

HANDLING OF COMPLAINTS IN THE OFFICE OF THE PARLIAMENTARY OMBUDSMAN AND IN THE DEFENCE FORCES

1. External handling of complaints

1.2 About the Finnish ombudsman institution

The Parliamentary ombudsman of Finland is a general ombudsman institution that mandated to deal with all public administration including the Defence Forces.

The Parliamentary Ombudsman's duties are defined in Finland on a constitutional level. Constitution of Finland states that it is the Ombudsman's duty to ensure that those within his or her legal jurisdiction follow the law and fulfil their duties. In addition, the Ombudsman monitors according the constitution the implementation of fundamental and human rights.

The Finnish ombudsman institution is second oldest in the world. It was established for 91 years ago in 1920 according the Swedish model. The powers of the Ombudsman are in Finland and Sweden broader than anywhere in the world. The ombudsman has even power to bring criminal charges. His or her oversight merit covers all authorities and public officials and also other persons and bodies when these are performing public task. Even the President of The Republic, Government Ministers and court of law are subject to the Ombudsman's oversight. There are no limitations of powers concerning The Defence Forces either.

The Ombudsman has an unrestricted right to receive from every authority and everyone performing a public task all information needed for the oversight of legality. Accordingly he has right of access to all classified documents and information systems of the Defence Forces.

1.2 The Ombudsman and the Defence Forces

The special Finnish feature is that Finland has still the traditional conscription based army. The number of conscripts is in Finland exceptionally high in relation to the population. Almost 80 % of men of each age group complete their military service in Finland. That means annually about 23.000 conscripts. In addition about 500 women volunteers complete their military service every year. Only about seven percent of the age group select the alternative civil service. The Finnish Defence Forces employ about 16.000 people, about 9000 soldiers and 7000 civilians.

The Parliamentary Ombudsman Act requires the Ombudsman to monitor the treatment of especially conscripts and other persons serving in the Defence Forces as well as of peacekeeping personnel and to conduct inspections of various units belonging to the Defence Forces. That is why the Defence Forces are of greater importance in the Ombudsman's oversight of legality than merely the number of complaints would indicate. The Ombudsman receives each year about 50-60 complaints concerning the Defence Forces and the Border

Guard, which is only a very small fraction of all about 4000 complaints. The focus has always been to oversee the treatment of the conscripts.

Complaints concerning matters in the military affairs category have been made to the Ombudsman by both regular personnel of the Defence Forces and Border Guard and conscripts, and sometimes by conscripts' parents. The threshold for making a complaint is fairly high for conscripts and others doing military service. They often consider it advisable to wait until they are nearing the end of their time in the military or have already ended it before turning to the Ombudsman. Complaints by conscripts have proved to be well-founded more often than complaints on average.

The Ombudsman has often underlined that all soldiers have in peace time the same human rights as other people. According our constitution only limitations on freedom of movement may be provided by an Act if they are necessary for fulfilment of the duty of national defence.

The ombudsman has also many times pointed out that the safety of the compulsory military service must be in confirmed in all circumstances. In his decision from 2008 the Ombudsman draw attention to shortcomings in the way explosives were stored by the Defence Forces. Explosives magazines were in poor condition located in some places so close to the barracks and training areas that they could pose a significant danger to a large number of people. The Ombudsman proposed that the ministry of Defence should take urgent measures to redress the situation.

The international operations overseas have not led to an expansion of work of the Finnish Ombudsman. All conscripts complete their service in Finland. At present, only about 340 Finns are currently participating in crisis management tasks abroad. Last year only one complaint was handled concerning a Finnish peacekeeper, and even that complaint did not lead to any measures.

1.3 Complaint matters

The Ombudsman oversees the legality of the activities of the Defence Forces primarily through the investigation of complaints. A complaint addressed to the Ombudsman must be in writing, but otherwise there are no formal requirements as to its contents. Any private individual or corporation, regardless of nationality, may make a complaint to the Parliamentary Ombudsman. The complainant need not be a party to the matter to which the complaint pertains. However, the Ombudsman does not investigate anonymous complaints. A complaint may be sent by post, fax or e-mail. The idea has been to make the filing of complaints as simple as possible, so that anyone can approach the Ombudsman if there is a need to do so.

Complaints received are allocated among the Ombudsman and the Deputy-Ombudsmen in accordance with the adopted division of labour. Each of them decides the complaints allocated to her or him independently and with the same authority. Each of them also has a group of lawyers for the preparation of cases.

The Ombudsman investigates a complaint if it is within her or his competence and gives rise to a suspicion of unlawful conduct. However, matters dating back more than five years are not investigated unless there is a special reason to do so. Likewise, a complaint will usually not be investigated if it is pending somewhere else or if a decision is still open to appeal through regular channels.

When a complaint is being investigated, any information and material considered necessary by the Ombudsman is procured. It can be obtained flexibly by various means, as is deemed suitable case by case. Thus, for instance, telephone and e-mail enquiries and requests for copies of official decisions and other documents are regular means for obtaining information. The most common procedure is to request a written statement and supporting documentation from the official against whom the complaint has been made and from the authority where he or she works. The Ombudsman may also instruct the police to investigate the matter.

The Ombudsman has the right to receive, free of charge, any executive assistance deemed necessary from other authorities as well as the right of access to all needed documents and information irrespective of any provisions on secrecy.

2. Internal handling of complaints

The Finnish Defence Forces do not have an internal ombudsman system. A so-called administrative complaint can, however, be filed in the Defence Forces, as in every other administrative sector. Such a complaint draws attention to an improper procedure or shortcoming in administration. It can concern official activities, written decisions or specific actions. In the Defence Forces an administrative complaint can be presented to a person's superior or to the relevant supervisory authority and does not have to follow any prescribed form. Complaints regarding any matter that is over five years old are considered only in special cases, however. Any person or organization can file an administrative complaint and does not have to be an interested party. A complaint can also be filed by a person who is not employed by the Defence Forces. The possibility to file a complaint is thus roughly as broad as in the case of complaints to the Parliamentary Ombudsman.

The head of each administrative unit in the Defence Forces makes decisions on complaints that have been sent to him/her concerning a subordinate or procedures followed by a unit or official under the same authority. The Defence Command makes decisions, however, if a complaint has fundamental significance for the Defence Forces' activities or regards the Defence Forces as a whole. The process of handling complaints in the Defence Forces is similar to the process followed in the Office of the Parliamentary Ombudsman. A written decision must be issued, with sufficient grounds, and a copy must be sent to the party that is the object of the complaint and generally to the party filing the complaint as well. The decision does not automatically reverse an action or overturn a decision, but the appropriate authority can take steps to ensure the legality of official actions or overturn an illegal decision. A decision regarding an administrative complaint is not an administrative decision in itself and therefore cannot be appealed.

3. Advantages and disadvantages of different handling mechanisms

Processing times. The handling of a complaint by the Office of the Parliamentary Ombudsman can sometimes take a quite long time. Of the roughly 4,000 complaints that are received by the Ombudsman each year, only 50-60 concern the Defence Forces. Only two or three of the Office's more than 30 lawyers handle matters concerning the Defence Forces, on a part-time basis. The handling of complaints in the Defence Forces is somewhat faster, with only 30-40

internal complaints being filed each year. In the internal handling process corrective measures can be taken faster and obvious misunderstandings can be set straight immediately.

The Legal Division of the Defence Command has stated that improprieties and illegal practices are more likely to be detected through internal control than through external control, since internal control can obtain information on the Defence Forces' activities through different channels, not just complaints and audits. The Parliamentary Ombudsman's external control is more random, and there may be a higher threshold to complain to an external control authority rather than internally. The external control can also sometimes lack the necessary expertise for dealing with military matters.

Independence. The handling of complaints by the Parliamentary Ombudsman is completely independent and neutral. Although the internal handling of complaints is meant to be neutral too, complainants may not always feel that they will receive a neutral outside opinion. In the internal control of legality, matters are examined from a military viewpoint in any case.

Effectiveness. A decision made by an independent control authority has a higher status and broader significance. The Ombudsman's decisions are typically recommendations for action and they are not legally binding. However the decisions of the Ombudsman have a considerable practical influence on the workings of public administration in Finland. The positions adopted by the Ombudsman are normally taken very seriously. The most important decisions are published on the Parliamentary Ombudsman's website and are sometimes accompanied by press releases. These decisions often receive considerable attention in the media.

Especially the Defence Forces largely comply with the Parliamentary Ombudsman's decisions. Generally calls for corrective measures and recommendations lead to immediate measures. The Parliamentary Ombudsman's opinions are also taken into consideration in revising the Defence Forces' internal rules and regulations.

The decisions made by the Ombudsman are also followed up. The focus of criticism expressed is often given a deadline by which to provide an account of the corrective measures taken as a result of the Ombudsman's decision. In virtually all cases, the decision of the Ombudsman is taken duly into account in the development of the procedures that have been criticised.

The positions adopted by the Ombudsman have been significant also in the context of legislative reform. They are often referred to in the precursor documents for new legislation and also when the internal guidelines for various fields of administration are being developed.

4. Relations between different complaints handling mechanisms

The Defence Forces receive copies of decisions made by the Parliamentary Ombudsman. These are broadly discussed at yearly training sessions for military lawyers, which are also attended by lawyers of the Parliamentary Ombudsman. Head of the Legal Division of the Defence Command and representatives of the Parliamentary Ombudsman meet each year and discuss timely issues to which attention has been drawn in complaints. A Nordic conference

for military lawyers is also arranged each year, and representatives of the Parliamentary Ombudsman are invited to attend this conference as well.

As a rule, if the same matter is the subject of both a complaint to the Parliamentary Ombudsman and an internal complaint, the matter is left up to the Defence Forces. Decisions are made on a case-by-case basis, however. The point of departure is that internal control takes priority while external control by the Parliamentary Ombudsman is of a supplementary nature.

5. Challenges and obstacles in handling of complaints

In handling complaints the biggest problem is the large number of complaints concerning other parties besides the Defence Forces. As a result it is difficult to concentrate on matters regarding the Defence Forces. Current legislation does not give the Parliamentary Ombudsman discretion to decide what complaints should be investigated. Any complaint concerning a matter that is less than five years old must be investigated if there is reason to suspect improprieties.

The Act on the Parliamentary Ombudsman was reformed this year so that only matters less than two years old will have to be investigated in future. Discretion regarding the handling of complaints has also been increased to some extent. In addition the reform will allow the Parliamentary Ombudsman to refer a complaint to another authority. These reforms will hopefully help to better focus on military complaints.

According to the Legal Division of the Defence Command internal and external mechanism for handling complaints complement each other fairly well, and matters are usually resolved properly in either way. Both procedures also provide means to intervene in improper or illegal procedures as a rule. The biggest challenge is a situation in which the same person sends a complaint to more than one address, in which case responsibility for handling the matter must be coordinated. Another challenge is if a person submitting a complaint repeatedly sends supplementary information before there has been time to investigate the matter and answer previous questions.

One challenge is to deal with the people who complain again and again. Nowadays over 60% of the complaints received by the Parliamentary Ombudsman arrive by e-mail, which has increased not only the total number of complaints but also the number of complaints in which arguments are not presented clearly and logically. People who send complaints by e-mail on the spur of the moment anytime day or night may not have a real need for legal protection. Handling this kind of complaints occupies resources that could be used for more important matters.