measure by the police, associated handling of personal data (for example photographs) is not lawful, either. In the same conjunction, the Deputy-Ombudsman pointed out that he considered it a problem that the right of the police to photograph persons they have under surveillance is not provided for with sufficient precision in the statutes. This problem will be rectified only partly by the amendments to the Coercive Measures Act and Police Act that come into force at the beginning of 2014 (1979/4/09).

The right to determination over oneself and one's body are among the things that are included in the sphere of protection of privacy. Intervention in the way a person dresses can be evaluated from the perspective of privacy (2740/4/09*).

Arising from protection of a prisoner's privacy, the so-called gender rule must be applied also in prison security checks that presuppose undressing, although this is not statutorily provided for in the Prison Act (1473/4/11).

If the composition of a group visiting a prison is such that it would be required on the basis of an Act to keep a prisoner's identity secret from the group, protecting the privacy of prisoners may be a legal obligation. Even if this is not the case, ensuring protection of the prisoners' privacy is a mode of operation that accords with the principle of least harm (2398/2/08).

Privacy in health care and social welfare functions

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.

Information relating to a patient's state of health must not be left where it can be seen by outsiders, such as other patients. Information that is required to be kept secret must be kept in a doctor's reception room in such a way that third parties can not see it (1840/4/10). A midwife breached her duty of confidentiality when she contacted, on her own initiative and without her patient's knowledge, the social welfare and child welfare authorities about a patient's affairs (1916/4/10).

A hospital district should not have sent e-mail messages, which revealed that the complainant had received health care services from the hospital district, through an open network (3438/4/09).

An insurance company had the right to receive only essential information about an injured person from patient records. A professional health care worker must assess what data are essential from the perspective of the intended use stated in the request for information to be furnished. Appropriate entries concerning the provision of information must also be made in the records (4595/4/09).

A doctor who was a member of staff of the Criminal Sanctions Agency and provided a report on a complaint by a prisoner had given a copy of his report in its entirety to the complainant for his information, although in the report he had revealed facts about the medical treatment given another patient, without that patient's consent. The patient's privacy and the fact that information can not be divulged without the person's consent or a reason founded in an Act must be taken into consideration in information relating to health care and social welfare provision (1575/4/10).

3.3.7 FREEDOM OF RELIGION AND CONSCIENCE, SECTION 11

Freedom of religion includes both the right to profess one's religion and to practise it in actuality. Freedom of religion and conscience includes also a negative freedom of religion. 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.

Freedom of religion includes the right to relinquish membership of a religious community. The procedures for leaving may not have the effect that they make it unnecessarily difficult for or even prevent persons from exercising their fundamental right. At the same time, however, they should safeguard the right to belong to a religious community. The action of three administrative courts was not necessary nor duly proportionate to their goals when they refused to approve applications to leave the church that had come through the eroakirkosta.fi ("leave the church") web site. The procedure likewise failed to safeguard the various dimensions of freedom of religion in a balanced manner (3666/4/10).

3.3.8 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. Freedom of speech is provided for in nearly the same wording in both the Constitution and international human rights conventions. 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.

A state research establishment violated a researcher's freedom of speech when it gave him a written warning after he had appeared before a parliamentary committee as an expert (3098/2/10*).

Photographing and publishing photographs are one area of exercise of freedom of speech. The relationship between freedom of speech as well as the publicity that is an aspect of a fair trial, on the one hand, and protection of the involved parties' privacy, on the other, arose in a case in which the president of the panel that issued a judgment in the Supreme Administrative Court had prohibited photographing outside the courtroom, i.e. in the waiting areas of the Supreme Administrative Court building. On a general level, the Ombudsman did not consider it out of the question that an authority could in some circumstances impose some degree of restrictions on also photography

using arguments founded on direct application of fundamental rights. In this case, however, the Ombudsman did not believe that there was any question of a gap in the law or other situation of a kind in which it would have been possible to extend a prohibition on photography to outside the courtroom by directly applying fundamental and human rights norms. The Ombudsman did not see any other grounds in the matter, either, that would have justified banning photography in the waiting areas (3149/4/10).

The Director of a regional council did not have a legal ground to prevent a movie maker from filming an information event relating to protection of the Saimaa ringed seal, because the movie maker was not present without a right to be and filming did not breach the privacy of the other persons there (4314/4/09).

When a letter that an inmate had written to the opinion column of a newspaper was read in a prison, it was an unlawful act because the reason given for doing so was the suspicion that the letter contained claims about prison officials that constituted slander. The regulations that authorise reading prisoners' correspondence and keeping a letter do not make it possible for an authority itself to prevent criticism of its official actions from being expressed (2703*, 2915*, 4356* and 4357/4/09*, 3830/4/10* as well as 313/4/11*).

Retaining possession of a prisoner's letter must be limited only to that part of a letter or postal despatch that is the ground for retention, if separating this part from the letter or postal despatch is possible in practice (3136, 3220 and 3315/4/09 as well as 907/4/10).

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 constitutional 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 avail of a statutory right 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.

A district court judge acted in contravention of the Act on publicity of trials in general courts when he refused to supply a journalist with the copy of a summons request that he had asked for after a preparatory hearing in a criminal case. What was involved was an action that was contrary to an explicit legal provision and established practice. The action was a conscious one and had been justified on the basis of arguments relating to safeguarding fundamental and human rights. However, there were no absolutely essential reasons in the case to restrict the publicity of the trial in order to ensure fairness of the proceedings (1094/4/11).

A Deputy-Ombudsman took the view that a municipal educational board should consider alternative ways of presenting groups of pupils in its annual report in such a way that the status of named pupils as members of special needs groups can not be inferred from the report (2983/4/09).

Even partial retention of documents from a postal despatch addressed to a prisoner which the authority that issued the documents has deemed public can be possible only very exceptionally and only on highly compelling grounds (3136, 3220 and 3315/4/09 as well as 907/4/10).

In many complaints concerning publicity of documents, however, the issue has been the time taken to deal with a request for information. The Act requires an authority to deal with this kind of matter "without delay" and information about a public document to be provided "as soon as possible", not later than two weeks or – subject to certain preconditions – no later than a month after the request. Closely associated with publicity of administration is also the general demand of openness of administration and service-mindedness when a client is seeking the information he or she needs.

The procedure followed by a district court when handling a request for a document was unsatisfactory from the perspective of the principle of publicity. Regularly requiring the name of an involved party or the diary number of the case did not as a mode of procedure implement the obligation that an authority bears to assist in individualising a request for information (556/4/10).

Charging a fee, in accordance with a decree concerning the charges to be made for services provided by the National Board of Patents and Registration, also for final accounts documents delivered electronically was in conflict with Section 34.1 of the Act on Openness of Government Activities. The Ombudsman did not find it acceptable, either, that in the way provided for in the decree, only sub-sections 2 and 3, which relate to services for which a fee is charged, of Section 34 of the Act are applied, but not the provision of subsection 1, which deals with providing information in ways for which no charge is made (1804/2/08).

3.3.9 FREEDOM OF ASSEMBLY AND ASSOCIATION, SECTION 13

More precise regulations than earlier were enacted in conjunction with the revision of the fundamental rights provisions of the Constitution. The right to demonstrate and join trade unions was specifically safeguarded. Mentioned as a part of freedom of association was also the right not to belong to an association, i.e. the negative right of 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. No cases relating to freedom of assembly and association were resolved during the year under review.

3.3.10 ELECTORAL AND PARTICIPATORY RIGHTS, SECTION 14

Political rights, i.e. electoral and participatory rights, have been conceived of more and more clearly as fundamental rights of the individual. In conjunction with the revision of the fundamental rights provisions of the Constitution, the desire was specifically to enact these rights on the level of the Constitution. Only persons separately mentioned in the Constitution, for example only Finnish citizens in national elections, have the right to vote. In addition to this, an obligation has been placed on the public authorities to promote the opportunity of everyone to participate, to the extent that possibilities permit, in societal activities and influence decision making that concerns him- or herself.

A municipality's remit does not include supporting political activities and the Local Government Act requires a municipality to treat its residents equally. A city had acted erroneously in giving electoral support to some members of the Eduskunta or their support groups. The city should have refrained from granting the support (3629/4/09*).

3.3.11 PROTECTION OF PROPERTY, SECTION 15

With respect to protection of property, a broad discretionary margin has been applied in the case law interpreting the European Convention on Human Rights, but this has not been able to weaken the corresponding protection afforded on the national level. Protection of property has traditionally been strong in domestic case law.

However, 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.

A public guardian had ascertained his principal's relatives inadequately, as a result of which he acted erroneously when alienating the deceased's domestic chattels. According to the Code of Inheritance, surrendering property belonging to the only heir to another party violated protection of the heir's property (3036/4/09).

A fundamental aspect of protection of property is that when a seizure order is overturned, the reason for retaining custody of an object is removed from the police, who must without undue delay and on their own initiative notify the owner that the object that has been released from seizure is available for collection (89 and 1828/4/10). It is more appropriate to return seized property in person than by post (4483/4/10). On the basis of the law, the destruction of supplies intended for the production of a narcotic substance must be done verifiably, which presupposes clear separate documentation (100/4/10*).

It was erroneous to keep a complainant's firearm in police custody for over six months without a decision, as required under the Firearms Act, to take it into temporary custody (436/4/10).

3.3.12 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. What is involved in this respect is not a subjective right, but rather an obligation on the public authorities to create for people the prerequisites for educating and developing themselves, each according to their own abilities and needs. The freedom of science, the arts and higher education is likewise guaranteed by the Constitution. The right to basic education is guaranteed for all children in the Constitution. The equal right of all children to education is also emphasised in the UN Convention on the Rights of the Child. The public authorities must ensure implementation of this fundamental right.

The disciplinary means to which a pupil is to be subjected under the Basic Education Act are stated clearly and exhaustively in the Act and no means of discipline other than those permitted and demarcated in the Act should have been used when dealing with a case of threatening behaviour in the school (2277/4/10).

The freedom of speech that a researcher at a research establishment enjoys can be regarded as being, precisely because of the freedom that science and research enjoys, in a certain way more special than that enjoyed by a public servant or employee of a body constituted under public law (3098/2/10*).

3.3.13 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, also the language and cultural rights of the Sámi, the Roma and other groups. The language provisions pertaining to the province of Åland are contained in the Act on the Autonomy of Åland.

Finland has also adopted the Council of Europe Charter for Regional or Minority Languages as well as the Framework Convention for the Protection of National Minorities.

Language rights have links to other fundamental rights, especially those relating to equality, freedom of speech, education, freedom to engage in economic activity as well as a fair trial and good administration. In conjunction with the revision of the fundamental rights provisions of the Constitution, an obligation to take care of the educational and societal needs of the Finnish- and Swedish-speaking segments of the country's population according to similar principles was extended to the "public authorities" as a whole, and not just to the State. As the structure of administration is changed and privatisation continues, this expansion has considerable significance.

Observations concerning implementation of language-related fundamental rights made in the course of oversight of legality are outlined in the section of this annual report dealing with the special theme for 2011, page 89.

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

In conjunction with the revision of the fundamental rights provisions of the Constitution, everyone was guaranteed the right according to the law to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The point of departure has been 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 addition, a duty to take responsibility for the protection of the labour force is imposed on the public authorities in the constitutional provision. The provision is of relevance in especially labour protection and related activities.

3.3.15 THE RIGHT TO SOCIAL SECURITY, SECTION 19

The central social fundamental rights are safeguarded in Section 19 of the Constitution. The Constitution entitles everyone 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 are also required by law to ensure adequate social welfare and health services for all. Likewise separately mentioned is the obligation on the public authorities to promote the health of the public as well as the well-being and personal development of children, in addition to the right of all to housing.

THE RIGHT TO INDISPENSABLE SUBSISTENCE AND CARE

Income support is a key financial benefit that safeguards the right to indispensable subsistence and care that the Constitution guarantees. It was a city's task to ensure that it had sufficient skilled personnel available to it and that it could make income support-related decisions in the manner that the Act requires and without delay. A dearth of personnel and the resultant backlog of applications did not justify delays in processing applications for income support (3518/4/10).

The round-the-clock on-call service that the Health Care Act requires had not been arranged in dental care. The arrangement did not safeguard patients' right to indispensable care or adequate health services (272* and 2767/2/10* as well as 1451/2/11).

The necessary medical care must be ensured for a patient also when a medicinal product remains outside the costs-reimbursement system (3233/2/08).

The right to indispensable subsistence of a person in the care of a public guardian failed to be implemented when it was not noticed in the guardianship office that the principal's rehabilitation allowance had ended, whereby he was deprived of regular income (3415/4/10).

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.

A complainant was left without security of basic subsistence when an unemployment fund failed to pay her unemployment benefits with respect to the "excess" periods in 2008 and 2009 when she was not entitled to per diem sickness pay (4652/4/09).

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.

The tasks of a joint board for a cooperative area include taking care of the arrangement of statutory health services in the municipalities within the area and thereby also ensuring the availability of the necessary reception services by a doctor. The duty to arrange remains with a joint board also when purchased services are used (363/4/10).

An intermunicipal joint authority arranged lymphatic therapy as medical rehabilitation only for those breast cancer patients who suffered from, in addition to postoperative swelling, also some other complication. By so acting, the joint authority excluded from the scope of a factual obligation to arrange services those patients who would have been entitled to lymphatic therapy as medical rehabilitation on the basis of their individual need for treatment (1725/4/10).

Under the Health Care Act, more detailed regulations on the principles in accordance with which auxiliary equipment is made available to patients can be issued in a Ministry of Social Affairs and Health Decree. It is essential to issue a ministerial Decree to ensure that the availability on an equitable basis of medical rehabilitation auxiliary equipment services can be safeguarded (1868/4/10).

A complainant's right to adequate medical services was not implemented when, owing to a hospital district's defective guidelines, she was not sent to a university hospital's maternity clinic for assessment concerning the mode of delivery and a birthing plan even though the father of the expected child suffered from congenital disturbed blood coagulation (18/4/10).

Shortcomings in an aged person's medical treatment and a nursing home's neglecting to draft a treatment and service plan for her did not safeguard her right to adequate health services and a high standard of care (230/4/10).

The Ombudsman did not consider it sufficient that a letter announcing the end of a complainant's long-standing therapy contained no guidance other than the telephone number of the clinic director. Although agreement had not been reached on the question of ending therapy, an attempt should have been made to end it in agreement with the patient in accordance with the Patient Act (706/4/11).

A health centre doctor acted incorrectly when he told a patient to contact a specialist himself. After he attended an on-call surgery, the patient should have been referred for follow-up examination in a specialist care facility with an urgency classification of 1–7 days (3346/4/09).

Guide dog services are included in medical rehabilitation auxiliary aids services and should not cause their users costs. The upkeep costs reimbursement sum paid to a guide dog user must cover the actual and warranted costs that the dog causes to its user (3535/4/09). Because the Finnish Federation of the Visually Impaired did not inform a hospital district authority that a guide dog had been temporarily taken away from its user, he was deprived of the medical rehabilitation auxiliary aid that the hospital care district had granted him, a guide dog, for over four months and his coping with everyday activities was not supported in any other way during that time (4538* and 4664/4/09*).

An opioid-dependent patient's right to adequate health services was not implemented, because he was admitted for treatment only nine months after the need for it had been determined (569/4/10).

The Ombudsman informed a social welfare and health board as well as a social welfare and health services centre of his opinion that unlawful procedure had been followed when inadequate availability of doctors meant that patients could not be informed of the date on which they would be admitted for treatment (1234/4/10).

The oral health care that a patient needed was delayed unduly at a health centre, because he received a service voucher to begin treatment only nearly one and a half years after the need for treatment had been assessed (2424/4/10).

A patient's right to adequate health services was not implemented when he had to wait over three years and two months for non-urgent dental treatment (3160/4/10). A patient's right to adequate health services was not implemented when he had to wait nearly nine months for treatment at a dental clinic (2453/4/10).

Defective entries in patient records

Complying with the regulations on patients' medical records safeguards the fundamental right concerning protection under the law that is enshrined in Section 21 of the Constitution and implementation of the adequate health services that are safeguarded as a fundamental right in Section 19.3 of the Constitution.

Defective entries in medical records meant that the National Supervisory Authority for Welfare and Health (Valvira) could not give the Ombudsman the expert medical opinion that he had requested in relation to the content and implementation of a patient's treatment. Therefore the Ombudsman could not himself assess whether the complainant had received health care and medical treatment of a high standard and whether a health care doctor had followed appropriate procedure in his professional actions (598/4/10).

It would have been in accordance with the Decree on Patient Records if a doctor doing on-call duty had on the following weekday entered a prescription that he had given by telephone in the patient records. What must be regarded as a minimum requirement is that an on-call doctor checks and ensures that the instructions he has given concerning a patient's care and medication have been correctly understood and entries concerning them made in the patient records (1245/4/10).

The information concerning the making of a DNR ("do not resuscitate") decision must be clear and understandable. The fact that the information has been given to the patient or their representative must also be entered in the patient records. The entries must likewise reveal what the patient's or representative's conception of the decision made has been (1571/4/10).

A dental nurse who appraised a patient's need for oral treatment should have made appropriate entries concerning the evaluation in the patient records (2453/4/10). A Bachelor of Medical Science acted contrary to the Patient Act and the Decree on Patient Records when he did not make an entry in the patient records describing the instructions he had given the complainant with regard to follow-up treatment (514/4/10).

The appointments-booking office of a city oral health care department neglected its statutory duty to make entries in patient records concerning assessments of a patient's need for treatment that had been made over the phone (3192/4/10).

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.

3.3.16 RESPONSIBILITY FOR THE ENVIRONMENT, SECTION 20

The environment must be preserved and remain viable so that all other fundamental rights can be implemented. The right to a healthy environment can nowadays be regarded as an international human right. When the fundamental rights provisions of the Constitution were being revised, a separate provision con-

cerning this matter was included in the list of fundamental rights. It contains two elements: first of all, everyone bears responsibility for nature, the environment and the cultural heritage as well as secondly an 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.

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.

3.3.17 PROTECTION UNDER THE LAW, SECTION 21

What protection under the law means in this context is mainly processual fundamental and human rights, i.e. procedural legal security. What is involved is the authorities following procedures that are qualitatively flawless and fair. 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 a 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 or civil court proceedings, the application of administrative law and administrative procedures. In an international comparison it is relatively rare for good administration to be seen as a fundamental rights question. However, also the EU Charter of Fundamental Rights contains a provision relating to good administration.

The demand for good administration follows in the final analysis from the Constitution and provisions on the level of an Act. Article 6 of the European Convention on Human Rights applies only to courts and authorities equatable with courts and not to administrative authorities. 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. Several matters belonging to the sphere of Section 21 are regulated also in the Prison Act.

When the procedures followed by courts – both general and administrative – are discussed, demands for protection under the law are largely based on, besides process-related legislation, the provisions of the Constitution and human rights norms.

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" (Chapter 40, Sections 7–10 of the Penal Code). Deviation from good administration 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 grey 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.

In the following we present an examination of sub-sectors of a fair trial and good administration that have featured a lot in the work of the Ombudsman. Owing to the large number of decisions, not nearly all of those issued during the year under review and that dealt with the rights safeguarded in Section 21 of the Constitution have been included. Besides, the various features of an individual decision may have been dealt with in several factual contexts. The presentation

is based on an examination of the fundamental and human rights demands associated with a fair trial and criteria of good administration.

OBLIGATION TO PROVIDE ADVICE AND SERVICE

Good administration includes an obligation to provide advice and service. Attention can be drawn to the way that an authority has arranged advisory services and, on the other hand, to the content of these services. In the provision of advice that good administration requires, it is not a matter of the kind of advice one would get from a lawyer, but mainly of telling citizens what rights and obligations they have and what procedure they should follow in order to institute processing of their matter and have their demands examined. An effort must also be made on the public servant's or authority's own initiative to correct any misconception that the client may have.

It took a patient 15 minutes to make direct contact with a health centre by telephone, after which the reply "wait a moment" was received from the appointments booking person, and then the wait lasted another 15 minutes (1144/4/10). In another case, the patient needed 32 minutes to make direct telephone contact with a health centre (2697/4/10). Such a long waiting time was not compatible with the service principle enshrined in the Administrative Procedure Act and the appropriateness of a service.

A primary caretaker nurse at a health centre had refused to tell a patient her name, because the patient had earlier behaved aggressively towards care personnel. The Ombudsman took the view that after an immediate threat to safety has ceased to exist, the identity of an official or other person performing a public task may not be concealed (3650/4/09). A senior constable did not present an acceptable reason for having failed to state his surname to a person who had asked it when he was breathalysed (2680/4/10). A guard with a private security company who conducted a security check at a district court should likewise have given his full name when asked for it (4250/4/09*).

Studying statistics published by a ministry – whether they are in printed form or published on the Internet – is not the kind of traditional transaction of business or handling of a matter at an authority that the Administrative Procedure Act's regulation on the service principle and the customer orientation that it includes applies to in the most conventional sense. On the other hand, customer orientation is important also in modern electronic operating environments, such as in the arrangement of authorities' various online services. In the broad sense, something that could also be regarded as belonging to customer orientation is how effortlessly information can be obtained in the national languages and found on official web sites (1308/4/10).

Officials at a day-care centre had told a complainant, incorrectly, that she had to bring mother's milk substitute to the day care centre herself. The complainant had been bringing the formula to the centre for about a week before the matter was redressed when a supervisor there looked into the matter immediately after returning from annual holidays (109/4/11). An Employment and Economic Development Office gave a complainant incorrect information about his entitlement to unemployment benefits during the time that he was on a trip abroad (702/4/10).

Replying to written communications

Good administration presupposes that letters other than frivolous ones addressed to authorities are replied to appropriately and without undue delay. No special deadline has been stipulated in the Administrative Procedure Act with respect to handling matters without delay.

An Employment and Economic Development Office and its labour guidance officer had responded to a complainant's enquiries only two months after he had first contacted them (678/4/11). A tax office replied to the itemised and clear enquiry made by a complainant living in Denmark only after he had complained to the Ombudsman (2796/4/10). A senior inspector at the Ministry of Employment and the Economy had, in the course of changing office rooms, placed documents that had come with a letter from a citizen into

the same folder as other documents. As a consequence of this error, it took over five years to answer the letter (467/2/11).

Due to negligence on the part of a tax office, a complainant was in ignorance about the grounds on which his tax was being assessed and he suspected that the reason he did not receive a reply was that the tax had been calculated incorrectly. A Deputy-Ombudsman drew the attention of the tax office to the obligation that authorities have to advise and respond to enquiries. This obligation is especially accentuated in the cases of clients who do not have firm ties to Finland and for whom it is therefore difficult to ascertain the principles on which their tax is calculated (2796/4/10).

THE RIGHT TO HAVE A MATTER DEALT WITH AND THE RIGHT TO EFFECTIVE LEGAL REMEDIES

Section 21 of the Constitution guarantees everyone a general 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. Correspondingly, Article 6 of the European Convention on Human Rights safeguards everyone's right to a trial in a legally established and independent court when his or her rights and obligations are being decided on or a criminal charge is laid.

Section 21.2 of the Constitution requires the right to appeal and other guarantees of a fair trial to be safeguarded in an Act. Articles 6 and 13 of the European Convention on Human Rights as well as Article 2 of the 7th Additional Protocol require effective and factual legal remedies.

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. The Constitutional Law Committee has in its practice regarded refusals of leave to appeal that are general in character and unitemised as problematic from the perspective of Section 21.1 of the Constitution (e.g. PeVL 70/2002 vp pp. 5–6). 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. In addition, the reasons presented in support of a decision are in an essentially important position when it comes to exercising the right to appeal against it.

The effectiveness of legal remedies can in certain cases presuppose recompense being made in one way or another for the harm that rights violations have caused. In trial procedures Article 13 of the European Convention on Human Rights leaves room for choice in the way recompense is effected. The Ombudsman can not intervene in courts' decisions, nor can he have an input into the way recompense is made. However, the Ombudsman does have the possibility of making various proposals with a view to recompense. The immaterial damage caused by undue delays in criminal trials is in certain cases compensatable in trial procedures. (Viz. Supreme Court judgments KKO 2005:73, 2006:11 and 2011:38).

Regulations on legal remedies to prevent trial delays and effect recompense for them have now been included in the relevant 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 the right of an involved party to receive compensation from State funds if legal proceedings in a tort, application or criminal case in a general court of law are delayed (see Supreme Court judgment KKO 2011:87).

In a statement he made to the Ministry of Justice, the Ombudsman supported the idea of broadening the scope of the the act on compensation for excessive duration of judicial proceedings to include also administrative courts. In his view, however, the legislation should enter into force as soon as possible and not only at the beginning of 2013 (2438/5/11*). An application in accordance with Chapter 19 of the Code

of Judicial Procedure to have a case declared urgent must be dealt with without delay and appropriately in order for this means of effecting a legal remedy against delays in legal proceedings to operate effectively. A district court gave its decision on an application to declare a case urgent only after about two and a half months. The complainant's letter had been incorrectly interpreted as an ordinary plea for expeditiousness (740/4/10).

Because a complainant's representative had, in writing and specifically citing a provision of the Enforcement Code, requested a decision as to whether a seizure of property should be cancelled on the ground that the receivable had been paid in full, the distraint officer should have issued a written appealable decision in the case (3260/4/10).

A land survey technician with a land survey office informed a complainant that the parcelling he had applied for would not be done, because zoning-related reasons prevented it. This procedure was incorrect, because the existence of the prerequisites for parcelling is among the matters that are resolved in a statutory survey transaction. The land survey office also followed incorrect procedure when it returned the application for a transaction to the complainant without the application having been withdrawn or a decision to reject it having been made (3081/4/09).

A city should have given appealable decisions concerning re-location to old people who were re-located in accordance with a decision of the Basic Security Guarantee Board. In addition, information on a matter concerning the phasing out of a home for the elderly should have been provided already in the early stages of planning the decision (4768/4/09). A city's social welfare and health centre should have heard a client's views and given him an appealable decision when it used a general guideline to alter the contents of a valid decision that the client had already received. A client must be given a new decision, which he can then refer to a court for assessment if he so wishes (2599/4/10).

A written decision together with instructions for appealing against it should have been made with respect to taking possession of the property of a patient who had been committed for psychiatric care (3209/4/09). The personnel of a health station had not made appropriate entries concerning a complainant's isolation and inspection of his property. The procedure that was followed violated the complainant's right to an effective legal remedy (3296/4/09). A decision limiting visits between a mentally handicapped adult person and his grandmother had been addressed to the grandmother. Instructions for making an appeal should have been appended to the decision (3096/4/09).

When a prisoner asks for property belonging to him to be given to him while he is in an observation cell, the question of whether or not to give him the property should be decided separately with respect to each item, and insofar as he is not given the property, a written decision outlining the refusal should be provided together with instructions for appealing against it (1804/4/10). Although the permanence of an earlier administrative decision or decision on the exercise of administrative law or res judicata might be unclear in the view of the prison, it would be more appropriate with the prisoner's legal security in mind to make a new decision on a matter concerning a permission or application relating to the prisoner than to fail to make any decision (3412/4/09). A prisoner should have been given a certificate of refusal in accordance with Section 29 of the Personal Data Act when his demand that entries in his patient records be corrected was refused (4887/4/09).

A city's social welfare department should have given a child's mother a written and appealable decision on restriction of contacts during an urgent placement period (4462/4/10). A person who had applied in writing for housing services from a municipal department providing care for intoxicant abusers should have been given written, reasoned, appealable decisions without undue delay (2783/4/10). A social worker had forgotten to issue a written decision on a complainant's application for income support (3836/4/10).

EXPEDITIOUSNESS 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".

Questions relating to the expeditiousness of handling matters continually arise in oversight of legality. The attention of authorities has often been drawn, for the purpose of guidance, to the principle of expeditiousness, also when what has been involved in a concrete case is not something that can be branded as an actual breach of official duty. The Ombudsman has tried to find out the reasons for delays and often also to recommend ways of improving the situation or at least to draw the attention of higher authorities to a lack of resources.

What can be regarded as a reasonable length of time to deal with a matter depends on the nature of the matter. The demand for expeditiousness is especially accentuated in social assistance matters. 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.

Delay in processing is often associated with inadequacy of the resources available. However, merely referring to "the general work situation" is not a sufficient excuse for exceeding reasonable processing deadlines. On the other hand, delay can result from otherwise defective or erroneous handling of the matter in question. In such cases, there can often be also other problems from the perspective of good administration.

Municipal authorities

A city's social welfare and health department unlawfully delayed its processing of a matter relating to services for the handicapped that an administrative court had referred back to it, because it took nearly six months to deal with the matter after it was referred back (2224/4/10). The overall period of nearly five months taken to process an application for allowance for caring for close relatives was excessively long in view of the nature of the matter and the individual's need for protection under the law (306/4/10). Correspondingly, the time taken to process decisions on client payments for family care, over eight months, was too long (2742/4/09). The time, about one year and six months, taken by a municipal road board to deal with a matter referred to it under the Private Roads Act was unreasonably long in view of its nature and scope (1595/4/09).

As a result of the careless action of a city's employment and economic development office, it took too long to issue a statement concerning a measure under labour policy and the processing time exceeded the statutory limit (2774/4/11). A complainant's request for a statement had been placed among the wrong documents in an employment office and as a result issuing of the statement was unduly delayed (4515/4/09). Handling of a complainant's request for a rectification took eight months. The board of a real-estate department was deemed to have neglected its duty to deal with the complainant's request for a rectification without delay (4864/4/09).

The individual affairs section of a city's basic services board dealt with a demand for reimbursement of day-care fees exactly a year after the application had been made. A Deputy-Ombudsman deemed the time taken to deal with the application to be too long (2452/4/10). Delay was also involved in the provision by a basic services director of a statement in relation to an application by a private family rehabilitation home (1611/4/10), drafting a rehabilitation plan at a health centre (1489/4/10) as well as dealing with a maintenance support case in two municipalities (845/4/10).

The Social Insurance Institution (Kela)

It was unreasonable from a complainant's point of view that it took 19 days for Kela to obtain the information it needed from an unemployment fund. It took Kela 1.5 months to deal with the complainant's application for unemployment benefits (2776/4/10). Processing of an application for unemployment benefits had taken over two months, mostly unnecessarily, in Kela (1553/4/10).

A Kela insurance district had neglected to deal sufficiently carefully with a case of demanding repayment of a rehabilitation allowance when it gave a complainant the account number of an office that had been closed and announced an incorrect due date on the invoice it sent. Handling of the matter had been delayed because of these errors (2664/4/10). The Kela unit responsible for demanding repayment of money neglected to deal carefully with a case of recovering funds when it reacted to the benefit recipient's death only two years later and recorded a letter from a complainant in the wrong documents. The measures to recover the funds had not proceeded without delay, either (4785/4/09).

The police and prosecution authorities

A request for an investigation waited 11 months either for a criminal investigation to begin or a decision not to investigate to be issued. The delay was due to a bad backlog of work at the police station, prioritisation of matters that were deemed more urgent as well as absences on the part of the officer in charge of investigations (658/4/11). A criminal investigation into causing injury had been unduly delayed and the police had not given an interested party an adequate explanation of the prerequisites for the case being investigated as one of causing injury (4679/4/09).

The duration of investigations of sucpected offences in office by police officers and their follow-up were looked into by the Ombudsman on his own initiative. No unlawfulness was identified in delays. Regarding follow-up, a Deputy-Ombudsman emphasised that supervisors in prosecutor's offices must ensure that police criminal cases are not unnecessarily delayed, and the Office of the Prosecutor General must monitor the situation nationally. A shortcoming is that statistical data still depend in part on manual keeping of accounts – information systems will not be developed in this regard before 2014 (610/2/10).

The total of over ten years taken to deal with a case involving several economic crimes, including four years during which charges were being considered, was unreasonably long. The court proceedings were just beginning. A Deputy-Ombudsman drew the attention of the Office of the Prosecutor General to the difficult situation in the economic crimes department of the Helsinki prosecution office (3460/4/09). The total time taken to deal with a case of causing injury and breach of official duty, from the first interrogation to withdrawing the charge and an exonerating decision by a district court, was over five years and absolutely too long (116/4/10).

Courts

The Ministry of Justice was informed of the Ombudsman's opinion that the Decree on on-call arrangements for district courts did not meet the requirements of the police in all respects. On-call sessions did not apply to all coercive measures in accordance with Chapter 5a of the Coercive Measures Act and intelligence acquisition under Chapter 3 of the Police Act that fall within the sphere of the court's jurisdiction and which can be very urgent and therefore cannot wait for official hours to begin (127/2/11).

Leave to appeal cases had been pending before the Supreme Administrative Court for 20 months without any proactive measures whatsoever and examination of the nature of the case (704/4/10). A court should have been proactive in its efforts to obtain the statement it had requested in an appeal case when the statement was delayed and the case involved was one concerning mental state that needed to be dealt with expeditiously. An appeal took nearly a year and four months to deal with in the Supreme Administrative Court (1580/4/09). The nearly two years and nine months taken to deal with a compensation for damages case, which was examined in written procedure in a district court was long, because the case was not particularly difficult or complex (11/4/11).

The duration of court proceedings dealing with a real-estate dispute (over seven years and three months) was too long (1458/4/10). A taxation rectification board was given a reprimand when it issued decisions on a complainant's rectification demands only after five years and five months (1330/4/10). An appeal took 18 months to deal with at the Unemployment Benefit Appeals Boards, which was deemed an unreasonable delay (3315/4/10).

Other authorities

Well over a hundred demands for rectification had been made to the Tax Administration with respect to decisions issued in response to applications for repayment of tax at source by the end of November 2009. In about one-third of cases the processing time exceeded ten months. The times taken by the Tax Administration to process some applications for withholding tax repayments were found to be unlawful. The reason was prioritisation of cases and an inadequate number of processing personnel relative to the number of cases. Only one person had been assigned to deal with demands for rectification (4137/2/09).

If there is a lack of clarity as to whether or not an asylum-seeker is a minor and concerning the applicability of the UN Convention on the Rights of the Child, an effort must be made to ascertain the person's age without undue delay. If an authority does not expeditiously interview asylum-seekers, the opportunity to have the matter resolved by an independent judicial body will also be delayed (270/2/11).

It took the National Supervisory Authority for Welfare and Health (Valvira) 15 months to deal with a complaint, which clearly exceeded the median time for dealing with complaints that is stipulated in the results agreement between the Ministry of Social Affairs and Health and Valvira. The length of the processing time was due to the large number of cases that the person in question had to deal with (4900/4/09). It took a regional state administrative agency unduly long, 22 months, to deal with a complaint (2903/4/10).

An insurance company was given a reprimand for delay in dealing with a traffic insurance case after it took the company nearly two years to process the matter (271/4/10). Handling of a matter concerning the return of a complainant's bonus share took three weeks in relation to damage insurance, and thus did not meet the requirement of delay-free processing (1556/4/10). Even after a complainant had supplied an insurance company with the report it requested, it still took the company seven months to process his claim for compensation for loss of earnings. The processing time was long, taking into consideration especially the fact that the matter had already been pending in the company for two years (2187/4/10).

Patient injury cases must be dealt with especially expeditiously when the granting of compensation to safeguard an applicant's subsistence is involved. However, it took over two years to deal with a matter relating to a family pension at the Patient Insurance Centre (1645/4/09).

In a case in which distraint proceedings were initiated in autumn 2005, a debtor's property had not been examined before 2010 to the extent that shares in a joint-stock company that the debtor owned had come to the knowledge of the distraint authorities. The first execution report for the debtor had been made only when he had been repaying his distrainable debt on the basis of a repayment plan for about four years (3485/4/10).

The time taken to process an application for earnings-related per diem allowance, nearly two months, by an unemployment fund was too long (3989/4/09). A complainant's application for a training allowance had taken 41 days at an unemployment fund, a time that can be considered long (4409/4/09). An application for earnings-related per diem allowance took over 7 weeks at an unemployment fund, which was too long. It is also important that an applicant for an unemployment benefit is given information on how long processing of the application is likely to take (79/4/10). An unemployment fund was given a reprimand because it was only in January 2010 that it started paying a complainant an increased per diem allowances on the basis of a decision that the fund had made in October 2008 (3084/4/09).

PUBLICITY OF PROCEEDINGS

Questions relating to publicity of proceedings arise mainly in the context of the oral hearings in the 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.

In the opinion of the Ombudsman, the scope of a ban on photography could not be extended to include the waiting areas of the Supreme Court building. The possibility of banning photography in a court is limited to the session in the courtroom itself, i.e. chronologically and spatially to the actual trial event (3149/4/10). The Act on security checks in courts does not make it possible to enquire about the personal particulars of a person arriving in the court. However, enquiring about medical and other substances during a security check may reveal a person's identity through prescriptions or similar items. If the information is not provided and not passed on to others, the procedure can not a priori be considered to be prohibited because of the principle of publicity of a trial (4250/4/09*).

In a public report issued by a district court in a case of sexual abuse of a child, it was mentioned that the perpetrator had been the child's father. In the Ombudsman's assessment, the report had been drafted in a balanced fashion from the perspective of protection of the involved parties and publicity of the trial. There had been no mention in the public report of the involved parties' name, place where the offence was committed or of the defendants' names or occupations (4798/4/09).

HEARING AN INTERESTED PARTY

Looked at from the perspective of the principle of hearing parties to proceedings, it is not possible to accept a deadline the observance of which would in practice place difficulties in an interested party's opportunities to study a proposed decision and other documents and present counter-arguments and possibly an additional report. The customs had given a nine-day deadline to provide a counter-report in a car tax matter instead of the normal 14–30 days. This procedure could not be justified by the office's results targets (3845/4/09).

Two visits, which were called inspections, had been made to a property. Because a municipality had regarded the visits as inspections in the meaning of the Waste Act, the occupant of the premises should have been given an opportunity to be heard before any inspection was carried out (3451/4/09).

Sending advance notification of a distraint execution is not a timely and adequate means of hearing a debtor when deciding on the lapsing of a payment plan (1075/4/10). A complainant had not received notification that distraint proceedings had been initiated, because his address data in prison had been incorrectly recorded at the Legal Register Centre. Execution ended in an insolvency impediment without the complainant having at any stage been informed that distraint collection had been initiated. This matter caused an entry of bad credit history to the credit data register (3879/4/10).

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. Article 6 of the European Convention on Human Rights likewise requires adequate reasoning in support of decisions. The obligation to reason decisions is defined in greater detail in, *inter alia*, the Code of Judicial Procedure, the Act on Criminal Trials, the Act on Exercise of Administrative Law and the Administrative Procedure Act.

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. Once again, numerous complaints concerning reasoning were resolved during the year under review.

A notary at a district court acted carelessly when determining the monetary amount of a day-fine and did not explain in the judgment on what basis the monetary amount had been arrived at. Because the defendant had claimed that his income had declined, it would have been appropriate for the notary to try to establish clarity in the matter, for example by requesting a statement (2016/4/11).

A decision by the board of a city's real-estate institution did not contain an explanation of the reasons for the decision and an answer to the question of why the decision could not be changed on the basis of the purposefulness principles invoked by the complainant. The principles on the basis of which the complainant's application for more moderate terms had originally been rejected were merely repeated in the decision (4864/4/09). The roads section of a municipality's rural affairs board inadequately reasoned a decision that it gave in relation to a matter that had been referred under the Private Roads Act to the municipality's roads board for resolution. Reference was made in the decision only to the response received from a private road maintenance association and the complainant's being heard during a transaction by the roads board (1404/4/11).

A prison had not given any reason for decisions to read a prisoner's correspondence other than repeating verbatim from the Act: "To combat a danger threatening order in the prison". This phrase did not contain the facts on the basis of which reading the correspondence had been deemed necessary (*inter alia*, 2106 and 3333/4/09).

A Kela office did not appropriately outline the reasons for its decision to grant a care allowance only for a specific period (3294/4/10). An official at an employment and economic development office forgot to record a visit by a complainant to the office and chose an incorrect reason for inclusion in a client's labour policy statement (3632/4/09).

An insurance company's decision on compensation had been inadequately reasoned and instructions for appealing had not been appended to it. In addition, the company had for reasons of moderation paid compensation for two months although it claimed that the applicant was not entitled to the compensation (4104/4/09).

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 relating to both court and administrative procedures. What was involved in some cases was an individual error due to carelessness, whilst in others the cause lay mainly in the procedural methods that authorities had adopted and in demarcations and assessments to do with factual power of discretion.

A city's social welfare department had not drafted a service plan in the meaning of the Services for the Handicapped Act for a complainant's son. The blameworthiness of this action was added to by the fact that by neglecting to draft a service plan the social welfare department had not complied with a decision issued by an administrative court and had not acted in accordance with a decision that a state regional administrative agency had earlier made in response to a complaint (1267 and 1249/4/10).

A distraint officer had decided for a reason not founded in an Act to allow a debtor's confirmed payment plan to lapse. In addition, a demand for payment and an advance notice of a distraint execution that were sent to the debtor contained mutually contradictory information about payment of the sums in accordance with a payment plan (1075/4/10). A distraint officer was deemed to have acted incorrectly when he had, without a compelling reason, specified a moving date that was less than a week after the date on which a demand to move was announced (801/4/09). As a result of a distraint office's error in recording receivables, costs had been recorded in the distraint information system as interest receivables (3775/4/10).

A police officer in charge of an investigation was criticised for the fact that superfluous information obtained through wiretapping had not been destroyed within the period specified in the relevant legislation, in addition to which the time it had taken to notify the suspect was unreasonably long, albeit not unlawful (609/2/10). Damage that had been caused to a door during a house search should have been notified immediately to the occupant of the dwelling. This would also have been in accordance with the principle of least harm (639/4/10).

A police officer in charge of an investigation had not informed an involved party without delay of his decision not to initiate a criminal investigation into allegations of sexual abuse that the involved party had made. The involved party was informed about the matter only about six months after the decision and when she enquired about it herself (3616/4/09). A decision to suspend a criminal investigation should have been notified to an involved party. Continuing the investigation would also have been more justified than suspending it (3602/4/10).

The police had decided to extend an order, made under the Firearms Act, to take temporary possession of weapons, although some of the weapons had earlier been confiscated on the ground of a crime, and they had not even originally been taken into possession of the police on the basis of the Firearms Act (1023/4/11). A senior detective constable had through carelessness put the wrong surveillance camera picture on the police information channel, as a result of which a person was deprived of liberty without cause (2361/4/10).

The view taken in a decision on a complaint concerning restriction of a criminal investigation was that, in a case in which a criminal investigation had been ended by decision of a prosecutor, it would be appropriate for a decision to re-commence the investigation to be made by the prosecutor or at least that resumption of the investigation be discussed with him. The prosecutor is in a position to assess whether, in spite of the earlier decision, there was reason to continue the criminal investigation (3578/4/09).

A district court chief judge who chaired the judicial panel in a criminal trial failed through inattentiveness to make an entry recording the arrival of an appeal from the defendant in the trial proceedings information system. For this reason, the prison was informed erroneously that no appeal had been made in the case (1456/4/11). Collection of a fine was delayed by over two years because a district court made an erroneous notification of the sentence (3647/4/09).

The right to a fair trial would have been implemented better if an administrative court had arranged an oral handling in a case concerning an inspection penalty in public transport (2295/4/10). An insurance company's statement concerning another person and the associated doctors' reports had by mistake been appended to a complainant's appeal documents at the Employment Accidents Appeal Board (2831/4/10).

A legal aid counsel had not, as agreed with his client, asked the Traffic Accident Board for a statement within the statutory period for doing so. Appropriate handling of the matter would have required that as soon as the legal aid counsel noticed his mistake, he would immediately have informed his client of this and of the consequences (3332/4/10).

A Kela insurance district had by mistake dealt with a complainant's application twice (2450/4/10). A Kela office had not initially sent a decision concerning an insured minor also to the minor's guardian (3879/4/09). A Kela office should have taken also an insurance compensation sum awarded to a complainant into consideration when it made a decision on a training grant (56/4/10). A Kela insurance district had by mistake appended a doctor's statement supplied to it by a client to documents relating to benefits matters that had already been resolved (2445/4/10).

Selling a dwelling that a person under a guardianship order uses as his own home is a very important step for the principal from the perspective of both protection of privacy and the right of self-determination. For this reason, the Ombudsman did not regard as on the whole, appropriate, the kind of licensing procedure in which neither the public guardian when applying for permission to sell or the registry office when granting it sought to ascertain the principal's position on the matter. The threshold to hearing the principal's views must be very low even though there might not be certainty about his ability to comprehend (973/2/10).

A complainant had on several occasions contacted his mother's public guardian and given to understand that she was unaware of what funds were at her disposal and the date of payment. The public guardian should have contacted his principal to find out about the matter (3503/4/09).

An insurance company had, according to its own statement on the matter, forgotten in one case to deal with compensations in accordance with the Traffic Insurance Act. The matter had initially been handled under the provisions of the Employment Accidents Act. The company had also failed to answer the complainant's enquiries appropriately (211/4/10).

An employment and economic development office had incorrect information about who was paying a complainant's unemployment benefits and sent a statement concerning measures under employment policy to the wrong party (4075/4/09). An employment and economic development office directed a complainant to the wrong service centre to take care of his business (56/4/11). An employment and economic development office applied the wrong point of law when it was dealing with a case to do with an applicant having quitted from vocational studies (518/4/11).

When an authority notices that it has made a mistake, it must attempt to the extent that possibilities permit to rectify the mistake and give the client of administration an explanation of what has happened and guide them in the matter. The Tax Administration neglected this duty, for which reason a Deputy-Ombudsman proposed that it should make recompense for the harm and bother its error had caused (424/4/10). A complainant's notifications of corrections and the documents appended to them were not studied carefully and the matter was not adequately examined in the Tax Administration, which led to an erroneous correction procedure being repeated several times (1675/4/10).

The discussions that took place after child welfare notifications by a youth services department and parents had been handled so badly that both parties had felt that they were the targets of threats in the matter. The attention of the youth services department was drawn to the fact that when the parents themselves request a meeting after a child welfare notification has been made, the principle of good administration requires that the meeting is not refused (3971/4/09).

The corrected protocol of a land division operation that the responsible engineer supplied to complainants was flawed insofar as it did not reveal what parts of it and when the engineer had corrected the protocol (267/4/09). A land survey office did not set a deadline for the statements concerning the amount of property transfer tax that it requested from the Tax Administration in cases concerning registration of title to a property. In the opinion of a Deputy-Ombudsman, the Administrative Procedure Act requires that a deadline be specified for providing a statement (894/4/10).

OTHER PREREQUISITES FOR GOOD ADMINISTRATION

The principle of being pertinent to purpose that Section 6 of the Administrative Procedure Act expresses contains a general obligation to exercise power only for the purpose that is assigned to it in an Act or for which it is intended to be used. The purpose of a driving ban is to prevent a person from driving a motor vehicle when they are regarded as lacking the prerequisites for doing so. The person may have committed traffic crimes or lack the requirements for obtaining a driving licence. The police decided, after the original ban had ended, to impose a one-week driving ban on a person who had been under a temporary driving ban for nearly four months. This was after a district court had rejected a charge of gross endangerment of traffic safety and taken the view that the person had been guilty of endangerment of traffic safety. In the view of a Deputy-Ombudsman, the decision was not justified in the light of the objectives that a driving ban is intended to achieve. Under the Act, it would have been possible to regard the driving ban as having been, given the length of the temporary driving ban, fully served (3004/4/10).

The police had made a notification under the Guardianship Services Act to a registry office about a person who was apparently in need of a public guardian. The principle of being pertinent to purpose, which guides

official actions, sets its own limits with regard to the discretionary power that authorities have with respect to making notifications. It must be possible to present acceptable reasons for making a notification after this has been done. Because the notification had been based on observations, made in the course of a criminal investigation, of a person and his ability to take care of and understand financial matters and suspicion of a crime is not a prerequisite for making a notification to a registry office, the police were not deemed to have acted unlawfully (97/4/10).

Availing of the possibility of correcting an error ex officio is a part of the service principle to be implemented in official actions. The Customs should have corrected car tax tables and tax decisions that contained errors. This would have promoted *inter alia* implementation of the principle of preservation of trust. It is important from the perspective of the effectiveness and smooth functioning of administration that an authority that has made an erroneous administrative decision can itself correct the error more flexibly and quickly than happens when the demand-for-rectification or appeal procedure is used (1664/4/09).

Protection of trust presupposes that a prisoner and a person who has come to visit him be confident that, by acting in the way required by the prison authority, i.e. by turning up for the visit at the time specified for it when it is granted, the visit will take place. A person had come 160 kilometres to meet a complainant, but because the granted visit had not been appropriately recorded in the prisoner data system, the visitor was turned away at the prison gate (1517/4/10).

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 processual rights to deal with also demands for punishment that an interested party presents.

The cases highlighted here are specifically those associated with a suspect's rights. Cases involving the rights of an interested party have been dealt with in the foregoing as especially a question associated with the right to have a matter dealt with by an authority. Several questions that manifest as issues of protection under the law have been examined already in the foregoing with respect to other constitutional provisions, such as Sections 7 and 10.

Responsibility for pre-trial investigation in remand prisoner's matters should be administratively and factually separate from responsibility for keeping them in custody. If investigation and custody are in the same hands, there is a danger that the conditions of custody and the treatment that the remand prisoner receives will depend on the progress of the investigation and the remand prisoner's attitude to it. Although there have not been any observations of this happening, the mere existence of the danger is ground for criticism. At its worst, the procedure can prevent implementation of a fair trial (3867/2/09*). Also a procedure in which a meeting between a remand prisoner and his legal counsellor representative is decided on by the police officer who is in charge of investigating the case can at its worst prevent implementation of a fair trial (1351/2/10*).

The right of a suspect or accused person to a legal counsellor or representative is in practice one of the most important minimum rights that are guaranteed to him in the European Convention on Human Rights, and the way they work is an especially important legal safeguard in precisely the criminal investigation stage. Because the right of telephone contact between a suspect being kept in police custody and that person's representative is absolute, the opportunity to make telephone calls must be arranged without undue delay. For these reasons, it was not acceptable to refuse telephone contact with one's legal counsellor on the ground that a visit between them had been arranged for the following day (1113/4/10).

The way in which a remand prisoner's telephone calls to his legal counsellor were arranged was that

a warder dialled the counsellor's number and handed the phone to the prisoner. The phone conversation took place in a space of such a kind that it was possible for the warder to hear the prisoner's side of it. A telephone call between a legal counsellor and a principal may not be listened to. Circumstances must be arranged in a way that makes it impossible to overhear the conversation. The police station announced that it had taken corrective measures in the matter (1961/3/11).

A prosecutor must when considering charges and the defendant and other interested parties when preparing a court case be able to trust that entries concerning the material on the criminal case that has been compiled in the course of a criminal investigation have been entered in the protocol of the criminal investigation, even if the police have not taken the view that it is of relevance in the case. A criminal investigation measure that has not yielded a result from the perspective of the police could be evidence of innocence in someone else's opinion. A variety of investigative measures provided for in the Criminal Investigations Act – irrespective of their final outcome – serve the end of solving a crime. It can be problematic from the perspective of a suspect's protection under the law if entries concerning measures of this kind are not made in the protocol of a criminal investigation or they are not otherwise brought to an interested party's attention (3313/4/10).

A detective-superintendent had, in contravention of the Coercive Measures Act, destroyed superfluous material obtained through wiretapping already before a judgment in the case had acquired the force of law. He had acted in accordance with earlier legislation and the police guidelines issued under it. The guidelines have subsequently been brought into compliance with current legislation (3484/4/10).

Merely refusing a saliva test was not sufficient ground for suspecting a person of being guilty of using a drug and driving under the influence. It is a different matter that a person is obliged by law to submit to a body search or a blood and urine test (3372/4/09).

The police were not able to determine after the fact on what a decision to interrogate a person as a crime suspect had ultimately been based. A suspicion must be founded on concrete facts, which must be checkable afterwards (3684/4/09). Although a detective-superintendent had acted within his discretionary powers when he decided that witnesses named by a suspect would not be questioned, also the opposite decision would have been easily justifiable (125/4/10).

There is no unambiguous legal basis for the police having a general obligation to draft, at a suspect's request, a written translation into a foreign language of a criminal investigation protocol in full. It is true that it follows from Article 6 of the European Convention on Human Rights that a crime suspect has the right during a criminal investigation to receive data on key documents in a language that he or she understands. However, it is possible to implement this right with an interpreter's help without the obligation to draft a written translation (4513/4/09).

IMPARTIALITY AND GENERAL CREDIBILITY OF OFFICIAL ACTIONS

As a provision of the European Convention on Human Rights sums it up, it is not enough for justice to be done; it must also be seen to be done. The thinking in Article 6 of the Convention is reflected on the administration of law side also on administrative procedure. In domestic law this is reflected by the fact that in Section 21 of the Constitution fair trial and good administration are combined in the same constitutional provision. 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.

In a preparatory session in a tort action in a district court other than his own, a district court judge represented a housing company in his capacity as the chair of its management board. As he was leaving the session, he said to the lawyer representing the other party: "Watch out that you don't come to a session of mine in Espoo District Court". Such behaviour outside of his official capacity was inappropriate for a district court judge and from the perspective of a judge's obligation to avoid conflicts of interest (1911/4/11).

A detective-superintendent in charge of investigating drug offences at a police service had participated in preliminary investigation of a suspicion of a drug offence having been committed by a close friend of his. The police service had been receiving tips about the matter for a year before the detective-superintendent brought up the question of his recusability with his superior officer. Assessment of the information that the tips contained should have been entrusted to someone else from the very beginning. What was also problematic was that the detective-superintendent had also discussed about the criminal investigation of the matter with, *inter alia*, the officer in charge of that investigation and made decisions relating to coercive measures in related criminal investigations and that he had a few years later been in charge of the investigation in criminal cases that were closely linked to new crimes on the part of his friend. It remains problematic that there are no general rules on recusability on the part of a police officer (609/2/10).

An officer in charge of an investigation at a police station had looked into his own son's possible involvement in a case of drunk driving that was under investigation. He had himself asked his son and a policeman who had been present about the matter and concluded that his son had not done anything wrong. The officer should have withdrawn from the investigation at the latest when he considered there was reason to find out about his son's role in the events. He could not himself decide or, as the officer in charge of the investigation, accept others' conclusion that his son was not involved in the matter. This final outcome was justified in and of itself, but what is of essential relevance is what the arrangements for investigation looked like from outside (3821/4/10*).

A principal's protection under the law was not implemented especially well when neither his public guardian when applying for permission to sell the principal's home or a registry office when granting the permission had tried to find out what the principal's position on the matter was (973/2/10).

Municipal office-holders were recusable when they participated in dealing with an administrative complaint that focused on themselves. They were also recusable when they took part in handling a report to be sent by the municipal board to the Ombudsman after the report had been requested arising from a complaint in which an action of theirs was criticised (4582/4/09).

A senior administrative nurse had participated in decision making by a hospital district's governing bodies concerning an organisational change that affected, among other things, the discharge of her spouse's official tasks and changed his official title. What was involved in the case was dealing with and deciding on a matter in which a close relative of the nurse was an interested party. Recusability stemmed also from the fact that the nurse's close relative could be seen to have obtained special benefit in the matter. The nurse should have left when the management teams and the board of the joint authority were dealing with these matters in their meetings (1151/4/10).

Notices of invitation for applications for posts had been published only on the Custom's Internet page for this purpose. From the perspective of openness of official activities, it would be desirable for invitations to apply for posts not to be confined to one channel only, and the authority's own electronic channel at that, especially when there is a need, with the discharge of the tasks belonging to the post in mind, to let as many capable people as possible know that applications are being sought. This is also conducive to strengthening trust in official actions (3907 and 4059/4/10).

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.

A report by a permanent expert with the Patient Injuries Board did not meet the requirements of good use of language, because in it critical and disparaging expressions were used about the complainant and his representative. They had found these expressions personally offensive (1134/4/10).

The choice of words made by an official at a social welfare office were inappropriate in a situation where he had described a client's way of failing to apply for primary benefits by saying: "You can't be perpetually weaselling out of things." The social worker's intention was not to offend the client, because immediately he heard the client's reaction he had tried to explicate the words he had used and expressed his regret for what had happened. A Deputy-Ombudsman drew the social guidance officer's attention to the importance of using neutral and appropriate language (2058/4/10).

3.3.18 SAFEGUARDING FUNDAMENTAL RIGHTS, SECTION 22

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

A surveillance notification form used in conjunction with traffic surveillance was not in Swedish at all. The form was used when drafting a document, which was both proof of a police measure and granted a right to drive a vehicle after its registration plates had been removed. The Ombudsman found it regrettable from the perspective of the requirement to promote fundamental rights that the Traffic Police had not taken or even announced that they would be taking appropriate measures on their own part to correct the shortcoming that had been revealed (3463/4/09).

3.3.19 OTHER CONSTITUTIONAL OBSERVATIONS

The President of the Supreme Administrative Court sent a letter to a police authority responsible for enforcing refusal-of-entry decisions and the National Police Commissioner in which, *inter alia*, he referred to a possible change in the law and suggested "from the court's point of view" that there was no need for urgency in enforcing decisions in the cases. The Ombudsman found the President's action to be contrary to the principles of separation of powers of the state and independence of the judiciary that are enshrined in Section 3 of the Constitution. The action was also inappropriate for the President of the Supreme Administrative Court and for a judge who remained in the minority in the composition of the Court that decided in the case (1933/2/10*).

Under Section 124 of the Constitution, tasks that involve significant exercise of public power can be entrusted only to authorities. If a municipality procures health services for the arrangement of which it is responsible from a private service producer, it is required under the Health Care Act to arrange its activities in such a way that it still has the personnel that are needed to perform those tasks that involve exercise of public power. The Ombudsman gave a city a reprimand because its on-call arrangement for basic health care was unlawful. The personnel providing on-call health services, which the city had outsourced, doctors employed by a private service producer were

performing tasks that involved exercise of public power (such as drafting referrals for observation under the Mental Health Act and giving the police executive assistance in carrying out clinical examinations) (3200/4/10).

Municipal parking supervision includes the exercise of public power that is regulated in Section 124 of the Constitution. It states that an administrative task can be entrusted to a party other than an authority only in an Act or by virtue of one. Under the Local Government Act, a task involving the exercise of public power is performed by a person employed as an official (321/4/11).

A guideline issued by a city's personnel centre in relation to smoking during working hours did not correspond to a decision of the city council or to its intention. Through a decision that contradicted the decision of the city council, the personnel centre had exceeded the powers assigned to it under the Act and the city's rules of procedure (2971/4/10).

A municipality's office-holders did not have a right founded in an Act or the rules of procedure approved by the city council to speak on behalf of the city in a court. Since the office-holders' exercise of speech was not founded on an appropriate ordinance in the meaning of the Local Government Act, the action was contrary to the principle enshrined in Section 2.3 of the Constitution that administration must be regulated by law. According to this principle, the exercise of public power must ultimately be founded on an Act. The municipality's action had been based only on established practice and the principles underlying it had not been referred to the council, the body that wields supreme power of decision in the municipality, for appraisal. Thus the council had not been able to decide what possibly were matters of such a kind that power to speak on behalf of the city about them could be exercised by, in addition to the authorities specified in the Local Government Act, also other city authorities. Since city office-holders had, without power founded in an Act, spoken on behalf of the city in courts and other authorities, this erroneous procedure might in some situations even constitute a ground for decisions by these authorities being quashed. A Deputy-Ombudsman issued a reprimand to the city board for its unlawful action (3896/4/10).

Policemen had within the framework of monitoring of foreigners under the Aliens Act entered a private dwelling and, despite being asked to leave by the occupant, failed to do so immediately. The police do not have any statutory power to carry out measures of this kind. In addition, the policemen and a man from the Border Guard carried out an inspection after the situation in working facilities in the cellar of the building, although there is no provision in law authorising them to carry out such an inspection. Section 2.3 of the Constitution requires all exercise of public power to be founded in an Act, for which reason the consent of the occupant of the premises to conduct an inspection associated with monitoring of foreigners in the workplace did not constitute justification for the inspection (3695/4/09).

A Deputy-Ombudsman pointed out that also administrative authorities, such as the Ministry of Agriculture and Forestry and municipal economic affairs authorities, can be regarded as having an obligation not to apply a norm of national law that conflicts with EU law. However, interpretation of EU law was by no means clear and unambiguous. Section 106 of the Constitution expresses the idea of the primacy of the position adopted by the Constitutional Law Committee and the requirement that a court of law yield to this primacy. Against this background, it is understandable that also in official procedures as well as in appeal processes the conception adopted by the Constitutional Law Committee had been leaned towards with regard to the relationship between EU law and fundamental rights, since the Constitutional Law Committee had expressly adopted a position on the question (251/4/09).

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 reoccur. 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 DEVELOPMENT HAS NOT ALWAYS BEEN ENOUGH

INTERNATIONAL CONVENTIONS

Ratification of international human rights conventions has not made sufficiently rapid progress in all respects. Examples include the Optional Protocol to the UN Convention against Torture (OPCAT, which Finland signed on 23.9.2003), the 1989 ILO Convention no. 169 on the rights of indigenous peoples and the UN Convention on the Rights of Persons with Disabilities (signed by Finland on 30.3.2007). Ratification of these conventions has been delayed, something that, in addition to causing problems with full implementation of human rights, is unsatisfactory when the matter is looked at from an international perspective.

TREATMENT OF PERSONS WHO HAVE BEEN DEPRIVED OF THEIR LIBERTY

For years, both the Ombudsman and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have expressed criticism of the so-called slopping-out cells still being used to accommodate inmates in Finnish prisons as violating human dignity. The cell

modernisation timetable has been put back from time to time and, despite a partly positive development, the number of slopping-out cells did not decline at all during the year under review and was 222 at year end (222 in 2010 and 338 in 2009).

It has emerged from time to time during conversations in the course of prison inspections and when investigating complaints that some inmates have to spend as much as 23 hours a day in their cells. In practice, their only activity outside the cell can be the opportunity that they have each day for one hour of outdoor exercise. The reasons for this situation can be the nature of the prison wing, prisoners' fear of other inmates, unwillingness to participate in activities or the prison's inadequate opportunities to arrange activities for inmates outside their cells. Circumstances of this kind can not be considered acceptable. According to the CPT, for example, the time that prisoners spend outside their cells should be 8 hours or more.

The Ombudsman has made about thirty (six during the year under review) recommendations concerning revision of the prison legislation that entered into force in 2006. The Ministry of Justice's revision package has been delayed, for which reason the shortcomings and inclarities observed have not been eliminated. In some case this has led to an unlawful circumstance or practice continuing.

Despite strict and precise regulation under the Act, appropriate attention is not paid in prisons to inspecting prisoners' correspondence. As in the previous year, several cases of interference with correspondence between a prisoner and his legal representative or a prisoner and an oversight authority, such as by opening a letter "inadvertently" or "through carelessness", came to light. The Ombudsman has issued several reprimands for inappropriate actions of this kind.

The Ombudsman has in the course of his inspection visits to prisons repeatedly had to draw attention to opportunities for and the circumstances of visits by prisoners' children.

Despite criticism by the Ombudsman, video surveillance – with recording of sound and images – has continued in the visiting area in Riihimäki Prison.

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 with which the danger of remand prisoners being put under pressure is associated. Excessive use of police prisons to house remand prisoners is a matter that both the Ombudsman and the CPT have been drawing attention to for years, but the problem does not seem to be going away. During the 2008 periodic visit, the CPT stressed that it is not acceptable that in over 16 years no significant progress has been made in this matter. Several decisions in which problems associated with remand prisoners being accommodated in police prisons were highlighted were issued during the year under review.

Numerous *de facto* coercive measures, which restrict the freedom of the person being cared for without their being statutorily provided for or even being thought of as coercive measures, manifest themselves in health care, care of the aged and care of the mentally handicapped. The Ombudsman has repeatedly highlighted these procedures, which are problematic in the light of, *inter alia*, personal liberty and bodily integrity. At the moment, for example, there is no legislation as required by the Constitution that would confer a right to intervene in an aged person's right of self-determination. In practical care situations, however, the personnel have to resort to measures for which they have no authorisation based on legislation. The Ministry of Social Affairs and Health has appointed a working group to study the right of self-determination of social welfare and health clients and it is due to complete its deliberations in autumn 2012. The objective is to bring about legislation by means of which the above-mentioned shortcoming could be redressed.

COURTS

Trial delays have long been a persistent problem in Finland, something that has been highlighted both in national oversight of legality and in the case law of the European Court of Human Rights. With trial delays in mind, a new Chapter 19 has been added to the Code of Judicial Practice to allow a case to be declared urgent. Legislation providing for recompense

for trial delays has also been enacted. These reforms are good and important. However, they do not solve the actual problem – trials can still take unduly long.

As long ago as 2006, the Deputy-Ombudsman recommended to the Ministry of Justice that it take under consideration the need to regulate, on the level of an Act and more precisely than in the current District Court Decree, the preconditions for transferring cases assigned to a district court judge and possibly also the principles underpinning a court's allocation of cases (Ombudsman's Annual report for 2006 pp. 33–34). The Ministry's Department of Judicial Administration stated in 2007 that it concurred with the positions taken by the Deputy-Ombudsman, but since then there has been no progress in the matter. On 5.10.2010 the European Court of Human Rights issued its judgment *DMD Group, a.s. v. Slovakia*, in which it found that there had been a breach of Article 6, because the legislation was too imprecise in a situation where the head judge of a lower court transfers a case that has been assigned to a judge. The European Court of Human Rights took the view that when a court's administrative and judicial functions are united, the legislation and legal remedies relating to transferring cases must be especially precise.

THE POLICE AND HOME AFFAIRS ADMINISTRATION

House searches in private dwellings have been attracting attention for years. As also in earlier years, situations in which a search has been conducted without giving the occupant the opportunity to be present during it and invite his or her own witnesses to be there arise. Failing to observe the right to be present can have an effect on, for example, implementation of a fair trial.

The availability of police services through the medium of Swedish has continued to be problematic. During the year under review, for example, three cases in which the language rights of Swedish-speaking motorists were not implemented in traffic control came to light. What was involved was that documents and forms had been drafted in Finnish rather than Swedish.

DISTRAINT

The procedure used when fines are collected by means of distraint is that the person liable to pay is summoned to court proceedings concerning the ordering of a conversion penalty if it appears that full implementation of distraint will not yield the amount of the fine within the one-year time limit. The practice is fairly problematic in many respects, and its possible variability can jeopardise equal treatment of debtors.

CUSTOMS

The National Board of Customs had not corrected errors in car tax percentage tables that it had published earlier nor the tax decisions in which too much tax had been levied due to an incorrect tax percentage. The procedure, which the National Board of Customs has been following since 2008, is conducive to weakening trust in the appropriateness of official actions.

HEALTH CARE AND SOCIAL WELFARE

The access to treatment that Treatment Guarantee legislation is supposed to ensure has not yet been implemented in full (examples of this in sub-chapter 3.3.15).

Outsourcing by municipalities of health services, the arrangement of which is their responsibility, to private service producers constantly causes problems with oversight of legality. The problems can be associated with the availability of adequate health services and inclarity with regard to who is responsible for what. It can also happen in these arrangements that tasks involving the exercise of public power are unlawfully entrusted to private parties, whereby doctors other than those in official posts can, for example, commit patients for observation under the Mental Health Act or request executive assistance.

Constant defects in entries in patient records can endanger implementation of good treatment and place difficulties in the way of oversight of the legality of health care.

Year after year, delays in handling applications for income support have been observed in various municipalities, as a result of which the constitutionally guaranteed right to essential subsistence and care is not being implemented legally in all respects. Differences between municipalities with respect to their ability to handle these applications lead also to people being treated unequally depending on where they live.

EDUCATION

In the Ombudsman's annual report for 2010, one of the Deputy-Ombudsmen intervened in his comment article in the ongoing restructuring of regional administration. This restructuring and protection-under-the-law services in the education sector were monitored closely in conjunction with investigation of complaints and inspections in 2011. The possibilities available to regional administrative authorities to provide municipalities with services and support relating to protection under the law of the educational have apparently dwindled as a result of the restructuring. Regional cultural administration has likewise weakened as a result of the restructuring of regional administration, especially in the Centres for Economic Development, Transport and the Environment.

LANGUAGE MATTERS

The Ministry of the Interior was given a reprimand by the Ombudsman in 2010, because an automatic traffic camera surveillance system did not safeguard the language-related fundamental rights of Swedish-speakers. The National Police Board was called on to tackle the matter more proactively. Despite critical comments, the shortcomings in the system have not been redressed, for which reason the Ombudsman has had to take the matter under investigation again.

The Ministry of Employment and the Economy has on several occasions been informed of the Ombudsman's opinion that translating a set of guidelines concerning good audit practices into Swedish would be called for from the perspective of the obligation to promote fundamental rights and safeguard language-related rights that has been imposed on the public authorities, even though the Ministry is not under a specific obligation founded on an Act to translate these guidelines, which are published by a body constituted under private law. Despite the positions adopted by the Ombudsman, the Ministry has not taken measures in the matter.

3.4.2 EXAMPLES OF GOOD DEVELOPMENT

During the year under review, the Ombudsman and the Deputy-Ombudsmen issued about 100 decisions in which an authority was asked to report what measures it had taken as a result of a stance adopted or a proposal made in a decision.

Some examples of cases of this kind in various sectors of administration are shown in digest form in the following. Presented in the digest is first the Ombudsman's or Deputy-Ombudsman's stance or proposal, and after that the authority's response. The aim with the digest is to give a general picture of the impact of the Ombudsman's work and positive development of the state of law or official actions. The Ombudsman's recommendations concerning recompense for mistakes or violations are compiled in sub-chapter 3.4.3. These proposals have mostly led to a positive outcome.

COURTS

The Ombudsman took the view that medicines, the possession of which is prohibited, can be taken from a person arriving in a court. Then, however, it must be ensured that information belonging in the sphere of protection of privacy is not divulged to outsiders. The Ombudsman did not regard as appropriate the generalising interpretation adopted by a district court as to which medicines it is prohibited to possess. In addition, he deemed a security inspector to have acted incorrectly when he refused to tell his own name to a complainant, because the complainant had not

asked him to show his guard's ID. That can not be demanded; instead, merely asking the name must suffice (4250/4/09*).

The Ministry of Justice announced that it had forwarded the Ombudsman's decision to courts for their information and asked them to supply information on, inter alia, security inspection practices and guidelines as well as situations that had been found problematic. The Ministry has given the courts recommendations concerning the handling of medicines in security checks. The Helsinki District Court announced that, among other things, it had changed its guidelines as well as its practices with regard to taking medicines into custody, with the result that the articles being taken possession of had declined significantly. The guards have been instructed in the guidelines to, among other things, show consideration for protection of privacy and a new scanning device has been ordered for the court building. The attention of guards has also been drawn to showing their ID cards when a name is asked for.

POLICE

Shortcomings were observed on unannounced inspection visits to the detention facilities at the Keski-Uusimaa police service's Järvenpää and Hyvinkää police stations, including some relating to the provision of information about the rights and obligations of persons who had been deprived of their liberty (955 and 956/3/11).

The police service announced arising from the inspection observations that it had drafted, as an annex to the rules of procedure, a programme of the day that included the rights and obligations of persons who have been deprived of liberty. The rules of procedure and the programme of the day are located in every holding room.

It was noted on an unannounced inspection visit to the detention facilities at the Lapland police service's Rovaniemi police station that telephone calls by prisoners were made in an area where a guard could overhear the remand prisoner's side of the conversation. A Deputy-Ombudsman pointed out that it was not allowed to eavesdrop on a conversation between legal adviser and principal. Circumstances must be arranged in such a way that listening in on a telephone conversation is not possible so that the confidentiality of a call between legal representative and principal is safeguarded (1961/3/11).

The Lapland police service announced that it had adopted procedures and a technique that ensured the confidentiality of the telephone call was safeguarded when a remand prisoner is in contact with his legal adviser.

For years, a need to revise the legislation on criminal investigations, coercive measures and the police has been observed in oversight of legality. The Eduskunta passed new laws during the year under review, but they will enter into force only at the beginning of 2014. Associated with this package of legislation is an amendment to the Coercive Measures Act that entered into force already during the year under review and which makes it possible for the legality of a house search to be referred to a court for evaluation. In connection with this, a Deputy-Ombudsman decided in a case that he had investigated on his own initiative that merely making statutory provision for the possibility of an appeal was not enough on its own. An authority must also proactively ensure that protection under the law of those who become the object of coercive measures is implemented also in practice (3229/2/11*).

The National Police Board (as well as the Customs, the headquarters of the Border Guard and the Defence Staff) announced that, arising from the Deputy-Ombudsman's decision, they had issued guidelines to the effect that the possibility of having a house search and seizure referred to a court for examination must be stated in writing.

The practices followed by the police when handling personal identifiers, for example the procedure whereby the personal identifiers of all involved parties are printed out on copies of a notification of a crime, have been criticised in several complaints. A Deputy-Ombudsman drew the attention of the police to the fact that a personal identifier must not be marked unnec-

essarily in all documents drafted by authorities. In his view, the question is linked also to the solutions by means of which information systems are implemented (1875/2/11).

The National Police Board announced that it had issued guidelines to police services and other police units concerning the handing out of copies of notifications of crimes. An application change had been made in the police matters information system and made it possible that copies of notifications made after 21.9.2011 would mention either the personal identifier or the date of birth. Also other updates of applications were being planned. The requirements of handling personal identifiers will be taken into consideration in an overall restructuring of the police matters information system.

PRISON SERVICE

In a decision relating to keeping prisoners under 18 separate and to their treatment, the Ombudsman asked the Criminal Sanctions Agency to inform him what steps it was taking in the matter (879/2/08).

The Criminal Sanctions Agency informed the Ombudsman of the following measures:
- *a set of guidelines dealing with the placement of prisoners under 18 and their participation in activities will be drafted*
- *a person familiar with children's matters will be appointed to take special responsibility for planning the time to be spent in custody*
- *a reasoned decision document will be required for placement of prisoners under 18*
- *negotiations will be conducted with the Ministry of Social Affairs and Health concerning the preconditions according to which underage prisoners could be placed in child welfare institutions to serve their time in custody*
- *a study of whether it would be appropriate to enact legislation on the use of electronic monitoring of remand prisoners, whereby also the number of underage remand inmates in prisons could be reduced, will be proposed*
- *cooperation with the social affairs administration will be developed and staff will be given training in working with child prisoners*

DISTRAINT

A Deputy-Ombudsman pointed out that in order to implement equality of debtors in the guidance of distraint it would be appropriate to issue more precise guidelines on how to obtain from the population data system the addresses of clients who have secured orders from administrative courts preventing data on them from being disclosed. As a consequence of defective address data, clients who have taken out these orders do not always receive notices of distraint (2910/4/09).

The National Administrative Office for Enforcement announced that it was looking into the issue of defective mediation of data from the population data system to the distraint data system. It issued guidelines on handling data that were subject to non-disclosure orders on 2.1.2012 and announced that it was preparing to make changes to the non-disclosure entries in the ULJAS information system and would be arranging training in these matters for distraint officials in 2012.

THE DEFENCE FORCES AND THE BORDER GUARD

It emerged from a complaint made by a conscript that a sergeant with the Kainuu Brigade was in the habit of confiscating conscripts' laptop computers when, for example, they had been used contrary to service guidelines. The computers were returned after a brief quarantine period (2006/4/10).

While the complaint was being investigated, the General Staff issued a set of national guidelines on the matter on 11.8.2011. According to the guideline on taking possession of private property, removing private property from Defence Force areas that are in common

use or ordering it to be removed is justified for reasons that include maintaining accommodation and internal order, minimising risks to electrical and fire safety as well as to protect property from vandalism and theft. A procedure whereby property or an object are taken possession of for a specific period as a punishment and later returned to its owner or user is prohibited under the guideline.

The internal oversight of legality conducted by the General Staff's legal department has become markedly more efficient in recent years, something that may have influenced the number of complaints made to the Ombudsman. In 2011 an effort was made to add further to this effectiveness, *inter alia* by establishing a separate oversight-of-legality sector within the General Staff's legal department, for which a new post of military lawyer was created. According to the section of the 2011 annual report dealing with oversight of legality focusing on the Defence Forces, attention had been paid to the observations made in the course of inspection visits and measures had been implemented on the Defence Forces' own initiative. For example, internal teaching had been made more effective in the Artillery Brigade and observations made on inspection visits gone through all the way down to the basic unit level.

It has emerged in conjunction with inspections that a slight improvement has been effected in the Defence Forces' difficult situation with regard to doctors (viz. the Ombudsman's annual report for 2010 p. 94).

CUSTOMS

A revision of the Customs Act has been in the pipeline for quite a long time. On an inspection visit by a Deputy-Ombudsman, representatives of the Ministry of Finance stated that the shortcomings that had repeatedly been highlighted in the Ombudsman's oversight of legality with respect to the prerequisites for customs inspections would be taken up separately for legislative drafting in the early half of 2012.

SOCIAL WELFARE

A complainant criticised the social welfare departments of two municipalities for delay in revising maintenance support agreements. A Deputy-Ombudsman pointed out that municipalities have a duty to ensure that they have the requisite skilled staff and that they can offer clients of social welfare the social services that are specified in the Act and Decree in the manner that the Act requires. The Deputy-Ombudsman took the view that processing of matters had been delayed unlawfully in both of the municipalities (854/4/10).

The social welfare department in one of the municipalities paid the complainant, as a preventive income support, for the financial loss suffered as a consequence of the delay.

HEALTH CARE

According to guidelines issued by the Helsinki and Uusimaa Hospital District (HUS), neuropsychological rehabilitation has been given only to those children meeting the rehabilitation criteria for whom it is especially recommendable. Thus children for whom this form of rehabilitation has been nevertheless medically necessary have been excluded from neuropsychological rehabilitation. The procedure has not been compatible with legislation. It was not possible to use guidelines on the arrangement of medical services to limit or exclude the right to services that are safeguarded in legislation (2823/4/09).

HUS announced that the shortcomings and restrictions pointed out by the Ombudsman has been removed from the guidelines. It reported that new posts for neuropsychologists were being created in the Helsinki University Central Hospital treatment district. The City of Espoo reported that an open-care unit for child psychiatry would be opened in spring 2012 and would include a post for a neuropsychologist. In addition, plans for the next few years include the creation of two posts for neuropsychologists to assist with children's rehabilitation services.

Svenska Finlands Folktinget (the Swedish Assembly of Finland) asked the Ombudsman to examine the practice observed by the City of Helsinki of always drafting patient records in Finnish. It also expressed criticism of a City guideline according to which there is no need to translate such documents as epicrises and doctors' statements even if the patient is Swedish-speaking. In the Ombudsman's opinion, the Health Centre's guideline on translation into Swedish contained too many restrictions. He took the view that epicrises and doctors' certificates and reports on Swedish-speaking patients must be translated into Swedish, unless the patient has announced otherwise (1962/4/09*).

The Helsinki Health Centre announced that the views expressed in the Ombudsman's decision have been taken into consideration in new standing guidelines on the language used in health care services.

The Ombudsman pointed out that on-call oral health care services were not being implemented in the manner that the Health Care Act requires, because round-the-clock on-call availability of dentists had not been arranged within basic health care. The Ministry of Social Affairs and Health has, by virtue of the Health Care Act, the right to issue a Decree on the principles in accordance with which urgent treatment is to be arranged. The Ombudsman considered it important that a Decree be issued to safeguard the availability of urgent treatment on a basis of equality (272* and 2767/2/10* as well as 1451/2/11).

The Decree is being drafted at the Ministry of Social Affairs and Health. The intention is to arrange on-call nighttime oral health services by area of special responsibility.

CHILDREN'S RIGHTS

Based on observations made in the course of an inspection visit, a Deputy-Ombudsman decided on his own initiative to investigate the right to basic education of asylum-seeker children who have arrived unaccompanied and are accommodated in a group home and support dwellings in the municipality of Siuntio. The municipality's then education board had taken the view that the municipality was under no obligation to arrange education for the children living in the group home and support dwellings (1420/2/10).

While the case was being dealt with, the municipality's education committee reassessed the matter and reached a different outcome. On the basis of the board's decision, a new group was created for the children from the group home and support dwellings together with other immigrant children. According to a report provided by the education director in December 2011, education for all children was being guaranteed.

The City of Helsinki Social Affairs Department had not succeeded in the best possible way in dealing with sudden and demanding child welfare cases, in which also the services of the Department's other units were needed. A Deputy-Ombudsman recommended that the Department draft operational guidelines for comparable situations to ensure that the client is well treated and social welfare of a high quality is safeguarded (4017/4/09).

The Social Affairs Department announced that it had begun drafting guidelines on work and operational methods in demanding child welfare situations and that it was taking coordination of the client situation and the responsible party into consideration.

LABOUR AND UNEMPLOYMENT SECURITY

A Ministry of Employment and the Economy guideline on work that the State is obliged to provide under one of its employment schemes had been interpreted incorrectly by an unemployment fund. As a consequence, the labour and economic development office offered a person work only more than two years after the right to it had come into being. In the opinion of a Deputy-Ombudsman, the Ministry's guideline had been in part open to interpretation, which could have contributed to the mistake being made (3678/4/09).

The Ministry of Employment and the Economy announced that in the negotiations it had conducted

with Kela it had added a new extraction condition to the system; this electronically transfers data on the per diem payments that the person has accumulated to the employment and economic development office also when 500 days was exceeded for the first time. The Ministry reported that it had sent a request to the companies responsible for the unemployment funds' payment systems to make an equivalent change.

GENERAL MUNICIPAL MATTERS

A municipal office-holder criticised a municipal board in his complaint for delay in compensating him for loss of earnings (2989/4/10).

After a Deputy-Ombudsman intervened in the matter, the complainant and the municipal board had accepted a proposal in accordance with which the complainant will be paid a discretionary personal supplement until he retires.

EDUCATIONAL MATTERS

The issue of teachers being temporarily laid off arose in many municipalities in 2009 and 2010, but the number of times this happens has since then declined markedly. In 2011, it was decided to lay off teachers only in the town of Juankoski, and the lay off lasted at most two weeks. Although temporarily laying off teaching staff is not a priori contrary to the Basic Education Act or any legislation regulating municipal education services, the Ministry of Education and Culture and the National Board of Education have taken a negative view of teachers being laid off also in secondary education and do not regard it as a correct way of trying to achieve savings. In addition, the Hämeenlinna Administrative Court ruled in a judgment issued on 27.6.2011 that a lay off of teachers in Hämeenkyrö in 2010 had been unlawful.

LANGUAGE MATTERS

The Ombudsman urged the Ministry for Foreign Affairs to draw the attention on a general level of all Finnish diplomatic missions abroad to the obligations that the Language Act imposes when the telephone answering tapes used by these missions are being recorded (1891/4/10).

Arising from the Ombudsman's decision, the Ministry urged all missions to ensure that their telephone answering tapes are recorded also in Swedish.

The Ombudsman drew the attention of the National Traffic Police to the language rights of vehicle users in traffic surveillance and emphasised that it is the duty of the upper command echelon of the National Traffic Police to ensure that activities are arranged in a way that means language rights are implemented in practice (2667/4/10).

The National Traffic Police sent the decisions to the result and local units for their attention and urged them to ensure in future that the language skill of patrol teams conducting traffic surveillance is adequate to implement language rights as well as possible in all circumstances. In addition, the intention was to disseminate information on the Ombudsman's opinions to all surveillance personnel at unit meetings or training courses. The command echelon of the National Traffic Police also urged the result units to ensure in recruitment that the persons chosen have an adequate command of Swedish. Further, the National Traffic Police's training unit was informed of the matter and asked to take it into consideration in training for the office as a whole.

It emerged in the course of investigating a complaint relating to traffic surveillance that the form used to make a surveillance notification in accordance with the Vehicles Act (Police Form 523), which was proof of a police measure and entitled its holder to drive a vehicle after its registration plates had been removed, did not exist at all in a Swedish-language version (3463/4/09).

The National Police Board announced that the form had been translated into Swedish and was available and could be filled in also electronically. The intention was also to draft a bilingual version of the form in order to facilitate its use in the field.

It was observed on an inspection visit to a company of the Border Guard in Lapland in 2010 that there were shortcomings in the Border Guard's services in the Sámi language. A Deputy-Ombudsman decided on his own initiative to investigate the situation with regard to the arrangement of services and forms in Sámi (1068/2/11).

It emerged that the Lapland district of the Border Guard had drafted a programme to improve the ability of Border Guard personnel serving in the Sámi home districts to use the Sámi language. In addition, the plan included the goal of translating all necessary forms and guidelines into Sámi. Further, the intention was to take Sámi into consideration when the Border Guard's Internet site was being revamped. At the request of the Deputy-Ombudsman, the Border Guard further reported separately which of the planned measures had been implemented and which ones were still intended to be accomplished in the near future. It likewise recommended to the National Police Board and the General Staff that also the police and the Defence Forces begin translating their forms into Sámi.

TAXATION

The times spent waiting to reach the tax Administration's telephone service were still unduly long in early 2010. In the case of one complainant, it took nearly an hour. A Deputy-Ombudsman pointed out that long waiting times in an authority's telephone service are a *de facto* impediment to the availability of advisory services and jeopardise implementation of the fundamental right of good administration where the provision of advice is concerned. Unduly long waiting times also cause superfluous expense to clients of administration, as a consequence of which the right to receive advice free of charge can likewise be endangered (1683/4/10).

Because reports received revealed that delays in reaching the Tax Administration's telephone service had nevertheless been reduced and the authority had also taken measures to develop the service, the Deputy-Ombudsman contented himself with drawing its attention to the importance of arranging its telephone service appropriately. He pointed out that he considered it an aspect of good practice on the part of an authority that when the Tax Administration was clarifying the complainant's service situation with him, it also expressed its regret arising from the matter.

3.4.3 THE OMBUDSMAN'S PROPOSALS CONCERNING RECOMPENSE

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 also led to a positive outcome.

The Parliamentary Ombudsman Act was amended by means of Act 535/2011, the legality-of-oversight provisions of which entered into force on 1.6.2011. The Constitutional Law Committee stated in its report (PeVM 12/2010 vp) on the Government Bill that it considered a proposal by the Ombudsman to reach an agreed settlement and effect recompense in clear cases a justifiable way of enabling citizens to achieve their rights, bring about an amicable settlement and avoid unnecessary legal disputes. Recompense has been recommended in ten cases since 1.6.2011. A total of 15 such recommendations were made during the year under review.

The Ombudsman's recommendation that a recompense be made can be founded on Article 13 of the

European Convention on Human Rights if a breach of a right or freedom for which the Convention provides has occurred. The right to effective legal remedies in the event of breaches of human rights is guaranteed in this article. If the violation can no longer be rectified or corrected, recompense for it must be made, and this must happen on the national level. A successful proposal by the Ombudsman that recompense be made can in some cases save Finland from a complaint to the European Court of Human Rights and even a guilty judgment.

A recompense-related recommendation can mean making up for the harm, sense of injustice or experience of wrong that has resulted from an authority acting contrary to national law. Making recompense can involve an immaterial measure, such as an authority expressing its regret and apologising, or monetary compensation. A recommendation can also mean making recompense for damage of a kind for which compensation could be claimed under the Tort Liability Act. This can involve compensation for personal injury or damage to property, but also for immaterial damage, for which compensation can be effected to only a very limited degree under the Tort Liability Act. A recompense-related recommendation by the Ombudsman has often led to, for example, a fee that has been charged or levied by mistake or unlawfully being repaid.

Recommendations concerning recompense made by the Ombudsman during the year under review are outlined in the following. Replies have not yet been received to all of them.

RECOMPENSE BASED ON ARTICLE 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

In the opinion of the Ombudsman, a ground for isolating a patient as specified in the Mental Health Act had existed. By contrast, he found the patient's treatment to have been humiliating and in violation of human dignity, because the patient had not been allowed to go to the toilet and had had to answer both kinds of calls of nature on the floor. In the Ombudsman's view, the treatment that the patient received involved a violation of human dignity, which is contrary to Section 7 of the Constitution of Finland and Article 3 of the European Convention on Human Rights. He asked the hospital district in question to consider whether it could make recompense to the complainant as provided for in Article 13 of the European Convention on Human Rights (4181/4/09*).

The hospital district admitted that the treatment had violated human dignity and paid compensation for it. The Ombudsman found this very positive. Acknowledging a violation and paying even a symbolic sum as recompense are important from not only the perspective of principle, but also the violated party's sense of justice.

Decisions concerning committal for psychiatric hospital treatment under the provisions of the Mental Health Act can be appealed against to an administrative court. The Act requires appeal cases of this kind to be dealt with expeditiously. An administrative court took over three months to deal with an appeal concerning involuntary committal for psychiatric hospital treatment. In the view of the Ombudsman, the administrative court had violated the complainant's right to have deprivation of liberty subjected to review by a court of law without delay. He regarded it as probable that the same conclusion would have been reached if the events had been referred to the European Court of Human Rights for evaluation. Violations of rights that have happened must be compensated nationally afterwards in a way and on a level that does not fall short of the European system of human rights. Finland still does not have national legislation providing for recompense for delay in proceedings in an administrative court. However, Article 13 of the European Convention on Human Rights provides a legal ground for recompense even in this case. The Ombudsman asked the Ministry of Justice to consider how the complainant could be given recompense for the suffering caused by the violation of rights (1901/4/10*).

It took over seven years and three months to deal with a tort case in general courts. In the opinion of the Ombudsman, the duration of the court proceedings had breached Article 6 of the European Convention on Hu-

man Rights and at the same time also Section 21.1 of the Constitution of Finland. He pointed out that in the case of the complainant the public authorities had not been able to safeguard, in the manner required by Section 22 of the Constitution, implementation of fundamental and human rights. Since, *inter alia* with respect to court proceedings in tort cases, specific statutory provisions on recompense for delays have since been enacted, he took the view that in this case he could not make a recommendation regarding recompense. Demands for recompense must be made separately in accordance with the statutory procedure (1458/4/10).

The Ombudsman deemed the Technical Research Centre of Finland VTT to have violated the freedom of speech of two researchers and acted contrary to the European Convention on Human Rights and the Constitution of Finland. One of the researchers had received a written warning after he had appeared in his capacity as an expert at a formal hearing arranged by the Commerce Committee of the Eduskunta when it was dealing with the issue of building nuclear power stations. The other would have wanted to publish a letter dealing with peat production in the readers' opinions section of a newspaper, but VTT had not considered this desirable. The Ombudsman asked VTT to consider how the violation of freedom of speech could be rectified and recompense made to the researchers (3098/2/10*).

VTT announced that it had begun revising its guidelines. The contents of the revised guidelines will follow the lines pointed out by the Ombudsman and emphasise freedom of speech as a fundamental right. VTT also expressed its regret for having intervened in the researchers' freedom of speech and announced that it had cancelled the warning given to one of them.

A DAMAGE CAUSED BY AN ACTION THAT WAS CONTRARY TO NATIONAL LAW

In one intermunicipal health care joint authority district, lymphatic therapy had been granted only in exceptional cases to some breast cancer patients since 1.1.2009. This practice meant that the joint authority was *de facto* excluding from the scope of its duty to arrange treatment to patients who would have been entitled to lymphathic therapy as medical rehabilitation on the basis of their individual need for treatment. The Ombudsman recommended that the joint authority should consider how the costs caused the complainant by its erroneous action could be compensated for be given consideration (1724/4/10).

The Ombudsman was informed that agreement had been reached with the complainant that the health centre would compensate her in full for the 20 treatment sessions given in 2011.

A complainant criticised a public guardian for not having made a sufficient effort to ascertain the existence of close relatives after his principal had died. The complainant, who was the only person entitled to a share of the estate, had heard of his half-brother's death only when an inventory of the deceased's estate was being drawn up. The Ombudsman deemed the public guardian to have examined his deceased principal's relatives inadequately and as a consequence followed incorrect procedure when disposing of the deceased's household chattels. The Ombudsman recommended that the public guardian consider appropriate measures by way of recompense (3036/4/09).

The public guardian announced that the complainant and the public guardian has reached an agreement whereby the property remaining in the estate had been given to the complainant, who was no longer making any claims in the matter. The public guardian had also apologised for his action. In the Ombudsman's view, there was no need for further action in the matter. He also expressed his satisfaction that an amicable settlement had been reached without delay thanks to the measures taken by the public guardian.

A complainant criticised the way his public guardian had taken care of matters. The issues included paying the TV licence fee and medical bills, applying for income support and the amount of funds at the principal's disposal. The Ombudsman found that the available material did not reveal whether failure to apply for income support had been to the principal's detriment. If that was the case, the Ombudsman asked the public guardian to consider how recompense could be made to the principal for the damage (3024/4/10).

The public guardian reported that the Ministry of Justice had, at the public guardian's request, paid compensation for the damage.

Calculation of a complainant's taxation and handling of changes made to a tax report that had been filled in beforehand had failed to be done, because the form returned to the Tax Administration had disappeared there. A Deputy-Ombudsman drew the attention of the tax director and the office manager to an authority's duty to deal with matters appropriately. When an authority notices that it has made an error, it must do everything possible to correct it by explaining to the client what has happened and guiding him in the matter. In the view of the Deputy-Ombudsman, the tax office should in some way or other make recompense to the complainant for the harm and bother that its error had caused him. Recompense could be an immaterial measure, such as an expression of regret and an apology, or financial compensation. The report provided by the tax office did not reveal that it had in this way accepted responsibility for its error and tried to restore the complainant's trust in its actions (424/4/10).

The tax office apologised to the complainant for having failed to follow appropriate procedure in dealing with his matter and for his not having been given sufficient guidance at the time. It also expressed its regret for the harm and bother that had been caused to the complainant.

A complainant received decisions on his rectification demands from a tax appeals board only after it had taken five years and five months to deal with them. During this time, a decision that the complainant had secured to suspend distraint was replaced by a realisation decision, on the basis of which a distraint office distrained a property and housing share owned by the complainant. The procedure that the same branch of a corporation tax office had followed when levying additional taxation had been investigated already earlier and it had been reprimanded for shortcomings and delays in its handling of tax matters. Despite this rebuke and the negligences on the part of the same tax official that had been revealed already in the earlier case, the situation had been allowed to repeat itself in the tax office. A Deputy-Ombudsman recommended to the Tax Administration that it should in some way make recompense to the complainant for the damage as well as inconvenience and bother that these unlawful acts of negligence had caused (1330/4/10).

The Tax Administration reported that it had sent a letter to the complainant expressing its regret for the harm that its error had caused. The complainant had presented a compensation demand that was not itemised and the bases on which the amount of damage had been calculated had not been explained. The Tax Administration will examine the demand when the complainant announces what costs and damages arising from the error he is demanding compensation for. The Tax Administration will try to reach an agreed settlement in the matter without delay.

A complainant had been given incorrect information by the Helsinki police service about the return of a charge associated with a residence permit. However, it was difficult after the fact to obtain exact information about the course of events and the precise content of the advice given. However, taking the information in the complaint and the report received into consideration, especially the experience of having been wronged that the complainant described in a letter, a Deputy-Ombudsman recommended that the Helsinki aliens police consider the possibility of making recompense to the complainant for at least the police's share of the responsibility for the incorrect information he had received (2162/4/11).

A complainant criticised Kela (the Social Insurance Institution) and a distraint office for the fact that at the same time an old maintenance support debt was collected from him through distraint as well as on the

basis of a payment demand made by Kela. A Deputy-Ombudsman took the view that, when the distraint office received information of the possibly overlapping collection that Kela was carrying out, the distraint office should have ensured that the position of the person with the distrainable debt was not endangered, for example by going below the protected percentage. The Deputy-Ombudsman pointed out that the principal responsibility for appropriate handling of collection relating to maintenance support had resided with the party applying for distraint, i.e. Kela. He emphasised that in situations of this kind, the party applying for distraint as well as the enforcing authority (the distraint office in question) must act in cooperation to ensure that the debtor's statutory rights are not jeopardised. In the Deputy-Ombudsman's view, it would be appropriate for Kela, as the party that had applied for distraint, to make recompense to the complainant for the economic damage caused (3059/4/09).

An error made at a distraint office in an entry concerning the interest for overdue payment had caused the debtor damage when the receivable that had been incorrectly marked as paid in full had actually still been outstanding and the interest on it was accumulating. A Deputy-Ombudsman recommended that the distraint office consider how it can make recompense to the debtor for the damage caused (3578/4/10).

The distraint office reported that, under regulations issued by the Ministry of Justice, maximally €500 could be awarded for damages. It had paid the complainant this amount.

A complainant had not received notification of enforcement of a distraint order to collect a receivable from the Legal Register Centre, because his address particulars in prison had been entered incorrectly in the information system there. This had caused damage to the complainant, because enforcement had subsequently ended when the debtor was declared to be without funds, without at any stage having become aware that distraint enforcement was under way. The distraint officer had, in accordance with a provision of the Enforcement Code, informed the credit data company of the impediment because the debtor lacked funds and with respect to the complainant a default on a debt had been recorded in the credit debit register. A Deputy-Ombudsman recommended to the Legal Register Centre that it consider how it could reasonably make recompense to the complainant for the damage and inconvenience caused in this matter (3879/4/10).

The Legal Register Centre reported that it had agreed with the complainant that €400 would be a reasonable recompense amount and it had paid it to him.

ERRONEOUSLY ORDERED PAYMENT OR REFUND

A Deputy-Ombudsman recommended that a city should rectify the charge that its technical department had imposed when complainants requested documents, because the basis used for determining fees had been incorrect. The fees charged for document requests should be assessed on the basis of the city's document tariff list. The Deputy-Ombudsman emphasised that in charging for the costs incurred in information retrieval, as in documents management in general, the starting point must be the principle of publicity and implementation of good administration (1872/4/10).

The city reported to the Deputy-Ombudsman that the excessive amount that had been charged had been refunded to the complainants in full.

A complainant claimed that the €120 charged for a visa had been due to an error made by an official at the Ministry for Foreign Affairs. The error was caused by the official doing defective application documentation when he was sending documents supporting the application to the Ukrainian consulate in Helsinki. In its report on the matter, the Ministry did not dispute the claim that its action had been in error. However, it took the view that the extra charge was due to the action of the Ukrainian authorities. The Deputy-Ombudsman found that an error had been made in the matter and that the procedure followed by the authorities did not in all respects meet the requirements of good administration. He recommended that the Ministry consider

the possibility of making recompense to the complainant for the damage that its action had caused (1391/4/11).

The Ministry announced that it had paid recompense to the complainant for this extra fee.

A complainant criticised a distraint office and the Legal Register Centre for the procedure that was followed in collecting receivables on foot of a distraint application that the Legal Register Centre had sent in electronic form. The complainant reported that the receivable had become statute-barred already in January 2005. Nevertheless demands for payment of it had continued to be made from 2005 until March 2009. These groundless attempts to obtain payment had caused major difficulties for the complainant in dealing with other matters and several entries in the credit data register indicating default. When the error was revealed, the Legal Register Centre had refunded the groundlessly collected capital, but without interest. In the opinion of a Deputy-Ombudsman, the Legal Register Centre had acted unlawfully when it failed to pay the six per cent interest on refunds that the law requires on the sums that it paid into distraint and receipted (1454/4/09).

The Legal Register Centre announced that, in accordance with the Deputy-Ombudsman's decision, it had paid the complainant interest of €95.56 on the refunded distrained sum and €442.14 on the receipted cash sum.

3.5 SPECIAL THEME FOR 2011: LANGUAGE RIGHTS AND THE REQUIREMENT OF GOOD USE OF LANGUAGE

3.5.1 INTRODUCTION

As in the previous year, language rights and good use of language were a special theme for the Office in 2011. A theme of this kind is taken up on all inspection visits and into consideration also in other activities, such as when considering own-initiative investigations (for more info on dealing with the theme and bringing it up in the Ombudsman's work in general, see the annual report for 2010, pp. 105–106).

The way the theme is dealt with in the annual report has been developed in such a way that in this chapter observations relating to it that were made in various sub-sectors of the Ombudsman's work (complaints, own initiatives and inspections) are now presented in summary fashion in this chapter.

3.5.2 LANGUAGE RIGHTS

Observations relating to language rights have been compiled into the following categories: 1) Signs, forms and other information, 2) interpretation and translation, 3) customer service, 4) handling of a matter, 5) ascertaining a client's language and 6) language skills of personnel.

SIGNS, FORMS AND OTHER INFORMATION

The Language Act requires bilingualism to be evident and demonstrated on their own initiative by authorities in their activities. What is involved is that, *inter alia*, signs, forms, brochures and so on must provide clients with information bilingually.

The following kinds of inappropriate actions are examples of those discovered in the activities of bilingual authorities when examining *complaints* and conducting *investigations on our own initiative*:

- A telephone answering tape was only in Finnish and English, but not Swedish (1891/4/10).
- Not all bulletins had been published in both national languages (2762/4/09).
- A complainant whose mother tongue is Swedish had been given a surveillance form in Finnish in traffic monitoring, although the individual data had been filled in in Swedish (3463/4/09).
- A notice of a fine that a Swedish-speaking complainant received was in a mixture of languages, i.e. the printed form was bilingual, but had been filled in partly in Finnish and partly in Swedish (463/4/10).
- The language regulations in a package markings decree issued by a Ministry allowed Swedish to be replaced by Norwegian or Danish and in bilingual municipalities made it possible to use only one of the national languages in markings (368/4/10).
- It was also emphasised that when a university advertised vacant posts, at least the language of administration as provided for under the Universities Act should have been used. Using, for example, only English was not enough (30, 523 and 1337/2/09).

By contrast, a ministry did not act inappropriately when it published some sets of material, because the material was not included in what the Language Act requires to be published bilingually (1308/4/10).

A public transport authority's actions, which were investigated on our own initiative, in providing information about exceptional arrangements in tram traffic did not lead to measures (4742/2/09).

No problems that would have required intervention were discovered in signs or forms *in the course of inspections*. Bilingualism was reflected in the activities of the authorities inspected in, for example, the fact that forms and Internet pages were in both national languages, in addition to which advertisements announcing vacant posts are published in both Finnish and Swedish. The rights of foreign clients, in turn, can be taken into consideration in that, for example, there is a model letter for them and it points out that the language of processing is either Finnish or Swedish. Forms can also be available in English in an abridged version compared with the versions in the national languages.

A matter that was taken up on a familiarisation visit by the Ombudsman to the Ministry of Justice was a letter published in the readers' opinions section of a newspaper to the effect that the instructions for opening encrypted messages sent by courts were only in English. After the IT centre for the legal administration had published its reply "The justice system communicates in Finnish, Swedish and English in secured mail", no further measures in the matter were deemed necessary.

INTERPRETATION AND TRANSLATION

When complaints were being dealt with it was found that incorrect procedure had been followed when a bilingual authority had sent a document in Swedish, which had not been translated into Finnish despite a request, to a Finnish-speaking client (684/4/11).

In a bilingual municipality, in contrast, it was possible that patient records had been drafted in the municipality's majority language, but the patient had a right to receive a translation of the treatment summary and doctor's report (1962/4/09*).

On the other hand, changing mother tongue in the population data register while a matter was still being dealt with did not impose an obligation on an authority to translate documents (2725/4/11).

Nor was an authority under an obligation to translate a decision into Swedish or English for a person who had initiated a matter in English, because the language in which the matter had been dealt with had, in accordance with the Language Act, been determined as Finnish (569, 629 and 3855/4/11).

It was not necessary to translate the protocol of a criminal investigation in full into a foreign language that the suspect understood (4513/4/09).

It was possible to give a foreign client a decision in Finnish, especially since the assistance of an interpreter had been on offer in any case (2979/4/10).

Translating a set of recommendations concerning good auditing practices into Swedish was considered advisable, although an individual ministry did not have a statutory obligation to do this and an obligation could not be inferred from the Åland Autonomy Act, either (2363/4/10).

The Ombudsman decided in a case that he had taken under investigation on his own initiative and which concerned which police force (Åland or national) was responsible for having an interrogation protocol that had been drafted in Finnish translated into Swedish and paying the costs of this when the Åland police had asked the national police to conduct an interrogation in a criminal investigation that was in progress in Åland. The Ombudsman emphasised the unilingual status of Åland and the importance of the regulations concerning the language of correspondence (1340/2/09).

One of the things revealed *in the course of inspection visits* was how interpretation had been implemented in practice, where the service had been obtained and whether there had been problems in arranging the service. A further matter that came up was to what extent translations of documents had been requested from authorities.

In this respect, problems do not in general come to light during inspection visits. However, something that came up on visits to prosecutors was that the Language Act is to some degree unclear about how much trial material should be translated for defendants.

Among the other observations made were that the need for translation was reduced if the information system in use in the sector of administration can provide printouts and documents in both national languages. Authorities used translation agencies when necessary, but their own personnel also translated documents. Inspection visits also revealed unilingual authorities operating in a Finnish-speaking area who were likewise able to offer services in Swedish.

Authorities had the opportunity to use the services of interpreters with their foreign clients. To accommodate clients speaking foreign languages, the main points in decisions could if necessary be translated into their languages.

A special feature that was revealed was that transactions with also persons who have foreign backgrounds and suffer from illnesses that cause memory impairment can succeed well. Although the vocabulary of a person dwindles when their memory is impaired, this is often compensated for by communication using gestures, touches and facial expressions.

At one site inspected the rights of persons with speech defects had been promoted by creating a post for a person to interpret for them. This person was tasked with, together with a speech therapist, building personal communication aids for the client and directing and guiding personnel and relatives.

CUSTOMER SERVICE

The following were among the inappropriate procedures and actions on the part of bilingual authorities that were revealed when investigating *complaints*:

- A Swedish-speaking client had been asked whether he could speak Finnish, and not even his second telephone call in Swedish had been redirected to a person able to speak Swedish (1455/4/10).
- A client's knowledge of Swedish had not been paid attention to and a changeover to serving the client in Swedish had not been made when he expressed a wish to be able to transact his business in this language (2965/4/10).
- A complainant whose mother tongue is Swedish has received an invitation in Finnish to an event where a demand for a penalty was served, and had not had his matter taken care of in his own mother tongue after he had telephoned the person who had signed the invitation (3624/4/09).
- Service through the medium of Swedish was not available during on-call hours at a health centre (1368/4/10).

– Selection of patients on the basis of their registered mother tongue was considered problematic if it failed to take account of those whose mother tongue was Finnish, but who also spoke Swedish and wanted health care services in this language (661/4/10).

The Ombudsman issued a decision on a matter that he had taken under investigation on his own initiative the previous year: implementation of language rights in ticket inspections in public transport. He took the view that a ticket inspector with a bilingual public transport organisation should, on his own initiative, use both national languages when announcing an inspection. Arising from the Ombudsman's decision, the public transport organisation issued guidelines to its ticket inspectors to the effect that they should announce inspections in both national languages (4309/2/10).

DEALING WITH A MATTER

The following incorrect procedures and actions were among those revealed when investigating *complaints* concerning handling of matters by bilingual authorities.

– A test result had been sent to a client in English only (1327/4/11).
– The authority responsible for the State's payments flows had sent a legal office in Åland an invoice that was only in Finnish (1914/4/10).
– An interrogation protocol had been drafted in Finnish, although the witness had used Swedish (125/4/10).
– An expression that is not used on a regular basis in Swedish had been used in the Swedish-language version of one of the questions in the matriculation exam (3753/4/09).
– Some ministries had appended material that was mainly in Finnish to a request for a submission that they had sent to Åland (503 and 656/4/09).

On his own initiative, the Ombudsman again took up the question of language rights in automatic traffic surveillance. In 2010 he had given a reprimand to the Ministry of the Interior, because the automatic camera system used for traffic surveillance did not safeguard the fundamental rights of Swedish-speakers. He called for a more proactive grasp in the matter on the part of the National Police Board. However, the shortcomings in the system had still not been redressed (3243/2/11).

One of the questions examined on *inspection visits* was whether the language through the medium of which matters are dealt with influences processing times. It was admitted at one of the places visited that translation lengthened processing times somewhat. In some places, however, the language used did not affect the processing time in practice, because the persons who processed matters in Swedish had fewer cases to deal with.

ASCERTAINING A CLIENT'S LANGUAGE

The Language Act requires the public authorities to ascertain a client's language when they contact him or her on their own initiative. A person can register also the language in which he or she wants to conduct dealings with the authorities, either Finnish or Swedish, in the population data system.

An incorrect procedure was revealed *in one complaint* case, in which a person whose mother tongue was Swedish had been sent an invitation in Finnish to an event where a demand for a penalty was served (3624/4/09).

In distraint, for example, the right of an involved party to use the language he genuinely wants was ensured, according to an observation made on *an inspection visit*, by having the debtor's mother tongue recorded in the distraint data system through the population data system.

In this respect, inspections did not reveal problems in the activities of authorities.

LANGUAGE ABILITY OF PERSONNEL

When using the written complaint-investigation procedure, the Ombudsman is a priori not in a position to assess the practical ability of an official or employee to speak a language. It was, however, established in one *complaint case* that a customer adviser's language skills were not fully adequate to enable a discussion with a client to be so clear that the client was left with a correct picture of how the matter was being taken care of (2207/4/10).

Another matter that was given attention on *inspection visits* was how language legislation was being implemented in the personnel policy of the body being inspected. The matters looked at included how language ability was taken into account in recruitment, what kind of language training was available for employees, how language ability was taken into consideration in remuneration and whether job tasks were assigned on the basis of an official's command of languages.

In the light of observations made on inspection visits, ensuring services, especially through the medium of Swedish, could be implemented in different ways.

The personnel of offices and agencies included, for example, officials who spoke Swedish as their mother tongue and who in a bilingual authority were based in bilingual localities. An individual official task could, irrespective of work location, also be transferred to another official who spoke the language. An effort had been made to guarantee a practical knowledge of the language and distribute it more evenly through a work community also by assigning persons who spoke Swedish as their mother tongue and belonged to various personnel groups to different departments. Another way in which language rights were safeguarded was that matters and telephone calls handled through the medium of Swedish were channelled to the persons with the best command of the language to be dealt with. One of the places inspected had a so-called language ambassador, who served as a resource.

A general observation was that language ability was taken into consideration in recruitment and counted as an advantage for the applicant. Likewise taken into consideration in recruitment was the fact that different personnel groups had practical knowledge of languages. Language lessons were offered personnel at several of the places inspected.

At many of the unilingual sites inspected, the need for customer service in English was greater than what was needed in Swedish. In some sectors of administration, such as labour and labour protection, clients can represent numerous different nationalities, whereby knowledge of also other languages in addition to English was needed.

3.5.3 THE REQUIREMENT OF GOOD USE OF LANGUAGE

The trust that must be felt towards an official's actions is closely linked to the official's behaviour both in office and outside it. Officials must behave in the way their positions and tasks presuppose. Especially in posts where trust and esteem are required, behaviour commensurate with the official's status must be demanded also outside official hours.

Matter-of-fact and neutral use of language can be expected of an official both in oral interaction and in documents drafted by the official and concerning a client. An official must use the kind of language and expressions that accord with good manners and are generally what is to be expected of an official. Expressions that some could find offensive even if they are not intended to be must be avoided.

The following shortcomings were among those revealed when *complaints* were being investigated:

A statement of opinion by a permanent expert used by an authority contained critical and disparaging expressions aimed at the complainant and his representative (1134/4/10).

An office-holder's choice of words had been inappropriate in a situation where he had described a client's way of not applying for primary benefits as follows: "You can't be perpetually weaselling out of things." (2058/4/10).

Attention was drawn to an official's choice of words in a case where the official had asked, in response to a client's behaviour: "What shape are you in today?" When the client replied that he was in good shape, the official had further asked whether "his medication was in balance" (1852/4/10).

Attention was further drawn to the choice of words when an official had used the expressions "ähläm" (a reference to Arabic) and "neekerinsuukko" (literally "Negro's kiss", a kind of marshmallow sweet with a chocolate covering) in a telephone conversation with a client (460/4/11).

The view taken in one ruling concerning the reasons presented for decisions was that it would have been desirable for an authority to pay attention to ensuring that the decision was clearly and precisely reasoned in a situation where the case itself had been exceptionally complex and difficult to understand (3236/4/09). A fact highlighted in another case, in turn, was that complex legislation can make it difficult to draft supporting reasons that are at the same time both concise and clear (4813/4/09).

A further matter emphasised as a part of the demand for good use of language was the fact that officials must present themselves to clients using their official name (2745*, 2995*, 3581* and 3706/4/10*).

Concrete matters that were looked at *on inspection visits* included whether the mode of expression used in a document was linguistically clear and its contents understandable, was the use of language neutral, were documents, especially decisions, perspicacious and clear in their visual appearance and did their contents form a consistent and easily understandable totality.

On inspection visits to distraint offices conducted the previous year, the offices expressed criticism concerning forms. They were regarded as, *inter alia*, defective or difficult to understand. A Deputy-Ombudsman asked the National Administrative Office for Enforcement to inform her what measures, if any, the problems that had been reported about forms would lead to.

The National Administrative Office reported that the distraint information system, called by the acronym ULJAS, and an associated document application are maintained and updated regularly and that some of the errors and problems that had manifested themselves had already been redressed. The National Administrative Office for Enforcement considered it not purposeful to change the terms the clients of distraint found to be problematic, but which are based on legislative provisions. A list of shortcomings in forms has been drafted by the Deputy-Ombudsman and forwarded to the chairs of the working groups developing the ULJAS and UNO information systems. The matter was not deemed to warrant further measures by the Deputy-Ombudsman.

Nothing that would have led to measures was observed with respect to this theme on other inspections, either.

ANNEX 1

CONSTITUTIONAL PROVISIONS PERTAINING TO PARLIAMENTARY OMBUDSMAN OF FINLAND

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

Section 38 – Parliamentary Ombudsman

The Parliament appoints for a term of four years a Parliamentary Ombudsman and two Deputy- Ombudsmen, who shall have outstanding knowledge of law. The provisions on the Ombudsman apply, in so far as appropriate, to the Deputy-Ombudsmen. The provisions concerning the Ombudsman shall apply *mutatis mutandis* also to a Deputy-Ombudsman and a substitute for a Deputy-Ombudsman. (24.8.2007/802)

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

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

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

Section 109 – Duties of the Parliamentary Ombudsman

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

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

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

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

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

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

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

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

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

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

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

Section 113 – Criminal liability of the President of the Republic

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

Section 114 – Prosecution of Ministers

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

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

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

Section 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

(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

(1) The Ombudsman shall carry out the on-site inspections of public offices and institutions necessary to monitor matters within his or her remit. Specifically,

the Ombudsman shall carry out inspections in prisons and other closed institutions to oversee the treatment of inmates, as well as in the various units of the Defence Forces and Finnish peacekeeping contingents to monitor the treatment of conscripts, other military personnel and peacekeepers.

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

Section 6 – Executive assistance

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

Section 7 – Right of the Ombudsman to information

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

Section 8 – Ordering a police inquiry or a pre-trial investigation

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

Section 9 – Hearing a subject

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

Section 10 – Reprimand and opinion

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

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

Section 11 – Recommendation

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

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

CHAPTER 2
REPORT TO THE PARLIAMENT AND DECLARATION OF INTERESTS

Section 12 – Report

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

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

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

Section 13 – Declaration of interests (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-Om-

budsman, 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-Ombudsman 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

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

(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

(1) The tasks of the Human Rights Centre are:
1) to promote information, education, training and research concerning fundametnal 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

(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 quarum 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 4
OFFICE OF THE PARLIAMENTARY OMBUDSMAN AND THE DETAILED PROVISIONS (20.5.2011/535)

Section 20 – 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 co-operation 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.
. . .

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.
. . .

ANNEX 2

STATISTICAL DATA ON THE OMBUDSMAN'S WORK IN 2011

MATTERS UNDER CONSIDERATION

Oversight-of-legality cases under consideration			6,700
Cases initiated in 2011		4,543	
– complaints to the Ombudsman	4,147		
– complaints transferred from the Chancellor of Justice	38		
– taken up on the Ombudsman's own initiative	82		
– submissions and attendances at hearings	37		
– other written communications	239		
Cases held over from 2010		1,692	
Cases held over from 2009		457	
Cases held over from 2008		8	
Cases resolved			4,728
Complaints		4,385	
Taken up on the Ombudsman's own initiative		64	
Submissions and attendances at hearings		42	
Other written communications		237	
Cases held over to the following year			1,972
From 2011		1,531	
From 2010		432	
From 2009		8	
From 2008		1	
Other matters under consideration			234
Inspections [1]		118	
Administrative matters in the Office		90	
International matters		26	

[1] Number of inspection days 83

OVERSIGHT OF PUBLIC AUTHORITIES

Complaint cases		4,385
Social security		873
– social welware	578	
– social insurance	295	
Police		728
Health care		472
Prisons		415
Courts		256
– civil and criminal	220	
– administrative	36	
Labour		186
Education		169
Municipal affairs		149
Environment		135
Enforcement		102
Transport and communications		100
Guardianship		100
Taxation		98
Prosecutors		88
Asylum and immigration		81
Agriculture and forestry		79
Highest organs of state		59
Defence		54
Municipal councils		50
Church		29
Customs		29
Private parties not subject to oversight		9
Other subjects of oversight		124

OVERSIGHT OF PUBLIC AUTHORITIES

Taken up on the Ombudsman's own initiative			64
Police		14	
Health care		9	
Prisons		8	
Education		6	
Social security		5	
– social welfare	1		
– social insurance	4		
Municipal affairs		3	
Defence		3	
Courts		2	
– civil and criminal	1		
– administrative	1		
Guardianship		2	
Environment		1	
Taxation		1	
Enforcement		1	
Prosecutors		1	
Asylum and immigration		1	
Customs		1	
Other subjects of oversight		6	
Total number of decisions			4,449

MEASURES TAKEN BY THE OMBUDSMAN

Statistical records changed as of 1.6.2011.

Complaints		4,385
Decisions leading to measures on the part of the Ombudsman		780
– prosecution		–
– reprimands		37
– opinions		604
– as a rebuke	340	
– for future guidance	264	
– recommendations (1.1.–31.5.2011)		4
– recommendations (1.6.–31.12.2011)		28
– to redress an error or rectify a shortcoming	1	
– to develop legislation or regulations	17	
– to provide compensation for a violation	10	
– matters redressed in the course of investigation		40
– other measure		67
No action taken, because		2,491
– no incorrect procedure found		491
– no grounds to suspect incorrect procedure (1.1.–31.5.2011)		868
– no grounds (1.6.–31.12.2011)		1 132
– to suspect illegal or incorrect procedure	772	
– for the Ombudsman's measures	360	
Complaint not investigated, because		1,114
– matter not within Ombudsman's remit		121
– still pending before a competent authority or possibility of appeal still open		517
– unspecified		200
– transferred to Chancellor of Justice		10
– transferred to Prosecutor-General		19
– transferred to other authority		65
– older than five years		27
– older than two years		56
– inadmissible on other grounds		99

Taken up on the Ombudsman's own initiative			64
Decisions leading to measures on the part of the Ombudsman		48	
– prosecution		1	
– reprimands		2	
– opinions		24	
– as a rebuke	11		
– for future guidance	13		
– recommendations (1.1.–31.5.2011)		3	
– recommendations (1.6.–31.12.2011)		6	
– to redress an error or rectify a shortcoming	1		
– to develop legislation or regulations	4		
– to provide compensation for a violation	1		
– matters redressed in the course of investigation		3	
– other measure		9	
No action taken, because			13
– no incorrect procedure found			2
– no grounds to suspect incorrect procedure (1.1.–31.5.2011)			4
– no grounds (1.6.–31.12.2011)			7
– to suspect illegal or incorrect procedure	6		
– for the Ombudsman's measures	1		
Own initiative not investigated, because		3	
– still pending before a competent authority or possibility of appeal still open		1	
– inadmissible on other grounds		2	

INCOMING CASES BY AUTHORITY

Ten biggest categories of cases

Social security		852
– social welware	557	
– social insurance	295	
Police		701
Health care		463
Prisons		361
Courts		233
– civil and criminal	203	
– administrative	30	
Labour		185
Education		151
Municipal affairs		145
Environment		139
Enforcement		112

ANNEX 3

INSPECTIONS

* = inspection without advance notice

Courts

- Ministry of Justice, Department of Judicial Administration
- Varsinais-Suomi District Court (coercive measures affecting telecommunications)

Prosecution service

- East Finland Prosecutor's Office
- Helsinki Prosecutor's Office, economic crimes department
- Office of the Prosecutor General
- West Finland Prosecutor's Office (investigation of employment-related offences)

Police administration

- East Finland Regional State Administrative Agency, police department
- Etelä-Pohjanmaa Police Service, detention facility at main police station in Seinäjoki*
- Etelä-Savo Police Service
- Etelä-Savo Police Service, detention facility at main police station in Mikkeli*
- Finnish Security Intelligence Service (twice)
- Helsinki Police Service, economic crimes unit
- Helsinki Police Service, Pasila police prison*
- Helsinki Police Service, Southern Police District neighbourhood police group and virtual neighbourhood police group
- Helsinki Police Service, Töölö detention facility*
- Jokilaakso Police Service, detention facility at main police station in Ylivieska*
- Kanta-Häme Police Service, detention facility at main police station in Hämeenlinna*
- Keski-Pohjanmaa and Pietarsaari Police Service, detention facility at main police station in Kokkola*
- Keski-Uusimaa Police Service, detention facility at main police station in Järvenpää*
- Keski-Uusimaa Police Service, detention facility at main police station in Hyvinkää*
- Länsi-Uusimaa Police Service, detention facility at main police station in Lohja *
- Lapland Police Service, detention facility at main police station in Rovaniemi*
- Lapland Police Service, foreigners' affairs at main police station in Rovaniemi
- National Bureau of Investigation (NBI)
- National Bureau of Investigation (NBI), Mikkeli office
- National Economic Crime Prevention Unit
- Oulu Police Service, detention facility at main police station in Oulu*
- Päijät-Häme Police Service, detention facility at main police station in Lahti
- Päijät-Häme Police Service, neighbourhood police activities
- Pirkanmaa Police Service, detention facility at main police station in Tampere*
- Pohjanmaa Police Service, detention facility at main police station in Vaasa*
- Registration Office of The National Police Board
- The National Police Board
- Varsinais-Suomi Police Service
- Varsinais-Suomi Police Service, detention facility at main police station in Turku*

Prison service

- Hämeenlinna Prison*
- Kestilä Prison*
- Kuopio Prison*
- Käyrä Prison*
- Mikkeli Prison*
- Oulu Prison*

- Pelso Prison*
- Riihimäki Prison polyclinic*
- Riihimäki Prison*
- Satakunta Prison*
- South Finland criminal sanctions region's regional centre and evaluation centre
- Turku Prison*
- Vantaa Prison

Distraint

- Itä- and Keski-Uusimaa distraint office (twice)
- Pirkanmaa distraint office

Defence Forces and Border Guard

- Air Force Academy
- Air Force Command
- Army Command Finland
- Artillery Brigade
- Defence Staff, legal department
- Lapland Air Command
- Lapland Air Defence Regiment
- Pori Brigade
- Satakunta Air Command
- Signal Regiment
- Signals Test Facility
- South Savo Regional Office

Customs

- Customs canine school
- Western Customs District (coercive measures affecting telecommunications)

Foreigners' matters

- Metsälä Reception Centre and detention unit
- Oulu Reception Centre
- Rovaniemi Reception Centre (run by Finnish Red Cross)

Social welfare

- City of Espoo's Taavinkoti Home for the Elderly*
- City of Hämeenlinna's Virveli day activities centre*
- City of Tampere's on-call housing service and supported living unit*
- City of Tampere's Selkis sobering-up and detox station*
- City of Vaasa's sobering-up and detox station *
- City of Vantaa social welfare and crisis on-call service
- City of Vantaa Viertola Reception Home
- City of Vantaa's Metsonkoti home for the aged*
- Helsinki Social Welfare Department's Hietaniemi Service Centre*
- Helsinki Social Welfare Department's Itiksen Aurinko Day Centre*
- Helsinki Social Welfare Department's Kontulan Symppis Centre*
- Helsinki Social Welfare Department's Western clinic for intoxicants abusers and detox station*
- Hyvinkään Mäntylä (a hostel run by a private foundation for homeless persons with intoxicants problems)*
- Hämeenlinna Family Centre
  - Taimistontie Reception Unit and Placement Unit
  - Pollentie Youth Home
- Refuge run by Naisten Apu Espoossa ry (Women's aid in Espoo)
- South Karelia Social Welfare and Health District's Leiri children's home*
- South Karelia Social Welfare and Health District's Youth Group Home*
- Virvelinranta support centre in Hämeenlinna, (Eteva joint authority's psychiatric unit for mentally handicapped patients with challenging behaviour)*
- Vuorela Reform School
- Ylinen care and rehabilitation services in the Pirkanmaa Hospital District

Health care

- Finnish Patient Insurance Centre
- Helsinki and Uusimaa Hospital District's Helsinki University Central Hospital's Psychiatry Centre
- On-call polyclinic at Etelä-Pohjanmaa Hospital District's Seinäjoki Central Hospital*
- Patient Injuries Board
- South Savo Hospital District's Moisio Hospital*

Social insurance

- Financial Supervisory Authority
- Insurance Court
- Kela's Oulu Insurance Region
- Kela's pension and income security office (collection of maintenance arrears)
- Kela's Northern Finland Insurance Region
- Local Kela office in Oulu
- Student Financial Aid Appeal Board

Labour and unemployment security

- Employment and Economic Development Office of Oulu Region
- Regional State Administrative Agency (AVI) of Northern Finland (labour protection area of responsibility)
- Regional State Administrative Agency (AVI) of South West Finland (labour protection area of responsibility)
- Unemployment Security Appeal Board

Education

- City of Kaarina's educational services
- General Education Division of the Ministry of Education and Culture

Other inspections

- Association of Finnish Local and Regional Authorities, legal affairs unit (visit)
- Diocesan Chapter of the Archdiocese of Turku
- Finnish Wildlife Agency
- Ministry of Finance's Administration Development Department
- National Archives
- South Finland Regional State Administrative Agency (AVI)
- South Savo Emergency Response Centre (ERC)
- South West Finland Emergency Response Centre (ERC)
- Tax Department of the Ministry of Finance

ANNEX 4

PERSONNEL

Secretary General

Romanov, Päivi, LL.M. with court training

Principal Legal Advisers

Kuopus, Jorma, LL.D., LL.M. with court training
Kallio, Eero, LL.M. with court training
Marttunen, Raino, LL.M. with court training
Haapkylä, Lea, LL.M. with court training
Länsisyrjä, Riitta, LL.M. with court training
Ojala, Harri, LL.M. with court training (since 1.12.)
Tanttinen-Laakkonen, Kaija, LL.M. (since 1.12.)
Haapamäki, Juha, LL.M. with court training (since 1.12.)
Räty, Tapio, LL.M. (since 1.12.)
Pölönen, Pasi, LL.D., LL.M. with court training (since 1.12.)

Senior Legal Advisers

Ojala, Harri, LL.M. with court training (till 30.11.)
Hännikäinen, Erkki, LL.M.
Tamminen, Mirja, LL.M. with court training
Tanttinen-Laakkonen, Kaija, LL.M. (till 30.11.)
Haapamäki, Juha, LL.M. with court training (till 30.11.)
Aantaa, Tuula, LL.M. with court training
Kurki-Suonio, Kirsti, LL.D.
Stoor, Håkan, LL.Lic., LL.M. with court training
Räty, Tapio, LL.M. (1.4.–30.11.)
Lindström, Ulla-Maija, LL.M. (since 1.12.)
Pirjola, Jari, LL.Lic., M.A. (since 1.12.)
Sarja, Mikko, LL.Lic., LL.M. with court training (since 1.12.)

Legal Advisers

Muukkonen, Kari, LL.M. with court training
Lindström, Ulla-Maija, LL.M. (till 30.11.)
Toivola, Jouni, LL.M. (on leave 10.1.–31.12.)
Pölönen, Pasi, LL.D., LL.M. with court training (till 30.11.)
Verronen, Minna, LL.M. with court training
Pirjola, Jari, LL.Lic., M.A. (till 30.11.)
Rita, Anu, LL.M. with court training
Niemelä, Juha, LL.M. with court training
Eteläpää, Mikko, LL.M. with court training
Suhonen, Iisa, LL.M. with court training
Sarja, Mikko, LL.Lic., LL.M. with court training (till 30.11.)
Arjola-Sarja, Terhi, LL.M. with court training
Äijälä-Roudasmaa, Pirkko, LL.M. with court training (on leave since 15.12.)
Holman, Kristian, LL.M., M.Sc.(Admin.)
Räty, Tapio, LL.M. (till 31.3.)
Lyytikäinen, Satu, LL.M. with court training (10.1.–31.12.)

Referendary

Skottman-Kivelä, Piatta, LL.M. with court training (10.1.–31.12., on leave 19.1.–31.3.)

On-duty lawyers

Wirta, Pia, LL.M. with court training
Romakkaniemi, Jaana, LL.M. with court training

Information Officers

Helkama, Ilta, M.A. (till 31.1.)
Tuomisto, Kaija, M.Soc.Sc.

Investigating Officers

Huttunen, Kari
Laakso, Reima

Notaries

Kerrman, Raili, LL.B.
Rahko, Helena, LL.B.
Koskiniemi, Taru, LL.B.
Tuominen, Eeva-Maria, M.Sc.(Admin.), LL.B.
Suutarinen, Pirkko, LL.B.

Records Clerk

Pärssinen, Marja-Liisa, LL.B.

Filing Clerk

Kataja, Helena

Assistant Filing Clerk

Karhu, Päivi

Departmental Secretaries

Ahola, Päivi
Stern, Mervi
Forsell, Anu

Office Secretaries

Raahenmaa, Arja (part-time since 1.9.)
Salminen, Virpi
Keinänen, Krissu
Salminen, Sirpa
(on leave till 10.3.)
Kaukolinna, Mikko
Hellgren, Johanna
Hokkanen, Pirjo (part-time since 1.9.)
Mäkelä, Tiina (till 31.1.)
Myllymäki, Helena (till 10.3.)
Einola, Eija (since 14.3.)
Karhunen, Sanna (since 15.12.)

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