

3.4

Shortcomings and improvements in implementation of fundamental and human rights

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

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

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

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

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

3.4.1 TEN CENTRAL FUNDAMENTAL AND HUMAN RIGHTS PROBLEMS IN FINLAND

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

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

Shortcomings in the conditions and treatment of the elderly

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

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

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

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

Shortcomings in child protection and the handling of child matters

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

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

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

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

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

Shortcomings in the guarantee of the rights of persons with disabilities

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

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

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

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

Policies limiting the right to self-determination at institutions

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

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

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

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

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

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

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

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

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

Flaws in the conditions and treatment of prisoners and remand prisoners

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

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

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

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

Shortcomings in the availability of sufficient health services

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

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

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

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

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

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

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

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

Shortcomings in the safety of the primary education learning environment

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

Indoor air problems are continuously identified at schools.

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

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

Increasing numbers of teachers have been laid off.

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

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

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

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

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

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

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

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

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

3.4.2 OTHER LONG-TERM SHORTCOMINGS

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

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

3.4.3 EXAMPLES OF POSITIVE DEVELOPMENT

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

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

Police

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

Social welfare

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

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

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

Health care

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

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

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

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

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

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

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

Guardianship

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

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

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

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

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

Language matters

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

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

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

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

Transport

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

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

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

Other authorities

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

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