

REPORT
OF THE FINNISH
CHANCELLOR OF JUSTICE
2005

SUMMARY



HELSINKI 2006

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To the reader

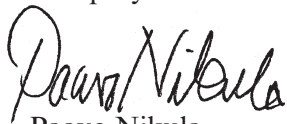
This summary is an abridged version of the Chancellor of Justice's Annual Report 2005. It is meant to provide the reader with a brief overview of the Chancellor's activities in the year under review. Decisions concerning the Chancellor's statement on the Commission proposal for the creation of a European Union Fundamental Rights Agency and concerning a prosecution order relating to a suspected offence in office committed by the Chief Judge of a District Court have been included in full text. The official report was presented to the Parliament and to the Government on September 5th, 2006.

According to the Constitution, the Chancellor of Justice shall ensure that civil servants and other persons performing a public task obey the law and fulfil their obligations. This means that matters concerning the activities of public authorities and officials fall under his supervision. The Chancellor of Justice is also entrusted with the task of supervising the legality of the actions of the Government, as well as advocates (members of the Bar). The Chancellor of Justice shall, upon request, provide the President of the Republic, the Government and the Ministries with information and opinions on legal issues.

English translations of the sections of the Constitution concerning the Chancellor's duties, as well as relevant subordinate legislation and the Rules of Procedure of the Office appear as appendices.

The Chancellor of Justice during the year under review was Mr Paavo Nikula, Doctor of Laws (h.c.). The Deputy Chancellor of Justice was Mr Jaakko Jonkka, Doctor of Laws. Mr Nils Wirtanen, Master of Laws, served as the Secretary General and Substitute to the Deputy Chancellor of Justice.

Helsinki, November 1st, 2006


Paavo Nikula
Chancellor of Justice


Nils Wirtanen
Secretary General

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1 Overview of the activities of the Office of the Chancellor of Justice

Main duties

The duties of the Chancellor of Justice are prescribed in the Constitution of Finland, which guarantees for the Chancellor an independent status as an overseer of legality. The duties of the Chancellor include supervision and monitoring of the legality of the actions of the Government, the President of the Republic and public officials. This duty encompasses the oversight of the legality of the actions of courts of law. The Chancellor of Justice also monitors the implementation of fundamental and human rights.

In addition to monitoring, legality supervision includes issuing opinions to the President, the Government, and the ministries. A fundamental part of legality supervision is the investigating of complaints lodged by citizens against public authorities. Reviewing procedures by courts of law is yet another of the Chancellor's duties. The Chancellor of Justice can also launch investigations on his own initiative. News reports in the media or alleged incidents of unlawfulness, for example, may give rise to an investigation. On the basis of the Advocates Act, the Chancellor of Justice also oversees the activities of advocates.

In response to a complaint, the Chancellor of Justice can issue a reprimand to an official or body. In many cases he issues instructions on proper procedure, for future reference. In more serious cases, he can order charges to be brought against the official in question. The Chancellor has no jurisdiction to alter the decisions of officials on the basis of complaints, or to award damages. He can, however, submit a proposal for a judgement or decision to be annulled. The Chancellor's rulings are not subject to appeal.

Where authorities or officials are accused of misconduct in office, the Chancellor acts as a special prosecutor. The other functions of the highest prosecuting authority rest with the Prosecutor General.

The Chancellor of Justice is appointed by the President of the Republic. In the performance of his duties the Chancellor is assisted by the Deputy Chancellor of Justice, who also deputises for the Chancellor when necessary. The

Deputy Chancellor of Justice, in turn, has a substitute to stand in for him in his absence. The division of duties between the Chancellor of Justice and the Deputy Chancellor of Justice is laid out in the Act on the Chancellor of Justice and the Rules of Procedure established for the Office of the Chancellor of Justice. The Chancellor acts as the head of Office and decides on cases concerning the supervision of the Government and matters of general importance. The Deputy Chancellor investigates complaints not dealt with by the Chancellor and matters concerning the reviewing of sentences imposed by courts of law.

Supervision of the Government

The Chancellor of Justice attends Government plenary sessions and Presidential sessions, where matters are put forward to the President of the Republic. The Chancellor attends these sessions in order to supervise the observance of correct legal procedure and current legal provisions. However, his presence at the sessions is not a juridical precondition for decision-making by the Government or the President of the Republic. In practice, the Chancellor of Justice or the Deputy Chancellor (or his substitute) is always present at the sessions.

Supervision of the Government is largely preventive in nature: the Chancellor of Justice reviews Government Bills, other proposed resolutions, and related appendices before they are presented to the Government and the President of the Republic. The Chancellor also reviews the memoranda submitted by the Government to the Parliament in matters related to the European Union.

The Department for Government Affairs is the unit responsible for the revision of matters that will be dealt with by the Government.

Issuing opinions

Issuing opinions is an integral part of supervising the actions of the Government. According to the Constitution, the Chancellor of Justice must supply information on legal issues and provide the President of the Republic and the Government with information and opinions. Because the Government represents not only the collegiate body of the Cabinet but also the individual ministries, it is usually the ministries responsible for the preparation of any given proposal that request the Chancellor for an opinion.

The Chancellor of Justice's opinion is often requested when new legislation is being drafted, particularly in the fields of constitutional, administrative, criminal, or procedural law. Although compliance with such requests is left to the Chancellor's own discretion, he strives to give an opinion on points of legislation that may have particularly important implications for legality supervision.

Supervision of fundamental and human rights

It is the Chancellor of Justice's duty to ensure that fundamental and human rights are observed. This duty is fulfilled through the supervision of Government actions and the handling of complaints, and by initiating investigations. The grounds for decisions on complaints embody, when pertinent, references to the specific sections of the Constitution that concern fundamental rights and liberties.

International human rights conventions binding on Finland must also be taken into account when investigating matters that fall under the Chancellor's purview. Finland has ratified a large number of international human rights conventions. The United Nations' International Covenant on Civil and Political Rights and the European Convention on Human Rights are two examples of such binding conventions. Attention must also be paid to the regulations of the Charter of Fundamental rights of the European Union.

Investigation of complaints

Anyone who feels that an authority, public official or body has acted in a manner that violates his rights, or that an advocate has neglected his responsibilities, may lodge a complaint with the Chancellor of Justice.

There are no restrictions on who can lodge complaints with the Chancellor of Justice. The complainant may be an individual person, a corporation, or an organisation irrespective of nationality. The complainant need not have a legal standing in the matter. The lodging of a complaint is free of charge to the complainant. Complaints should generally be lodged in one of Finland's official languages, that is Finnish or Swedish, but complaints written in other languages may also be considered, within the limits of the Office's resources.

Complaints will be investigated if they concern the activities of persons or bodies subject to the Chancellor's supervisory authority. There must also be justifiable grounds to suspect illegal action or other misconduct. During the investigation the Chancellor of Justice is entitled to approach any authority for information and documents, including material classified as secret.

If unlawful action or other misconduct is found to have taken place, the Chancellor will take appropriate action. Depending on the case, this action may consist of issuing a reprimand or bringing charges for misconduct in office. If the misconduct is minor in nature or some controversy has been detected, the Chancellor may issue an authoritative statement on what is considered proper conduct according to law or the principles of good governance. If public

interest so requires, the Chancellor of Justice must, where necessary, take steps to ensure that the incorrect decision or action is rectified.

As a rule, decisions on complaints are given in an official document written in Finnish or Swedish. In 2005 the Chancellor of Justice received 1,186 complaints from private citizens.

The Chancellor of Justice will not investigate a complaint lodged more than five years after an alleged infringement has taken place, unless there are special grounds for doing so. This time limit is, however, not absolute, which makes it possible to investigate a case of exceptional gravity or importance irrespective of the time that has elapsed between the infringement and the lodging of the complaint. In 2005 the Chancellor dismissed 16 complaints on the basis of the time limitation.

The Office of the Chancellor of Justice also receives numerous telephone and E-mail enquiries from private citizens on a variety of matters that either concern them personally or have sparked wider public interest. Information is provided on the scope of the Chancellor's authority, on the formalities related to the filing and processing of complaints, or if the matter falls outside the Chancellor's purview, the correct authority or instance to approach. The Chancellor of Justice does not offer advice or assistance on points of law or provide other substantive legal information.

Review of sentences

According to the Act on the Chancellor of Justice, the Office of the Chancellor of Justice has the right to review sentences imposed by courts of law. For this purpose, the Office receives documents concerning decisions on sentences and their enforcement. Actions taken on the basis of these documents are described in the Chancellor of Justice's annual report. Any relevant errors detected in the sentences are referred to the courts for rectification. A total of 7,091 notifications on sentences were submitted for review during year 2005 and an investigation was initiated on 163 of these.

Supervision of the Bar

The Chancellor of Justice's duty to supervise the actions of advocates is based on the Advocates Act. While it is the duty of the Finnish Bar Association to take any necessary disciplinary action against its members, the Chancellor of Justice is responsible for checking a) the decisions made by the Board of the Bar Association concerning the supervision of its members and b) the decisions on disciplinary action made by the Bar Association's Disciplinary Board. The Chancellor also decides whether to exercise the right to have a decision on a

disciplinary matter examined in a court of law. The Chancellor of Justice investigates complaints on the actions of advocates, inclusive of public legal aid counsels, and may refer these matters to the Bar Association.

Communications and media services

According to the Constitution, the Chancellor of Justice must submit an annual report to the Parliament and the Government on his activities concerning legality supervision. The report includes descriptions of opinions and proposals issued and brief descriptions of cases that have lead to action by the Office. It also contains general reviews of the complaints received by the Chancellor of Justice, statistical data, and information on measures of general significance that the Chancellor of Justice has undertaken during the year under review.

The structure of the report has been revised over the past year. The idea has been to clarify and simplify the structure and, at the same time, to improve its readability and usefulness. The new structure is based on the division of the central administration into sectors, normally headed by the Ministries in charge of their respective purviews. The positions taken by the Chancellor of Justice concerning the Ministries and the agencies operating in their sectors can be more easily located in this manner.

The report is published in Finnish and Swedish. It is presented yearly to the Parliament and the Government when the Parliament opens its autumn term, usually in early September. An English summary of the report – that the reader is having in his or her hands now – is also published and made available to the public. The reports can be found on the Office's website (www.chancellorofjustice.fi).

The Office has a statutory Information Plan, which is approved by the Chancellor of Justice. The Plan defines the general principles, goals and practical means of interactive communication with the media and the public.

According to the Plan, the focus concerning information services is on openness, reliability and quality of service. Information seekers have to be served equally and effectively. Adequate information has to be available also in Swedish and Sámi, which are the languages of the main two linguistic minorities of the country.

Queries about the Office are responded to and more general information is given on the Office's website. The website also contains a complaint form and instructions on how to lodge a complaint as well as press releases, which are distributed every year to a large segment of media, NGOs and the general public.

Accounts of major decisions taken in the Office are sent monthly to Finlex, the comprehensive Internet database of Finnish legislation (www.finlex.fi). This is maintained by the Finnish Ministry of Justice and also includes a database of descriptions of decisions by the Chancellor of Justice. The database is primarily in Finnish and Swedish, but also includes translations of Finnish legislation into other languages. The database is open to all and free of charge. The Office also produces information for several web portals that gather information on public services.

Division of duties between the Chancellor of Justice and the Parliamentary Ombudsman

Finnish public officials are not only supervised by the Chancellor of Justice but also by the Parliamentary Ombudsman. The duties of the two authorities differ mainly in that the activities of the Government and the advocates fall under the Chancellor of Justice's supervisory authority, while the Defence Forces, prisons, and other closed institutions belong to the Ombudsman's supervisory field.

The division of duties between the Chancellor of Justice and the Parliamentary Ombudsman is laid out in the Act on the Division of Duties Between the Chancellor of Justice and the Parliamentary Ombudsman. The Act contains a list of matters to be referred to the Parliamentary Ombudsman, unless the Chancellor deems that there is some specific reason for investigating the matter at the Office of the Chancellor of Justice.

Generally the Chancellor of Justice refers the following types of matters to the Parliamentary Ombudsman: 1) Cases concerning the Defence Forces and those employed by the army or the Frontier Guard; 2) Cases related to apprehension, arrest, imprisonment on remand, or a travel ban related to a criminal investigation, as well as cases involving putting a person under custody or other such deprivation of liberty; and 3) Cases related to prisons or other institutions to which a person has been committed against his will. Complaints lodged by prisoners or other people in confinement are also usually referred to the Parliamentary Ombudsman.

On the basis of the aforementioned Act, the two authorities may agree for a particular case to be referred to either one or the other in order to secure speedier processing of the matter at hand, or for some other special reason.

In 2005 the Parliamentary Ombudsman received 53 complaints by referral from the Office of the Chancellor of Justice. The Ombudsman in turn referred 3 complaints to the Chancellor of Justice.

If both authorities have received the same complaint, only one of them will put the matter under investigation.

In addition to the Chancellor and the Ombudsman, there are a number of specialised authorities in Finland who perform more limited tasks in the field of legality supervision. These include the Ombudsman for Equality, the Consumer Ombudsman, the Data Protection Ombudsman, the Ombudsman for Minorities, and the Bankruptcy Supervisor.

The Office of the Chancellor of Justice

The Office of the Chancellor of Justice comprises three departments: the Department for Government Affairs, the Department for Legal Supervision, and the Administrative Unit. The Secretary General of the Office heads the Administrative Unit, while the other two departments are both headed by a Referendary Counsellor. The Department for Government Affairs deals with matters concerning the supervision of the Government and prepares opinions related to this function. This department is also responsible for the supervision of the Bar and public legal aid counsels, as well as for international matters and issues related to the preparation of EU affairs at the national level. The Department for Legal Supervision is responsible for the investigation of complaints, the supervision of courts of law, and other legality supervision. The Administrative Unit deals with internal administration, financial affairs, training, information and media services, and international co-operation.

At the end of the year under review, the Office had a staff of 37 officials, 19 of whom (in addition to the Chancellor of Justice and the Deputy Chancellor of Justice) were Masters of Laws, as required by their duties.

In the State budget (2005) the Office was allocated a sum of 2, 805, 000 EUR.

On-site inspections

The Chancellor or Justice is authorised to inspect authorities, government agencies, and other instances that fall within his supervisory jurisdiction. Consequently, legality supervision often takes the form of visits to central and local government offices to inspect the offices' activities. These visits also offer the authorities a chance to inform the Chancellor about the conditions under which they perform their functions and/or any matters they may find problematic.

During the reporting year, the Chancellor of Justice or the Deputy Chancellor of Justice carried out 36 on-site inspections of various State or municipal authorities.

International affairs

– The most significant international event for the Chancellor of Justice during the year in review was the seminar jointly arranged by Chancellor Nikula and Parliamentary Ombudsman Riitta-Leena Paunio for the Overseers of Legality in the Baltic Sea Region on 6-7 June 2005.

In addition to the hosts and their representatives, the seminar participants included the Swedish Ombudsman and Chancellor of Justice, the Estonian Chancellor of Justice, the Ombudsmen of Denmark and Lithuania, as well as overseers of legality or their representatives from Norway, Latvia, Germany, Poland and the Office of the European Ombudsman.

The seminar was held in the premises of the Parliament of Finland; the discussions ranged from the supervision of prisons and other closed institutions to the social rights involved in psychiatric care, and to good government as a fundamental right in the European Union.

– The Ombudsman of Ethiopia, Abai Tekle, visited the Chancellor of Justice on 7 March 2005. The meeting was attended also by Ms Anu Konttinen, the Foreign Ministry team leader for the Horn of Africa region. The topics of discussion included the oversight of legality, fundamental rights and human rights.

– Representatives of the Anti-Corruption Commission of the Republic of Korea and Consul Yong-gi Shin from the Korean Embassy met with the Chancellor of Justice on 8 June 2005. The visitors were introduced to the activities of the Office of the Chancellor of Justice.

– The Deputy Head Procurator of the People's Republic of China, Wang Zhenchuan, and his delegation visited the Office of the Chancellor of Justice on 14 June 2005. The Chancellor gave a talk about the tasks and the activities of the Office.

– On 14 June 2005, a group of 15 Bulgarian officials, journalists and NGO representatives visited the Office of the Chancellor of Justice under the auspices of a project for the implementation of an anti-corruption strategy, under the management of HAUS The Finnish Institute of Public Management and with funding by the EU. In a general introduction given to the visitors, the activities of the Chancellor as the supreme overseer of legality were discussed.

– A delegation from the Office of the Human Rights Ombudsman of the Council of Europe, led by Deputy Director Markus Jaeger, met the Chancel-

lor of Justice on 30 August 2005 in the context of the delegation's follow-up visit to Finland (see the Chancellor of Justice's annual report 2001, p. 18). The topics of discussion included the observations and recommendations of the Ombudsman relating to Finland, as well as the measures undertaken by Finland in this respect. Some of the issues under discussion were discrimination, minorities and asylum-seekers, national service in civilian duties, rights of children, violence against women and trafficking in human beings.

– The Fifth Seminar of the National Ombudsmen of EU Member States, arranged jointly by the European and the Dutch Ombudsmen, in The Hague on 11-14 September 2005, was attended by the Chancellor of Justice and Counsellor Marja Leskinen.

– The Chief Justice of the Supreme Court of Hungary, Zoltan Lomnicki, and his delegation visited the Office of the Chancellor of Justice on 19 September 2005. The Chancellor introduced the visitors to the duties and the activities of the Office.

– Representatives of the Estonian Lawyers' Union visited the Office of the Chancellor of Justice on 23 September 2005. The occasion began with an introduction to the activities of the Office by the Chancellor of Justice, followed by a joint event for the visitors and the staff of the Office.

– On 16-21 October 2005, the Chancellor of Justice visited Nigeria on the invitation of the Nigerian Minister of Justice. During the visit, he met with representatives of the Nigerian legislature and judiciary, Government, the Law Faculty of the University of Abuja, and the Nigerian Human Rights Commission.

In Abuja, the Chancellor of Justice gave a lecture on the topic "Drafting the Constitution – the Finnish Experience" and had discussions e.g. on the principle of good government, the oversight of the legality of the activities of the authorities, and the legal issues relating to the equality of the sexes. Another topic of discussion was the co-operation between the Government and the legislature, as well as the Finnish experiences in this respect during our membership in the European Union.

2 The Chancellor of Justice and the Government

General

The Chancellor of Justice's other main responsibility in addition to the handling of complaints is to supervise the legality of decision-making by the President of the Republic and the Government. Supervision of the Government requires the Chancellor to examine in advance the presentation agendas of Bills and proposals to be submitted to plenary sessions and presidential sessions. Examining these proposals and their grounds often requires talks with officials at various ministries and the issuing of opinions on the legal issues involved. This examination deals solely with legal questions and not with the expediency or political aspects of the proposals.

In 2005, 61 plenary sessions of the Government (66 in 2004) handled 1,527 (1,732) matters and the President of the Republic made 744 (832) decisions at 40 (39) presidential sessions. Supervising the actions of the Government thus claimed a large share of the weekly workload of the Chancellor of Justice and his assistants.

Among matters presented to the Government for decision are the Government's notices, accounts and reports to Parliament, legislative decisions of the Government and certain official appointments. Among matters presented to the President of the Republic for decision are Government Bills to Parliament, ratification of Acts of Parliament, issuance of Executive Decrees, the most important appointments to public office, matters relating to international co-operation and decisions concerning pardons.

In the event that the Government as a whole or a member of the Government violate the law in the course of performing their duties, the Chancellor of Justice is obliged to call attention to this and to specify the nature of the violation. If his observation is ignored, he must have it recorded in the Government records.

A criminal investigation into the legality of an official act by a member of the Government can be initiated by the Constitutional Law Committee of Parliament, for example in response to a comment by the Chancellor of Justice. The decision to indict a member of the Government in the High Court of Impeachment is taken by Parliament. Indictments are prosecuted by the Prosecutor General.

Supervision of the legality of Government actions

The fundamental provision on the Chancellor's duties is section 108 of the Constitution, according to which it is the responsibility of the Chancellor of

Justice to oversee the lawfulness of the official acts of the Government and the President of the Republic.

The constitutional provisions governing decision-making by the President of the Republic and the Government also have implications for the Chancellor of Justice's work in supervising the legality of the Government's actions. The President takes decisions at meetings of the Government, but apart from a few exceptions always on the basis of a proposal presented by the Government. The President is required to co-operate with the Government, but not necessarily to share its opinion. If the President does not decide in accordance with the Government's proposal, the matter is returned to the Government for further preparation. The idea is that this will lead either to a joint decision or to one or other of the parties deferring to the position of the other party. If agreement cannot be reached, the President may decide the matter however she considers most appropriate within the limits of her discretionary powers, irrespective of the Government's proposed solution. During the reporting year, there were no instances of the President of the Republic making a decision otherwise than directly on the basis of the proposal submitted by the Government.

The constitutional reform from year 2000 has increased the parliamentary element in presidential decision-making by strengthening the role of the Government, responsible as it is to Parliament, in the procedure for presidential decision-making. Similar to this in its basic aims is the provision governing authority in international relations and international affairs, according to which foreign policy is directed by the President of the Republic in co-operation with the Government. The tying of decision-making by the President to co-operation with the Government also has implications for the supervision of the legality of Government decision-making.

The President, the Government and the ministries can issue decrees only under authority specifically provided in the Constitution or in some other Act of Parliament. The authority to issue decrees is also limited by the principle that the fundamental principles of an individual's rights and duties can only be laid down by Act of Parliament.

Reviewing presentation agendas

The aim of checking the presentation agendas submitted by the Government is to eliminate any factual or formal errors and deficiencies. For this reason, rapporteurs from the various ministries may have to be contacted several times a week. Government presentation agendas are being sent to the Chancellor of Justice for advance comment before their presentation.

In the case of Government Bills to be submitted to Parliament, the Chancellor of Justice focuses on the order of enactment, typically where the Bills concern the Constitution or constitutional rights. In some cases, the Chancellor has supplemented a Government Bill with a recommendation that the Government request an opinion from the Constitutional Law Committee of Parliament. Implementing provisions, and problems relating to the retroactive effect of new laws have also drawn the attention of the Chancellor of Justice.

Presentation agendas concerning international treaties and conventions sometimes require an opinion on whether Parliament should be involved in their ratification.

The Chancellor of Justice also checks the lists of Parliament's replies to Government Bills to ensure that these have been submitted to the Government within the prescribed time and that they include Parliament's orders on specific action to be taken by the Government once the Bills passed by Parliament are ratified and published as laws.

The purpose of advance checks on draft decrees is to ensure that the new provisions will not conflict with existing laws. In the case of draft decrees or Government decisions, the Chancellor of Justice also pays close attention to the provisions concerning delegation.

When examining appointments to higher governmental posts, the Chancellor checks the credentials of all the applicants in order to ensure that they have been presented on similar grounds and that the process of finding the most competent applicant has been conducted in the proper manner. Comparison of merit is based on the official competence requirements of an office or other official position and on the job description, and is carried out by establishing the level of education and work experience the candidate must have in order to manage the duties of the office.

According to the State Civil Servants Act, potential appointees to certain high positions are required to enter a declaration of any commitments that may be of significance for an assessment of their qualifications for performing the duties concerned. The Chancellor of Justice requires that notification of such commitments and an affirmation that they do not affect the candidate's suitability for the position be attached to the presentation report. In some cases, the Chancellor may require candidates to relinquish their commitments if they could endanger impartiality.

According to the Act on Equality Between Women and Men, the minimum percentages of men and women on government committees, advisory boards and other corresponding bodies must be 40, unless special reasons require

otherwise. Observance of this principle of quotas is a constantly topical issue, and in most cases an increase in the percentage of women on committees and other bodies is ordered.

Another matter requiring an opinion from the Chancellor of Justice has often been the disqualification of a minister from involvement in the making of a specific decision on the grounds of potential partiality.

Matters related to EU membership

Matters related to the European Union often concern the relationship between the Government and Parliament and safeguarding Parliament's influence on legislation. All proposals for Community regulations and treaties must be duly submitted to Parliament without delay, and any memorandums accompanying these proposals must be clear, unambiguous and state the effects of the proposed provisions on Finnish legislation. Memorandums must also include the Government's opinions on the proposals.

In the case of EU treaties, a memorandum must state whether the ratification of a treaty requires the approval of Parliament. If it does, the memorandum must also state that the treaty will be brought before Parliament in the same manner as all other international treaties.

In the case of certain national legislative proposals, their relationship to Community law was investigated. In some cases, the Chancellor of Justice demanded the inclusion of more precise information on this aspect in the memorandums accompanying the proposals.

Written opinions and proposals

In 2005, the Chancellor of Justice and the Deputy Chancellor of Justice issued opinions and proposals on the following:

- 1) The legal status of the Conference of Permanent Secretaries and of the Conference of Emergency Chiefs of the Ministries, and the legal status of the Chairperson of these Conferences in particular
- 2) Application of the Pre-Emptive Purchase Act on real estate transactions of the State
- 3) Competence in the Council of the EU of a State Secretary appointed for the duration of the term of a Minister
- 4) Disqualification of a State Secretary appointed for the duration of the term of a Minister
- 5) Amendment of the provisions concerning the amount and assessment of the land tax in the Capital Region

- 6) Reorganisation of the Finnish Maritime Administration
- 7) Competence of the President of the Republic to issue a pardon relating to the enforcement of a threat of a fine
- 8) Issue of a Government Decree on the national supplement to the compensation payable in less favoured areas
- 9) Amendment of the Government Rules of Procedure relating to the composition of the Government Foreign and Security Policy Committee
- 10) Proposal of the European Commission for a European Fundamental Rights Agency
- 11) Amendment of the legislation concerning the appointment procedure for the highest ranks of the State civil service
- 12) Repeal of the legislation of civil service career records
- 13) Reform of the legislation on State enterprises
- 14) Reform of the Act on Environmental Impact Assessment
- 15) Duty of Ministries to obtain a statement from the Ministry of Justice in significant legislative matters
- 16) Division of competence between the Ministry of Finance and the National Customs Administration in EU customs matters
- 17) Compensation of flood damage to others than the beneficiaries referred to in section 3 of the Flood Damage Act
- 18) Civil service arrangements relating to the reorganisation of the Ministry of Transport and Communications

The Chancellor of Justice has issued also a number of other statements to the Ministries. Owing to the reform of the structure of this Annual Report, these statements have been discussed in the sections concerning the respective Ministries.

3 Fundamental rights and human rights

The constitutional bill of rights

In the Finnish context, the term ‘fundamental rights’ refers to constitutional rights, or the equal rights of everyone as provided in the Constitution. In the legal hierarchy, the provisions on fundamental rights are superior to ordinary legislation.

The Constitution provides that the State and other public authorities must ensure the implementation of fundamental and human rights.

The Finnish system of fundamental rights was aligned to our international human rights obligations already by the legislative reform carried out in 1995. From the Finnish point of view, the most relevant human rights treaties have been concluded under the auspices of the Council of Europe and the United Nations.

By and large, the international human rights obligations set a given minimum level of protection of fundamental rights and human rights. The 1995 fundamental rights reform developed this protection by expanding and refining the traditional basic freedoms already guaranteed by the Constitution as referred in international human rights treaties, as well as incorporating the most important economic and social rights and environmental rights into the Constitution. The goal was to promote the direct applicability of fundamental rights in the courts and other authorities, to increase equality, and to improve the chances of individuals to invoke their fundamental rights directly. An additional goal was to have the courts and administrative authorities to refer to fundamental rights provisions in their statements of reasons, in the event that these provisions are applied in the respective decisions.

In connection with the reform, the provisions of the Constitution Act which define the Chancellor of Justice’s functions were amended to specifically include the duty to supervise the implementation of fundamental and human rights. The amendment does not extend the Chancellor of Justice’s supervisory functions, but emphasizes the importance of fundamental and human rights supervision as an integral element in this function. The same supervisory function was assigned to the Parliamentary Ombudsman.

In its report on the reform of fundamental rights, the Constitutional Law Committee of the Finnish Parliament took the view that it would be in accordance with the spirit of the reform that the highest guardians of the law should include specific sections on the implementation of fundamental and human rights in their annual reports.

Fundamental and human rights in the context of supervision

Issues of fundamental rights and human rights arise in the work of the Chancellor of Justice both in the context of the general supervision of the legality of official action and in the specific supervision of the Government.

The Finnish system of fundamental rights has been organised in a manner compatible with Finland's international human rights obligations. As a result, issues of fundamental rights and human rights are intertwined in the Chancellor's supervision of legality. Hence, the supervision takes heed of how human rights issues have been dealt with and decided in the international arena. The most significant sources of law in this respect are the rulings of the European Court of Human Rights on the application of the provisions in the European Convention on Human Rights and Fundamental Freedoms (ECHR); the observance and consideration of these rulings put certain requirements both to the administration in general and to the supervision of legality.

As noted, the rulings of the European Court of Human Rights on the application of the provisions of the ECHR are very important; it is accordingly a requirement that these should be followed closely and taken duly into account both in the administration in general and in the oversight of legality. The Office follows the case-law of the European Court of Human Rights. It appears, *inter alia*, that there were some 80 cases pertaining to Finland pending in 2005. There were 23 new complaints lodged during the year. The Court of Human Rights issued rulings in 12 cases, human rights violations were held to have occurred in ten of them. In addition, one case was filed with the UN Commission on Human Rights. This body issued two decisions in 2005. Neither of these contained a finding of violation. No new cases became pending in the other six international adjudicative or investigative bodies.

Under Article I-9, paragraph 2, of the European Constitutional Treaty, signed in Rome on 29 October 2004, the Union is to accede to the ECHR. Part II of the Constitutional Treaty encompasses the EU Charter of Fundamental Rights, as adopted in December 2000, covering the civil rights and the political, economic, and social rights of Union citizens and others residing within Union territory. The idea is not to create new fundamental rights, but rather to restate those rights which are already recognised as basic sources of EU law in the case-law of the European Court of Justice. With the ratification of the Constitutional Treaty, the proposed set of fundamental rights would be binding on the institutions and other organs of the Union, as well as the member states when applying EU law. The Constitutional Treaty is still undergoing national ratification processes in various member states.

There are plans for the establishment of a Fundamental Rights Agency for the European Union (COM(2005) 280). According to the relevant Commission

proposal for a Regulation, the purpose of the Agency would be to offer expert services relating to fundamental rights to Union institutions and the member states, when these are applying EU law. The Chancellor of Justice has issued a statement on this issue (29/20/05); he stresses that an effort should be made in the design of the Agency and its competences to avoid redundancy with fundamental rights work and human rights work undertaken in other international and domestic institutions, albeit that the Fundamental Rights Agency may offer considerable value added to the activities of the Union. The full text of the statement appears as an annex to this summary.

Fundamental rights and human rights in the supervision of the Government

As regards the supervision of the Government, the same issues of fundamental rights and human rights arose during the reporting year as has been the case also earlier. Such issues include the selection of the correct level of norm, the existence and content of provisions on delegated powers, appeal prohibitions, the retroactivity of legal provisions, the principle of legality in criminal law, equality, and the protection of property rights.

In general terms, Government matters can be divided into legislative matters (especially Bills to be submitted to the Parliament and Decrees of the Government) and administrative matters, to be decided by an administrative decision or another decision.

In practice, the issue of fundamental rights and human rights usually becomes evident when proposed legislation is being checked. There is a need to evaluate how the content and requirements of the fundamental rights laid down in the Constitution and the human rights obligations under international treaties have been taken into account in the drafting work.

In the scrutiny of the presentation agendas for the general session of the Government (or for the President of the Republic), attention has been paid on the sufficiency of detail in the description of the draft legislation's relationship to fundamental rights and human rights. If any doubt has arisen of the full and complete harmony of the proposal with the fundamental rights and human rights norms, it has normally been required that the proposal be supplemented with a statement to the effect that an opinion should be obtained also from the Constitutional Law Committee of the Parliament. The reason for this procedure is that the scrutiny of the presentation agendas for an entire session will normally have to be completed in just a few days, and there consequently will be no time to prepare a comprehensive report on the constitutionality of a proposed statute, which sometimes can be quite extensive.

The scrutiny of the agendas takes place virtually every week, and offers a fine opportunity to examine issues of practice and discretion relating to the enact-

ment procedure. The general observation has been that Government bills for new legislation have as a rule contained a section on enactment procedure, where one has been necessary. With some exceptions, the various considerations relating to the choice of enactment procedure have been discussed in the bills in an appropriate manner.

In the scrutiny of draft Decrees of the Government or of the President of the Republic, the focus has been on the establishment of proper delegated powers under section 80 of the Constitution and on the prohibition to issue provisions by Decree in so far as these pertain to fundamental aspects of individual rights or obligations.

Even though the Ministries have been delegated broad powers of decision, the Government Plenary Session still makes some administrative decisions, especially regarding the issue of permits in matters with considerable significance to the society. As regards fundamental rights, these pertain especially to the principles of equal treatment in section 6 of the Constitution and of due process and good government in section 21 of the Constitution. Among the latter principles, the most important in this respect are the hearing of all involved parties and the supply of adequate reasons for the decision.

Another issue arising in the supervision of the Government is the realisation and safeguarding of fundamental rights in the decision-making processes pertaining to the preparation and adoption of EC legislation. The officials representing Finland in EC drafting work must remain aware also of the requirements of the Constitution of Finland. In the national implementation of EC law, not only the objectives of the EC norm, but also the safeguarding of fundamental rights and human rights must be taken appropriately into account. The supervision focuses on the requirements of EC law, the Finnish legal system and the legal protection of the individual.

Fundamental rights and human rights in the supervision of other authorities

Recent legal developments, both international and domestic, have made the contents of fundamental rights and human rights clearer and more tangible. With the entry of fundamental rights and human rights into our regular legal system, it has become commonplace that they are invoked as if they contained many provisions on subjective rights, even though the number of such subjective right provisions in fact is quite small. It can be stated in general that the courts and other authorities have exercised restraint in referring to fundamental rights and human rights provisions in their decisions. Normally, a case can be decided by reference to regular legislation and other subordinate norms, without there being a need to resort to fundamental rights provisions. It would

be quite the exception to decide a case solely by reference to a fundamental right provision.

In the supervision of public authorities and officials and others performing a public task, issues relating to the realisation of fundamental rights and human rights will normally arise in the context of complaints.

The fundamental rights and human rights cases show clearly that similar questions will arise time and again over the years. However, a fair number of different fundamental rights provisions have been involved. The conclusion that can be drawn from this is that the significance of fundamental rights provisions in political and societal decision-making – and not merely in the supervision of legality – will increase.

As before, the question of what constitutes good governance arose again in the reporting year. Complaints continue to be lodged for reason of cases being delayed in the authorities. The Chancellor's inspection visits have incorporated also an element of own-initiative research on case delays, conducted by way of spot checks.

Investigation rarely indicates the cause to be neglect on the part of the official concerned; most commonly it is simply a case of a pile up of business waiting to be attended to. This may be due to unnecessarily complicated processing arrangements or insufficient staffing levels at the authority in question.

Fundamental and human rights cases

This section contains a number of the Chancellor of Justice's decisions, divided into categories, indicating positions taken e.g. on the fundamental rights issues of equality, fair trial, and good governance.

Competence of the Chancellor of Justice regarding legislative powers delegated to the authorities of the autonomous Åland Islands

The Government of Åland had repealed section 3 of the Elk Hunting Decree, adopted on the basis of the Åland Hunting Act. According to the provisions on the Act on the Autonomy of the Åland Islands, legislative powers concerning hunting lie with the Åland authorities. According to a complaint addressed to the Chancellor of Justice, the repealed section 3 had been a very significant provision as regards the equal treatment of individuals.

The Government of Åland has considered that the matter pertains to the exercise of legislative powers properly in the competence of Åland authorities, and hence beyond the competence of the Chancellor of Justice.

The Chancellor of Justice has noted that the competence to issue Decrees may be based on an express authorisation either in the Constitution or in other parliamentary legislation. However, the Constitution contains no provisions on the scrutiny of the constitutionality of Decrees after they have been adopted. Hence, in the context of delegated legislation in Finland, this scrutiny takes place when the Chancellor of Justice oversees the decision-making in the plenary session of the Government. Owing to the special autonomous status of the Åland Islands, there is no corresponding supervisory competence in the context of delegated legislation in Åland.

That being said, the Chancellor of Justice has stated that, apart from certain provisions on the protection of the Swedish language and the Swedish culture in the Åland Islands, the fundamental rights provisions of Finland are equally applicable in Åland and set the same restrictions on the exercise of the competence of the Åland authorities as they do on that of the national authorities. With due regard to the extent of the fundamental rights in the Constitution and their binding effect relating to the protection of the individual in respect of the public authorities, as well as to the Chancellor of Justice's duty of supervision in the Constitution, the Chancellor could not agree with the position of the Åland authorities on his alleged lack of competence. In the exercise of his duly established power of supervision, he must nonetheless take note of the special autonomous status of the Åland Islands and on the due process protections already available there (886/1/02).

Rule of law

Trust in the impartiality of public authorities

In his ruling concerning a complaint about the participation of the chairman of the municipal board and a municipal executive in a foreign trip arranged by a commercial corporation, the Deputy Chancellor of Justice noted that it is important in the exercise of any public function to preserve trust in the impartiality of the public authorities. It is required in section 2(3) of the Constitution that the law be strictly observed in all public activity. One aspect of this rule is that no improper consideration is accepted for the performance of public functions. Moreover, it is a fundamental rule-of-law principle that it also appears in the activities of the public authorities, credibly, that no such improper consideration is involved. (707/1/03).

Equal treatment

Equal treatment of public officials in the payment of salaries

According to information obtained in a complaint matter, a job centre had placed two officials doing the same work in different salary categories, one in

A16 and the other in A13. This was the result of a process where the annual category hikes granted in collective negotiations had been regularly directed to unionised officials. The bargaining scheme, which had a basis in statutory law, involved negotiations between the representatives of state authorities and the relevant unions. As such, the scheme did not cover non-unionised officials at all. Accordingly, the chances of such officials to benefit from category hikes were considerably lower than those of unionised officials.

In his ruling, the Chancellor of Justice has noted that this procedure is conducive to undermining the duty of the public authorities to treat their officials equally, as required in the civil service legislation. In the context of collective bargaining, it has been held that the requirement of equal treatment covers also the granting of various discretionary benefits (such as category hikes). The constitutionally protected principle of equal treatment is considered to mean that a person's status as unionised or non-unionised should have no bearing on the awarding of benefits.

In his assessment of the activities of the authorities, the Chancellor of Justice has considered that the bargaining scheme and the strong position of the unions have in practice constrained the Ministry of Labour in its exercise of discretion. There was nothing in the case that would have warranted measures by the Chancellor with respect to his supervision of legality.

In addition, the Chancellor of Justice has noted that the whole of the purview of the Ministry of Labour has implemented the new salary system as of 1 June 2005. The category hike negotiations under the old system have been abolished. The new system is based on the assessment of the difficulty of the official's tasks and the standard of performance of the official in those tasks. The system will allow at least a partial adjustment of distortions in the salary structures. Accordingly, also the job centre service will have a better chance to meet the duties inherent on public authorities, including that of treating its officials equally in terms of salary, regardless of whether these happen to be union members or not.

The Chancellor of Justice has sent this statement to the Ministry of Labour to be taken into attention (1064/1/04).

Right to life, liberty and personal integrity

Apprehension and custody of a patient

A person suffering from mental problems who had come to a hospital emergency department at night time had on the request of the medical personnel been fetched by the police in the morning and held in custody until the following afternoon, when he was conveyed back to the hospital. The Deputy Chancellor

of Justice held that during this process, inadequate attention seemed to have been given to the validity of the legal basis for depriving the patient of liberty. The Deputy Chancellor drew the attention of the emergency department personnel and the managers responsible for the emergency service, as well as the police, to the fact that measures which mean that a person is deprived of personal liberty must always be based on an express authorisation in the law, as well as on careful case-by-case consideration (92/1/03).

Principle of legality in criminal law

Decision of a District Court

The Deputy Chancellor of Justice held that a District Court judgment in a criminal case, convicting the defendant, had been based on an interpretation of the Penal Code which in view of the wording of the relevant provision, the preparatory works and the principle of legality in criminal law went beyond the scope of legally feasible interpretative options.

According to section 8(1) of the Constitution, no one can be found guilty of a criminal offence or be sentenced to a punishment on the basis of a deed, which has not been determined punishable by an Act at the time of its commission. The principle of legality in criminal law requires that all penal provisions are clearly defined. In adjudication, the principle proscribes the application of the law beyond the scope of its wording. When the District Court had considered that entries in the Population Register on legally valid marriages constituted legally relevant errors for purposes of the penal provision on register offences, the penal provision had been interpreted in a manner beyond the scope of its wording and thus in contravention of the principle of legality.

According to the Deputy Chancellor of Justice, an overwhelming public interest required that he petition the Supreme Court for the annulment of the judgment, as the matter was of the realisation of an important fundamental right. In the public interest, it was also necessary to prevent the accrual of erroneous case-law, no less because sentences of imprisonment had been imposed in the case. Accordingly, the Deputy Chancellor made a petition to this effect under chapter 31, section 8, of the Code of Judicial Procedure. The Supreme Court annulled the judgment of the District Court on 6 July 2005 (321/1/04).

Freedom of speech and access to information

Publication of secret information

The Deputy Chancellor of Justice held that the publication of information on individuals receiving social assistance in the agenda of a meeting of the munic-

ipal board was clearly unlawful. The agenda had been posted also on the website of the municipality in question, The Deputy Chancellor drew the attention of the municipal board and the officials in charge of drafting the agendas and the minutes of board meetings on the proper observance of the secrecy provisions and the provisions on good information management practices in the Act on the Openness of Government Activities (481/1/03).

Electoral rights and participation rights

Secrecy of the vote in small electoral districts

It had been stated in a complaint that the current electoral procedures and the publication of returns in small electoral districts could in the case of candidates receiving only few votes mean that it can be ascertained whom a given person has not voted for (negative secrecy of the vote). This risk arose when the election information service published detailed information about the behaviour of single voters. In its statement on the matter, the Ministry of Justice noted that the problem has been recognised and that the Ministry would take measures no later than before the 2008 municipal election, assessing the need to amend the Elections Act to this point. The Chancellor of Justice has considered it important that the matter be addressed at the level of parliamentary legislation, because it involves the realisation of fundamental rights. The significant public interest in the publication of election returns may in some cases come to conflict with the protection of the privacy of individual voters (1222/1/04).

Education rights

Elementary education of children in care

In a matter taken up on the own initiative of the Deputy Chancellor of Justice, an inquiry was carried out on the realisation of the right of children taken into care to elementary education. Some shortcomings in this matter had been alleged.

In his decision, the Deputy Chancellor of Justice stated e.g. that the right to elementary education has been guaranteed to all children on an equal basis and that it is inherent on the public authorities to see to the realisation of fundamental rights. This emphasises the duty of those responsible — the municipalities, the state provincial offices and the Ministry of Education — to take all possible action to remedy the situation, as described in the decision and the results of the inquiry underlying the decision (3/50/04).

Right to own language and culture

Conduct of the Ministry of the Environment in a language matter

The Swedish-speaking complainants note that the Ministry of the Environment had served a 2004 decision of the Government relating to the Natura 2000 network on them in the Finnish language.

The Chancellor of Justice noted that due consideration of language rights is an element of good government. Accordingly, good government means that the right to use one's own language with the authorities, as guaranteed in section 17(2) of the Constitution, is also realised in practice. It ensues from section 22 of the Constitution, where it is stated that the public authorities must secure the realisation of fundamental rights and human rights, that also language rights are realised without there being a need to expressly invoke them. Thus, when the authorities act proactively in their language relationships, the principle of good government is observed as a matter of course (402/1/04).

Fair trial and the guarantees of good government

Independence of presiding judges in the Labour Court and the requirement of fair trial

On 10 May 2005, the Deputy Chancellor of Justice proposed to the Ministry of Justice that the Act on the Labour Court be amended.

In the opinion of the Deputy Chancellor, it was an open question whether Finnish legislation was in this respect in harmony with the requirements of judicial independence and impartiality in the international instruments concerning the requirement of fair trial.

The Deputy Chancellor proposed that the Ministry of Justice consider whether the independence of the Labour Court could be enhanced by amending the relevant Act so that that the appointment of the President of the Labour Court, and possibly also the Justice of the Labour Court, were no longer for a fixed term of three years, but rather a permanent one. The Deputy Chancellor requested that the Ministry inform him before the end of the year about the measures possibly undertaken in the matter.

By its letter of 16 May 2005, the Ministry of Justice noted that it had appointed a working group to assess the status of the presiding judges of the Labour Court from the points of view of judicial independence and civil service legislation. In its report of 31 October 2005, titled *Permanence of the positions*

of presiding judge in the Labour Court, the working group proposed that both positions be filled on a permanent basis when they next become vacant, on 1 January 2007.

The Government Bill for the amendment of the Act on the Labour Court was submitted on 21 April 2006. The Bill contained the proposition that both positions, that is, President of the Labour Court and Justice of the Labour Court, be filled on a permanent basis (2/50/05 and 11/51/05).

Hearing of parties

The Deputy Chancellor of Justice drew the attention of the Insurance Court on the principle of *audi alteram partem*. The complainant should have been notified of the response and supplementary response of the insurer and reserved the opportunity to make comments on them (1393/1/04).

Requirement of good government in the activity of the police

The chief of a police district and a police inspector in that district had made a money payment to the complainant in consideration for him not demanding a penalty and claiming damages from them as the injured party in a criminal case.

Under the law in force, the police have no right to “make a deal” with an injured party for not pressing charges in a case where a police officer is suspected of an offence in office.

In order for the police to be successful in their work, it is necessary that they enjoy the trust of the public. To maintain this trust, it is necessary that the conduct of the police is such that it will not cast doubts on their impartiality. A situation where police officers in charge of the investigation of an offence try to exert an influence on the injured party, so that he would refrain from pressing charges for an offence in office possibly committed by those officers, casts serious doubts on the credibility of the activities of the police. The Deputy Chancellor of Justice noted also that the officers involved in the situation held positions of responsibility in the organisation, being the chief of the district and a senior inspector. For these reasons, their conduct ill became police officers (295/1/04).

Statement of reasons in a social welfare

The Deputy Chancellor of Justice drew the attention of the social welfare authorities to the fact that the decision issued to the complainant relating his application for social support payments should have contained reasons also as regards the decision concerning the compensation of travel costs (262/1/04).

Language appropriate for a public official

In a case relating to the conduct of an assistant bailiff, the Deputy Chancellor of Justice noted that a public official, when performing an official task, should not use linguistic expressions that can justifiably be interpreted as a violation of the presumption of innocence (753/1/03).

Provision of erroneous information

The Deputy Chancellor of Justice noted that the correctness and reliability of information provided by the authorities are vital elements regarding the credibility of the exercise of public authority and the rule of law. It is inherent to the task of a public official that no erroneous information is contained in the official documents issued by that official and that the accuracy of the information provided is adequately verified (1401/1/03).

Loss of correspondence

The substitute to the Deputy Chancellor of Justice drew the attention of the Ministry of Social Affairs and Health to the proper handling of documents sent in by private individuals.

It was noted in the Ministry statement regarding the loss of certain correspondence from the public that the Ministry had first become aware of the loss when another person had complained about this matter to the Chancellor of Justice in 2003 (decision of the Deputy Chancellor of Justice 15 September 2003 (252/1/03)). The letters sent by the complainant to the Ministry had been lost when the Ministry had moved premises, that is, in the same circumstances as the letters referred to in the earlier complaint. Already the first complaint had led to an improvement in the monitoring of the internal caseflow of the Ministry.

That being said, the substitute to the Deputy Chancellor of Justice noted that already the first incident should have resulted in the Ministry, with due regard to the principle of good government, notifying on its own motion the probable loss of correspondence to the known correspondents whose letters could no longer be located and which according to the Ministry docket had not yet been responded to (439/1/05).

Service of notice of a vehicle tax decision

In accordance with a practice adopted in the customs administration, the tax subject had been sent a vehicle tax decision only after he had paid the tax determined in the decision. The Deputy Chancellor of Justice noted that the duty to observe the law strictly, as referred to in section 2(3) of the Constitution,

and the duty of due process, as referred to in section 21(1) of the Constitution, mean that a public authority must comply with the legislation governing administrative procedure. No exceptions have been provided for the vehicle tax decisions issued by the customs authorities as regards the obligation to serve notice of decisions on the parties to the matter, laid down in section 25 of the Administrative Procedure Act; hence, the service of notice could not be made dependent on any measures taken by the tax subject (811/1/03).

Safeguarding of fundamental rights

Reference is made in many decisions of the Chancellor of Justice and the Deputy Chancellor of Justice to the duty of the public authorities, under section 22 of the Constitution, to safeguard fundamental rights. One such decision concerned the elementary education and educational rights of children in care. In his decision, the Deputy Chancellor of Justice stated e.g. that the right to elementary education has been guaranteed to all children on an equal basis and that the public authorities must see to the realisation of fundamental rights (3/50/04).

In his statement concerning the Natura 2000 network and language rights the Chancellor of Justice referred to section 22 of the Constitution when he noted that language rights must be realised without there being a need to invoke them expressly (402/1/04).

This duty of the public authorities has been referred to also in certain other decisions, such as those relating to the conduct of the Ministry of Social Affairs and Health when deciding on the increase of certain maintenance payments on the basis of a change in the cost-of-living index (352/1/05), the securing of the drafting work towards a new Off-road Traffic Act (1211/1/04), the handling of a letter addressed to the Prime Minister (516/1/02) and the provision of access to information (347/1/02).

4 General supervision of legality

The field of supervision covers both general and special courts. Supervision also covers other officials in judicial administration, such as prosecutors, police and the enforcement authorities, and other authorities in various sectors of central and local government.

The general supervision of legality cannot normally be based on advance checks or personal intervention before a potentially illegal decision, as is possible when supervising the acts of the Government. Instead, supervision is largely based on the investigation of complaints by private citizens. Supervision may also involve investigating notices or proposals submitted by authorities and examining court judgments and records of the enforcement of punishment. The Chancellor can also take a matter up for consideration on his own initiative.

In handling complaints, the Office of the Chancellor of Justice follows the same procedure irrespective of what authority the complaint refers to. After an initial look at the complaint a decision is taken on the need for an investigation to pass the matter on for intermediate action, and if necessary, the defendant asked for a response to the claim(s). An account is required from the authority/official concerned in cases where the initial investigation does not rule out the possibility that he has acted inappropriately. If the account is inadequate, further clarification or additional documents can be demanded. The complainant is then given an opportunity to be heard, unless this is clearly unnecessary. If the repertoire of responses available in the supervision of legality are seen as sufficient, or if the investigation does not give cause for any action, the matter can be resolved on the basis of written material. However, under the present legislation on criminal procedure, the bringing of charges against a public official generally requires a pre-trial investigation, which is normally conducted by the National Bureau of Investigation.

Courts of law

During 2005, the Chancellor of Justice received 166 complaints that were either completely or partially to do with procedure in the general law courts. Administrative court procedure gave rise to 47 complaints, and the special courts 20. The total number of complaints concerning all the different types of court was slightly down on the previous year.

According to the Constitution, judicial authority in Finland is exercised by independent courts of law. For this reason, supervision of the administration of justice is in practice not as broad as the supervision directed towards public administration in general. In supervising the administration of justice, the

Chancellor of Justice can in general only concern himself with procedural errors and acts in breach of fundamental and human rights. The Chancellor cannot influence a pending process nor alter or revoke judgments. Moreover, the Chancellor cannot re-evaluate the evidence presented in a case in court. If any general defects are noted in the administration of justice, a legislative proposal will be made to put them right.

As has been the case in previous years, the courts were during the year in review the subject of more complaints than any other type of public authority. In the matters resulting in measures being taken, the issue has not only been the long duration of proceedings, but also procedural errors or omissions. A distinct group is formed by criminal reports filed by private parties against judges, as these are as a matter of course sent by the police to the Chancellor of Justice for information. In one case initiated in this manner, a charge for an offence in office was brought against a court clerk for her failure to send appeal documents to the Court of Appeal, as would have been her official duty. The other charge for an offence in office arose from an observation made in the revision of penal judgments.

The Act on Restraining Orders was amended as of the beginning of the year in review, to the effect that a restraining order may be issued also when the person to be protected and the person to be restrained live in the same household. In the same vein, the juvenile punishment was regularised throughout the country as a penalty option for offences committed by persons under 18 years of age. During the year in review, drafting work was under way for the mediation of civil cases and the certification of mediated settlements in the courts of law, as well as for the amendment of chapter 8 of the Penal Code, which pertains to the statute of limitations. The respective legislation entered into force in the beginning of the year following the year in review. Some other pending legislative projects pertain to written procedure in criminal cases, the publicity of court proceedings and the revision of the sifting procedure in the Courts of Appeal.

The Chancellor of Justice carried out legality supervision of the law courts also by examining their judgements in criminal cases. Every month, the Legal Registers Centre forwards for examination copies of the notifications on sentences lodged with it in line with instructions issued by the Chancellor of Justice.

In 2005, 7091 notifications on sentences relating to prison sentences were forwarded to the Office of the Chancellor of Justice for examination. Identified errors led to one charge for an offence in office the issuing of reprimands and statements or instructions. The charge and one of the reprimands pertained to the expiration of the statute of limitations. Three reprimands were issued in

respect of errors in the setting of the probation periods for suspended sentences and two in respect of errors in the calculation of time served in the imposition of a sentence.

The Deputy Chancellor of Justice conducted an on-site inspection visit to the Labour Court.

The prosecuting, police and enforcement authorities

In the broader sense, the administration of justice encompasses not only the courts, but also the prosecutors, the police and the enforcement authorities. Also the measures carried out by these public authorities will arise, time and again, in the matters under investigation by the Office of the Chancellor of Justice.

Certain complaints pertaining to the administration of justice will as a rule be transferred to be dealt with by the Parliamentary Ombudsman, in accordance with the Act on the Division of Duties between the Chancellor of Justice of the Government and the Parliamentary Ombudsman (see Appendix 4).

Under the said Act, the Chancellor of Justice has been relieved of the duty to deal with some complaints unless he finds special reason to do so. These include complaints lodged by prison inmates or complaints relating to apprehension, arrest, detention or travel ban under the Coercive Measures Act, protective custody or other deprivation of personal liberty. The Chancellor of Justice has likewise been relieved of the duty to deal with matters within the competency of the Ombudsman that have been lodged by persons deprived of personal liberty by detention, arrest or other measures.

With the transfer of the duties of supreme prosecutor to the Prosecutor General, the role of the Chancellor of Justice in the supervision of the prosecutors has diminished. Prosecutor supervision has been assigned to the Prosecutor General by statute. Persons discontent with the conduct of a prosecutor normally address their complaints directly to the Prosecutor General. Even though also the Chancellor of Justice is still competent to supervise the prosecutors, complaints addressed to the Chancellor and pertaining to the activities of local prosecutors have at times been reassigned to the Prosecutor General. Especially the complaints that concern the evaluation of charges for some other act than an offence in office can sensibly be reassigned to the Prosecutor General, as he can both examine the legality of the prosecutor's conduct and take the matter up for a new evaluation of charges. In contrast, the Chancellor of Justice can re-evaluate the charges only in matters within his prosecutorial competency, that is, alleged offences in office. The reassignment of a complaint can under such circumstances be considered to be in the best

interests of the complainant, as well. The Prosecutor General will send his decision to the Chancellor of Justice for information, and a person discontent with the decision of the Prosecutor General may lodge a further complaint against that decision with the Chancellor of Justice.

During the reporting year, the Office of the Chancellor of Justice received 57 complaints (67 in 2004) concerning a *prosecutor's* conduct. Three of these (eleven in 2004) were reassigned to the Prosecutor General.

There were 186 complaints directed at *the police* during the reporting year (227 in 2004). The volume of complaints no doubt arises mainly from the line of work police officers are engaged in. On one hand, they are supposed to protect the values that have been enshrined as fundamental rights, but on the other hand they must interfere with these rights e.g. so as to clear up suspected criminal offences. Another possible reason for the volume of complaints is that many decisions made by the police, e.g. in the context of a pre-trial investigation, are not open to any form of regular appeal. Accordingly, a complaint, lodged within the police organisation (e.g. with the Police Department of the State Provincial Office) or with a high supervisor of legality, may be the only possible means to have the conduct of a police officer properly investigated. And indeed, most of the complaints that have been lodged have pertained to the conduct of the police in their role as a pre-trial investigation authority involved in the investigation of a suspected criminal offence. There have been complaints also about the use of coercive measures (such as searches of premises). Some complaints pertain also to police behaviour or to the measures taken by the police in their role as a permit authority.

It is probably the case that persons discontent with the police will not in the most serious situations be satisfied with a complaint, but instead report the officer for a criminal offence. Under section 14 (2) of the Pre-Trial Investigations Act, a prosecutor serves as the head of investigation in relation to offences suspected to have been committed by police officers, with the exception of less serious cases dealt with in summary penal fee or penal order proceedings. The Prosecutor General has assigned a number of prosecutors and established their jurisdictions for this type of activity. The purpose of the arrangement is to ensure that a criminal investigation is carried out without regard to the status of the subject and that the public trust in the process is maintained. It has been stressed in the instructions issued by the Prosecutor General that in situations that are not clear the procedure under section 14 (2) is to be applied. The police must notify the local prosecution unit at once, so as to have a head of investigation designated for a police offence.

During the year in review, the Deputy Chancellor of Justice conducted on-site inspection visits to six police districts and one local precinct of the National

Traffic Police. During the visits, discussions were held e.g. on the realisation of the internal affairs supervision of the police and the investigation of crimes that appear to be racially motivated. On the basis of documentation procured in advance from the police districts, an evaluation was made of the promptness of pre-trial investigations and of the substantive and formal appropriateness of decisions made in respect of pre-trial investigations and coercive measures.

The competence of the police was expanded by an amendment of the Police Act which entered into force in July 2005. Among other things, the police were entitled, with the permission of a court, to use wiretaps also for the prevention of crime and not only for the investigation of crime. In addition, the legislation governing the executive assistance provided by the Defence Forces to the police was amended so that also military force can be used, if unavoidable, for the prevention or interception of terrorist offences.

Complaints about the *enforcement authorities* were lodged on 35 occasions during the reporting year (36 in 2004). In the main, these concerned procedure in the distraint of assets or garnishment of wages.

Central government

The present section deals with the supervision of legality over state administrative bodies other than the administrators of justice referred to above.

It is the duty of the Chancellor of Justice to supervise the legality of the activities of all state authorities and officials, including state institutions, executive boards, boards and consultative committees. In addition, the Chancellor supervises that also others comply with the law and discharge their duties when performing a public task, in the exceptional event that a public task has been entrusted to someone else than a public authority.

The limits of the authority of the high supervisors of legality are not clear-cut in all such cases. Hence, case-by-case discretion and argumentation are required. For instance, state enterprises are private entities by nature and generally fall outside of the scope of legality supervision. The greater part of education, social welfare, health and environmental administration is municipal by nature. The supervision of legality pertaining to these areas is described in the following chapter.

In the purview of the Ministry of Agriculture and Forestry, most of the complaints decided in 2005 pertained to the conduct of the land survey offices and the Ministry. Four of the complaints led to measures by the Chancellor of Justice. These pertained e.g. to the application of the language provisions in the

Act on the Autonomy of Åland and to the compensation payable for damage caused by wild predators abroad. In addition, the Chancellor of Justice issued a legal opinion to the Ministry of Agriculture and Forestry in respect of flood damage compensation payable for 2004. The Deputy Chancellor of Justice conducted on-site inspection visits to the Employment and Economic Development Centres of Satakunta and Kainuu, inspecting e.g. the rural affairs divisions of the Centres.

In the purview of the Ministry of the Environment, the complaints filed pertained mainly to the conduct of the Finnish Environment Institute, the Regional Environment Centres and the Permit Authorities. In addition to private individuals, complaints were filed e.g. by the Finnish Association for Nature Conservation and by various other nature conservation organisations. Many of the complaints contained criticism about the administrative procedure of the environmental authorities. In one of the decided matters, the substitute of the Deputy Chancellor of Justice criticised the case management system of a Permit Authority, as it was not sufficiently detailed.

As of the purview of the Ministry of Trade and Industry, the matters decided during the year in review pertained e.g. to the incentive systems in use for the top management of State enterprises and the length of proceedings in the Consumer Complaint Board. The Deputy Chancellor of Justice conducted on-site inspection visits to the Employment and Economic Development Centres of Satakunta and Kainuu, inspecting e.g. the enterprise affairs divisions of the Centres.

What comes to the Ministry of Labour, the greater part of the complaints pertained to the employment administration. Many of the requirements of good government were involved, e.g. those pertaining to processing times and the sufficiency of the reasons supplied for the decisions. In many of the cases pertaining to the employment administration, the complainant is displeased with the authorities having declined to award him or her a given unemployment benefit. As a supervisor of legality, however, the Chancellor of Justice cannot normally intervene in the substance of the decisions made by the authorities and appellate authorities within the scope of their competence and discretion.

Complaints in the purview of the Ministry of Social Affairs and Health have been discussed in the context of the supervision of legality in the municipal sector. Some cases pertaining directly to the Ministry involved the conduct of the Minister of Health and Social Services in responding to a letter (847/1/05) and the independence of appellate boards (101/1/04). Another case in the purview of the Ministry of Social Affairs and Health concerned the conduct of the National Public Health Institute and the National Agency for Medicines in respect of vaccines. During the year in review, the Chancellor of Justice

conducted an on-site inspection visit to the Occupational Safety District of Uusimaa.

Other government

In addition to the supervision of state authorities, the Chancellor of Justice is also charged with the supervision of the activities of various autonomous entities. Hence, the subjects of this supervision are the municipalities (local authorities), the religious communities and the administrative bodies of the autonomous Åland Islands. During the reporting year, the greater part of the supervision of legality relating to the autonomous entities was based on complaints on various aspects of, and decision-making in, the municipal administration.

The supervision is concerned with the legality of process; in contrast, the Chancellor has no competency to examine the expediency of measures taken by these authorities.

In the cases decided during the year in review in the field of the education administration, the issues ranged from appointments and qualification requirements of vocational education teachers to the conduct of the education authorities in a matter pertaining to damages payable and advice given to a student in secondary education. In a matter pertaining to the elementary education of children taken into the care of the authorities, the Deputy Chancellor of Justice held that there is reason to investigate how the role of the State Provincial Offices can be developed and strengthened in the supervision of teaching provided in foster homes/institutions.

The complaints in the social welfare and health sector relate usually to the realisation of social and health services and benefits and the respective procedure in the municipal social welfare and health service. In the health sector, an assessment was carried out e.g. on the treatment of intoxicated patients in hospital emergency rooms. During the year in review, the Deputy Chancellor of Justice carried out own-initiative investigations to safety issues in day-care centres (5/50/05) and to the functioning of the system of social welfare ombudspersons. He also conducted an on-site inspection of the social and health service of the City of Vantaa.

The complaints relating to social insurance were directed mainly at the conduct of the institutions administering social insurance in Finland. Most of these complaints pertained also during the year in review to disability pensions and the benefits under the accident insurance legislation, the national pensions legislation and the sickness insurance legislation, as well as to the decisions of appellate organs in respect of these benefits.

Most complaints relating to the environmental administration of the municipalities concerned proceedings under the land use and construction legislation. Municipal zoning decisions, the conduct of building inspectors, street maintenance, the duty of the municipal roadworks manager to provide advice, and municipal waste management planning were some of the issues covered by these complaints. During the year in review, the Deputy Chancellor of Justice conducted an on-site inspection to the environmental agency of the City of Vantaa.

Three complaints were filed during the year in review in respect of the church administration (down from nine in 2004). Two decisions were issued during the year. Both related to the conduct of the organs of the Evangelical Lutheran Church, neither resulted in measures being taken.

A few complaints relating to the administration of the Åland Islands were also dealt with during the reporting year. The Chancellor of Justice issued one decision concerning the Åland Government (1264/1/04). In addition, he took a position on the competence of the Chancellor of Justice in matters where the legislative power has been delegated to Åland authorities.

5 Supervision of the Bar

Advocates

Under Finnish court procedure, legal counsel is not mandatory for the presentation of cases in court. However, the use of lawyers with court experience is often necessary in practice. The duties of counsel are most often performed by an advocate, a public legal aid counsel or another lawyer. However, only members of the Finnish Bar Association are entitled to use the professional title of advocate.

According to law, the term advocate refers to a person registered in the Roll of Advocates as a member of the Finnish Bar Association, which acts as the national association of advocates. A lawyer with practical experience and skill in addition to adequate legal training must be accepted as a member of the Bar Association. In addition, the rules of the Bar Association require that the applicant must pass an advocate's examination.

Public legal aid counsels

A new system of state-funded legal aid was created in Finland by an Act of 1998 on public legal aid and related legislation. Public legal aid is primarily intended for persons of limited financial means, for whom the aid is free or partially free. An amendment to the Legal Aid Act replaced public legal aid and cost-free trial with a new uniform legal aid system which also expanded the sphere of those entitled to legal aid.

Public legal aid consists of legal counsel services intended to meet the standards of an advocate's practice. Public legal aid counsels are also required to comply with the professional ethics of the Bar in all their activities, and in this respect they are subject to supervision by the Finnish Bar Association and the Chancellor of Justice. In fact, as municipal officials, public legal aid counsels had also previously come within the sphere of the overall supervision of legality conducted by the Chancellor of Justice. Under the new legislation, however, public legal aid counsels are central government civil servants and thereby come within the overall supervision of legality by the Chancellor of Justice under that heading.

Professional ethics of the Bar

Under the Advocates Act, advocates must carry out the assignments entrusted to them honestly and prudently and in all their activities comply with the professional ethics of the Bar. Such a definition of the general duties of an advocate takes into account both the client's and the public interest. The public

interest is considered to require advocates, as far as possible, to strive to promote good judicial practice in their activities.

The professional ethics of the Bar have been defined further in the code of professional ethics approved by the Bar Association. This contains stipulations concerning an advocate's work, law firms and their organisation, acceptance and rejection of and withdrawal from an assignment as counsel, issues concerning the relationship between advocate and client, and the advocate's relationship with the opposite side, the courts and other authorities.

Supervision of advocates

The primary responsibility for the supervision of advocates rests with the organs of the Finnish Bar Association. The Disciplinary Board performs supervisory duties, and its members include both advocates and persons from outside the Bar. The Chancellor of Justice plays an important role in supervision as the guardian of the public interest. Under the Advocates Act, his supervisory authority applies to advocates. Any member of the public can bring a complaint before either the Bar Association or the Chancellor of Justice if he considers that an advocate has neglected his duties or acted contrary to the professional ethics of the Bar.

Supervision of advocates by the Chancellor of Justice is carried out both as part of the overall supervision of legality and in the specific context of monitoring the implementation of disciplinary supervision. Supervision also covers public legal aid counsels who serve simultaneously as both private advocates and civil servants.

The supervision of advocates in the context of the overall supervision of legality by the Chancellor of Justice takes place mainly on the basis of complaints and the revision of the decisions of the Disciplinary Board. The written complaints from private citizens members of the public received by the Chancellor of Justice and the disciplinary and supervisory decisions of the Bar Association submitted to the Office provide a good picture of the content and implementation of the professional ethics of the Bar. In 2005, the Chancellor of Justice received a total of 98 (145 in 2004) complaints concerning the conduct of an advocate or public legal aid counsel. Disciplinary proceedings were initiated in fifteen cases by submitting complaints received by the Office to the Bar Association.

The range of complaints sent to the Chancellor of Justice represents the areas of advocates' activities that people consider problematic. For example, typical complaints concern delays in winding up and distributing the estate in probate proceedings; in such cases, the origins of the complaint often lie in disagreement

between the parties to the estate over its administration or realisation. An increasing number of claims are being brought forward concerning potential disqualification of an advocate. A client's disappointment with a court decision is often found to lie behind complaints concerning trial counsels and attorneys. Such complaints usually concern civil cases.

As the freedom and autonomy of the Bar is an important element of Finnish law, members of the Bar must have the right to protect their clients' rights and interests free from outside influence and in compliance with the law and code of conduct of the Bar. Primary responsibility for supervising advocates' activities therefore lies with the Disciplinary Board and the Finnish Bar Association itself.

The autonomy of advocates restricts supervision by the Chancellor of Justice. The Chancellor must ensure that advocates comply with their professional duties, but he cannot intervene in an advocate's work or impose a disciplinary measure. Nevertheless, the Chancellor is considered to have the right to express an opinion when complaints on the way an advocate has carried out an assignment are resolved.

In practice, the Finnish Bar Association's primary responsibility for supervision is expressed through the handling of complaints. The Chancellor has the power to initiate disciplinary proceedings and to deal with matters concerning membership of the Bar.

If the Disciplinary Board finds that an advocate has acted contrary to his duties, it imposes a disciplinary sanction. Such sanctions are defined in the Advocates Act as disbarment, a monetary penalty, a warning and a reprimand. In minor cases, the Disciplinary Board will draw the advocate's attention to the proper conduct.

The Chancellor of Justice receives copies of all decisions on disciplinary measures taken by the Bar Association. The decisions are also communicated to the complainants or other persons who have notified the Bar of the advocate's misconduct. If they consider that the Disciplinary Board has not handled the case properly or have other reason to be dissatisfied with the decision, they may turn to the Chancellor of Justice, who will take their views into account in considering a possible appeal of the decision.

The Chancellor of Justice has an unrestricted right of appeal to a Court of Appeal in respect of any decisions concerning Bar Association membership or disciplinary measures. Also an advocate who has been disciplined has the right to appeal.

6 A Statement by the Chancellor of Justice and a decision by the Deputy Chancellor of Justice

Statement of Mr Paavo Nikula, Chancellor of Justice, to the Ministry of Justice, 31 August 2005 (29/20/05)

In a letter dated on 18 August 2005 the Ministry of Justice has requested a statement from the Chancellor of Justice regarding the Commission proposal for the creation of a European Fundamental Rights Agency. According to the letter, the objective of the creation of the Fundamental Rights Agency is to extend the remit of the European Monitoring Centre on Racism and Xenophobia (EUMC) as decided by the representatives of the Member States in the Brussels European Council on 12 and 13 December 2003.

According to the relevant Commission proposal, the idea is to establish a European Union Fundamental Rights Agency, which is to operate as a centre of expertise on fundamental rights issues at the EU level. Fundamental rights are to be respected in all activities of the Union. The Agency offers expertise and advice on fundamental rights in the context of the application of EU law, thus promoting the quality of the various policies of the Union.

In his statement, the Chancellor of Justice noted that it appears in the Commission proposal attached to the request of the Ministry of Justice that the idea of establishing a Fundamental Rights Agency had been welcomed unanimously in the consultation of various interested parties. Also the Chancellor considered the establishment of the Agency justified, *inter alia* because the European Union has not acceded to the European Convention on Human Rights and Fundamental Freedoms and because the legal significance of the European Fundamental Rights Charter remains an open question (the Charter incorporates the fundamental rights deemed to be operative throughout the European Union, but its inclusion in the Constitutional Treaty of the Union, which has not entered into force, may have changed the situation somewhat). With a view to the work on fundamental rights and human rights undertaken in other international and domestic institutions, and to the prevention of redundancy, the Chancellor referred to his earlier statement to the Ministry of Justice relating to the Commission Communication on a Fundamental Rights Agency (20 January 2005, 1/20/05). In the opinion of the Chancellor, one possible method to avoid redundancy is to emphasise the possibility of networking, as referred to in paragraph 10 of the preamble to the Commission Proposal.

According to Article 2 of the proposed Regulation, the objective of the Agency is to provide the institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they

take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights. The scope of the authority of the Agency is delimited by the phrase "when implementing Community law", which is also to be taken into account when undertaking work for the avoidance of redundancy.

Article 3 of the proposal contains more detailed provisions on the scope of application of the Regulation. According to paragraph 1 of the Article, the Agency is to carry out its tasks for the purpose of meeting the objective set in Article 2 within the competencies of the Community as laid down in the EC Treaty. More detailed provisions on the scope of application are given in paragraphs 2–4 of the Article.

In the opinion of the Chancellor of Justice, the objective and the scope of application of the proposed Regulation are in agreement of the position of the Finnish Government, as communicated to the Grand Committee of the Parliament of Finland in the context of the Commission Communication on the European Fundamental Rights Agency. The delimitation of the activities of the Agency and the emphasis on the Fundamental Rights Charter, in comparison to other actors, are conducive to promoting the development of fundamental rights and human rights protection in the Union.

Article 5 of the proposal contains provisions on the areas of activity of the Agency. Accordingly, the Agency carries out its tasks within the thematic areas determined by a Multiannual Framework. Under point (b) [of paragraph 1] of the Article, the Framework is used to determine the thematic areas of the Agency's activity, always including the fight against racism and xenophobia.

The Chancellor of Justice considers the expansion of the remit of the Agency, in comparison to that of the European Union Monitoring Centre on Racism and Xenophobia, to be very important. According to the explanatory memorandum of the Commission proposal, the creation of the Agency will make the Fundamental Rights Charter more tangible, its very terms of reference being based on that instrument. Hence, the substantive contents of the Fundamental Rights Charter are in the opinion of the Chancellor very significant to the area of activities of the Agency.

As regards the scope of the Fundamental Rights Charter, the Chancellor of Justice referred e.g. to the statement in the report of the Constitutional Reform Follow-up Working Group (Ministry of Justice 2002:7, p. 35) to the effect that in the Fundamental Rights Charter, the fundamental rights recognised in the European Union range from the classical civil and political rights to economic, social, and cultural rights. In addition, the Fundamental Rights Charter contains provisions on the rights of EU citizens, good government, due process and the environment.

Taking due note of the fact that the Fundamental Rights Charter enshrines, in parallel and inseparably, both civil and political rights and economic, social, and cultural rights, as well as, in comparison to many other human rights instruments, a broader scope of protected rights, it is to be hoped that the future activities of the Agency area a substantive reflection of this idea. Notwithstanding the strong element of economic integration in the nature of the Union, fundamental rights and human rights are an essential, and apparently increasing material element in the entirety of Union activities. The Fundamental Rights Agency may create considerable added value to the activities of the Union, thus reinforcing its social dimension and its legitimacy in the opinion of the citizens.

Prosecution Order relating to a suspected offence in office committed by the Chief Judge of a District Court

Report of the decision of Dr Jaakko Jonkka, Deputy Chancellor of Justice, 26 September 2005 (142/30/03)

INITIATION OF THE CASE

In the revision of penal judgments by the Office of the Chancellor of Justice it was determined that a judgment passed by the District Court was erroneous.

BACKGROUND

The District Court had convicted defendant B of operation of a vehicle without a license and of means of payment fraud and sentenced B to a joint punishment of imprisonment for 30 days, converting that sentence immediately to 30 hours of community service. The summons had been served on the defendant only after the statute of limitations relating to operation of a vehicle without a license had already expired. Accordingly, the defendant had been convicted out of time.

On the petition of the Deputy Chancellor of Justice, the Supreme Court rectified the judgment of the District Court so that the charge for operation of a vehicle without a license was dismissed. Defendant B was again convicted for means of payment fraud and sentenced to imprisonment for 25 days, immediately converted to 25 hours of community service.

According to the inmate register of the Criminal Sanctions Agency, B had completed the 30 hours of community service in accordance with the judgment of the District Court already before the case had been initiated in the Office of the Chancellor of Justice.

PRIMARY INQUIRY

According to the explanation offered by Chief Judge A, who had presided in the District Court, the error had occurred by inadvertence; the presiding judge had not during the trial or the deliberations taken up the issue of the statute of limitations possibly having expired. In their explanations, the lay judges sitting in the District Court have stated that the possibility of the statute of limitations having expired was not discussed during the proceedings.

PRE-TRIAL INVESTIGATION

On the request of the Deputy Chancellor of Justice, the National Bureau of Investigation carried out a pre-trial investigation, interrogating Chief Judge A as the suspect of a criminal offence.

Chief Judge A referred to the explanation submitted to the Deputy Chancellor of Justice, again stating that the error had occurred by inadvertence.

B, who was heard as the injured party, stated that he did not demand that A be punished for the error, but entered a claim of EUR 1,000 in damages.

RULING

According to chapter 8, section 1(1)(paragraph 4), of the Penal Code, a sentence shall not be passed if charges have not been brought within two years, if the most severe penalty for the offence in question is imprisonment for at most one year, or a fine. In the case at hand, a sentence has been passed for operation of a vehicle without a license, an offence which under chapter 23, section 10, of the Penal Code is punishable by a fine or by imprisonment for at most six months. It is an undisputed fact that the District Court had acted unlawfully by passing sentence on the defendant for an act where the relevant statute of limitations had already expired.

Assessment of the conduct of Chief Judge A

In terms of criminal law, the conduct of the Chief Judge must be assessed in the context of the constituent elements of negligent violation of official duty, as referred to in chapter 40, section 10, of the Penal Code.

The Deputy Chancellor of Justice held that, by convicting defendant B “by inadvertence” for a criminal act out of time, Chief Judge A had acted negligently and thus violated his official duty, as referred to in chapter 40, section 10, of the Penal Code.

It remains to be determined whether A's act surpasses the "pettiness threshold" provided in the section in question.

No criteria have been provided for determining whether an act is petty either in the law or in the preparatory works. Hence, the assessment must be based on the application of generalisable criteria on the case at hand. When the provisions on offences in office were being reformed, a discussion was provided in the preparatory works about the basis and the need for the punishability of negligent offences in office. In the relevant Bill (no. 58/1988, p. 19), the extent of punishable activity is discussed e.g. thus: "... *there is no need, under present circumstances, to extend punishability to insignificant acts, mainly pertaining to the violation of procedural provisions, where these have no effect worth mentioning either on the appropriate performance of official duty or the rights and interests of private individuals.*"

The conclusion can thus be drawn that the pettiness of an act should be determined e.g. on the basis of how significantly the offender has failed in the appropriate performance of official duty and how much it violates individual rights or interests. In legal literature, some importance has been attached also to the question whether the error has caused harm or damage. Moreover, in the case-law it has been held important to determine how seriously the act compromises the credibility of the activity of the authority in question (e.g. KKO:2001:54).

In terms of principle, passing sentence for an offence where the statute of limitations has expired is a serious error. In effect, it entails the imposition of a punishment in a situation where there is no lawful basis for punishing the individual in question. The imposition of a punishment unlawfully falls within the core of the activities of a court; it is conducive to seriously compromising the principle of due process in the courts of law.

However, the pettiness threshold provided in chapter 40, section 10, of the Penal Code, must also be assessed in view of the particulars of the case at hand, that is, whether there are circumstances under which the act should be considered petty when assessed as a whole, regardless of the seriousness of the act *per se*.

B had served the sentence imposed by the District Court before the Supreme Court rectified the error in the judgment. The error has caused tangible harm and damage, for which B has also filed a claim for compensation, as referred to above.

Another significant issue is to address the degree of negligence inherent in the act, so as to determine whether the act for this reason should be considered

petty, as referred to in chapter 40, section 10, of the Penal Code. In effect, it must be determined whether the expiry of the statute of limitations not having been noticed was under the circumstances excusable, and whether this is relevant to the assessment of the act under criminal law. In this respect, the Deputy Chancellor of Justice noted that the charge for operation of a vehicle without a license had in fact been out of time already when the summons had been issued. The error had occurred in court proceedings, with the case pertaining to two quite commonplace offences. The case has not been extensive or complex. The expiry of the statute of limitations has been ascertainable in the documents without difficulty.

For these reasons, the Deputy Chancellor of Justice held that the act of Chief Judge A was not to be considered petty when assessed as a whole.

Assessment of the liability of the lay judges

The presiding judge, who is a lawyer, and the lay judges are jointly responsible for the judgments of the court. Thus, the primary principle is that also the criminal liability provisions pertain equally to the lawyer and the laymen when these sit on the bench. There are no specific provisions on the liability of lay judges. In practice, however, it has been held that the lay judges are liable for errors such as the present one only if the issue of the statute of limitations has expressly been discussed or if they for some other reason have had cause to address this issue.

It is provided in chapter 23, section 2, of the Code of Judicial Procedure (in Act 690/1997) that the presiding judge is to explain to the lay judges the points that have arisen in the proceedings and the legal provisions applicable to them.

In the case at hand, the issue of the statute of limitations had not arisen during the deliberations or at other stages of the proceedings. There is also no other indication for the Deputy Chancellor of Justice to deem that the lay judges would for some reason have had cause to address the issue of the statute of limitations pertaining to the act. Hence, liability for the error lies solely on the legally trained presiding judge of the court.

Conclusions

The Deputy Chancellor of Justice held that Chief Judge A, when sitting as the presiding judge of the District Court, had negligently violated his official duty by not making sure that the statute of limitations relating to B's operation of a vehicle without a license had not expired. This act, in view of its detrimental and harmful effect and the other pertinent circumstances, was not to be deemed petty when assessed as a whole.

Accordingly, the Deputy Chancellor of Justice held that A's conduct fulfilled the constituent elements of the punishable act of negligent violation of official duty, as referred to in chapter 40, section 10, of the Penal Code.

The Deputy Chancellor of Justice decided to bring a charge against Chief Judge A.

MEASURES

By a letter sent to the Prosecutor General, the Deputy Chancellor of Justice has ordered the prosecution of Chief Judge A for negligent violation of official duty, under chapter 40, section 10, of the Penal Code.

Later, on 16 February 2006, the Court of Appeal of Eastern Finland has convicted Chief Judge A of negligent violation of official duty and sentenced him to a warning.

7 Statistics on the activities of the Office of the Chancellor of Justice

Caseload in 2005

Complaints filed in 2005	1186
Other supervision matters filed in 2005 ¹	725
Administrative matters filed in 2005	38
Total	1949

Supervision of the sessions of the Government

Sessions

11) Government plenary session	61
12) Presidential session	40

Matters dealt with

11) Government plenary session	1527
12) Presidential session	744

Minutes revised

11) Government plenary session	65
12) Presidential session	44

Requests for opinions

1) President of the Republic, Government, Ministries	43
2) Other authorities	5
Total	48

Complaints against the Government and other authorities

<i>Complaints filed in 2005</i>	1186
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The complaints pertained to the following authorities or types of matter

1) Government or Ministry	93
2) Court of general jurisdiction, criminal case	56
3) Court of general jurisdiction, other type of case	110
4) Administrative court	47
5) Special court	20

¹ Including matters initiated on the basis of the revision of penal judgments

6) Prosecution authority	57
7) Police	186
8) Enforcement authority	35
9) Prison authority	8
10) Other judicial authority	20
11) Foreign service authority	1
12) Provincial and other internal affairs authority	33
13) Defence forces	3
14) Tax authority	32
15) Other authority in state finances	26
16) Education authority	21
17) Agriculture and forestry authority	22
18) Traffic authority	13
19) Trade and industry authority	7
20) Social welfare authority	122
21) Medical and health services authority	58
22) Employment authority	43
23) Environmental authority	20
24) Municipal authority	115
25) Church authority	3
26) Other authority, other person performing a public task	71
27) Advocate or Public Legal Aid Attorney	98
28) Criminal offence by a private individual	0
29) Civil law matter	22
30) Miscellaneous	65
Total number of subjects of complaints ²	1407

Complaints decided in 2005 1221

Measures in admissible complaints

1) reprimand	3
2) proposal	2
3) position or instruction	75
4) other comment	26
5) other measure	9
6) subject-matter rectified or adjusted while complaint was pending .	13
7) finding of no fault	595
Total.....	723

² Some complaints pertain to more than one authority or more than one matter

Complaint ruled inadmissible ³	
1) beyond the competence of the Chancellor of Justice	106
2) pending in competent authority or appeals not exhausted	179
3) transferred to the Parliamentary Ombudsman	53
4) transferred to the Prosecutor-General	3
5) transferred to the Finnish Bar Association	14
6) transferred to the competent authority	2
7) incomprehensible	52
8) lapsed for withdrawal of complaint or for some other reason	76
9) exceeded five-year time limit	16
Total	<u>501</u>

Monitoring of the courts

Penal judgments received for revision	7091
1) matters pending on the basis of revision of penal judgment	163
2) Court of Appeal notices to the Chancellor of Justice	13
3) criminal reports forwarded by the police	21
4) sent by the Office of the Prosecutor-General	2
5) sent by local prosecution offices	<u>3</u>
Total	202

Admissible 212

Measures in admissible matters	
1) written statement	1
2) other opinion	1
3) criminal charge	2
4) reprimand	6
5) position or instruction	50
6) finding of no fault	0
7) no measures needed	<u>152</u>

Monitoring of the Bar

1) monitoring and fee disputes	408
2) other monitoring of the Bar	<u>18</u>
Total	426

³ In most of these cases, the complainant has been notified in writing

Admissible	412
Measures in admissible matters	
1) position or instruction	0
2) other measure	1
3) written statement	2
4) other opinion	3
5) no measures needed	406
Own initiatives and on-site inspections	
1) own initiatives	13
2) on-site inspections	36
Total	49
Admissible	41
Measures in admissible matters	
1) proposal	1
2) position or instruction	5
3) other measure	2
4) other opinion	1
Total	9

The Constitution of Finland

Sections 69, 108, 110-115, and 117

Chapter 5 – The President of the Republic and the Government

Section 69 – The Chancellor of Justice of the Government

Attached to the Government, there is a Chancellor of Justice and a Deputy Chancellor of Justice, who are appointed by the President of the Republic, and who shall have outstanding knowledge of law. In addition, the President appoints a substitute for the Deputy Chancellor of Justice for a term of office not exceeding five years. When the Deputy Chancellor of Justice is prevented from performing his or her duties, the substitute shall take responsibility for them.

The provisions on the Chancellor of Justice apply, in so far as appropriate, to the Deputy Chancellor of Justice and the substitute.

Chapter 10 – Supervision of legality

Section 108 – Duties of the Chancellor of Justice of the Government

The Chancellor of Justice shall oversee the lawfulness of the official acts of the Government and the President of the Republic. The Chancellor of Justice shall also ensure that the courts of law, the other authorities and the 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 Chancellor of Justice monitors the implementation of basic rights and liberties and human rights.

The Chancellor of Justice shall, upon request, provide the President, the Government and the Ministries with information and opinions on legal issues. The Chancellor of Justice submits an annual report to the Parliament and the Government on his or her activities and observations on how the law has been obeyed.

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.

Act on the Chancellor of Justice of the Government (193/2000)*Section 1 – Scope of application*

This Act contains provisions on the supervision of legality by the Chancellor of Justice, as referred to in the Constitution, and on the Office of the Chancellor of Justice.

The Chancellor of Justice supervises the activities of advocates (members of the Finnish Bar Association), as provided in the Advocates Act (496/1958; *laki asianajajista*).

Section 2 – Supervision of the legality of the official acts of the Government and the President of the Republic

If the Chancellor of Justice notes, in the course of the supervision of the legality of the official acts of the Government or the President of the Republic, that a decision or an act by the Government, a Minister or the President of the Republic gives rise to an observation, he or she shall make that observation and present the reasons for the same. If it is not heeded, the Chancellor of Justice shall have the observation entered into the minutes of the Government and, if necessary, take other measures.

If the Chancellor of Justice notes that a legal issue arising in a matter under consideration in a session of the Government calls for a position, he or she may have that position entered into the minutes of the Government.

The Chancellor of Justice shall monitor that the minutes of the Government are correct.

Section 3 – Supervision of the activities of the authorities and of other public activities

When supervising the activities of the courts and other authorities, as well as of other public activities, the Chancellor of Justice carries out investigations on the basis of written complaints addressed to him or her, as well as of notifications by the authorities. The Chancellor of Justice may also open an investigation on his or her own motion.

The Chancellor of Justice is entitled to carry out inspections of the authorities, institutions and other facilities subject to his or her power of supervision.

The Chancellor of Justice revises penal judgments, notifications of which are sent to the Office of the Chancellor of Justice in accordance with the specific provisions thereon.

Section 4 – Admissibility

The Chancellor of Justice shall admit a case for an investigation, if there is reason to suspect that a person, authority or other corporation subject to the Chancellor's power of supervision has acted unlawfully or failed to fulfil an obligation, or if the Chancellor otherwise deems there to be a reason for the same. However, the Chancellor of Justice shall not open an investigation on the basis of a complaint pertaining to events occurring more than five years earlier, unless there is a special reason for opening an investigation into the case. Specific provisions apply to the transfer of a case to the Parliamentary Ombudsman.

Section 5 – Casework

The information deemed necessary by the Chancellor of Justice shall be obtained in a case brought before the Chancellor by a complaint or otherwise. If there is reason to assume that the case may give rise to measures by the Chancellor of Justice, the person, authority or other corporation subject to the Chancellor's power of supervision who is concerned by the case shall be reserved an opportunity to be heard.

Section 6 – Measures

If an official, an employee of a public corporation or another person performing a public task has acted unlawfully or failed to fulfil an obligation, the Chancellor of Justice may issue a reprimand to that person to be heeded in future activity, in so far as the Chancellor does not deem that there is a reason to bring a criminal charge against that person. A reprimand may also be issued to a public authority or to some other corporation.

If the nature of the matter so warrants, the Chancellor of Justice may draw the attention of the person concerned to what constitutes lawful or appropriate administrative conduct.

If the public interest so warrants, the Chancellor of Justice shall take measures for the rectification of an unlawful or erroneous decision or conduct.

Section 7 – Right of initiative

The Chancellor of Justice has the right to make proposals for the development or amendment of provisions or official instructions, if shortcomings or inconsistencies have been discovered in the supervision or if they have given rise to uncertainty or divergent interpretations in the application of the law or administration.

Section 8 – Executive assistance

In the performance of his or her duties, the Chancellor of Justice has the right to immediate executive assistance from all authorities, to the extent of the competence of the authority to provide assistance.

Section 9 – No charge for information or documents

The Chancellor of Justice has the right to obtain the information and documents needed in the supervision of legality free of charge.

Section 10 – Chancellor of Justice

The Chancellor of Justice has the sole power of decision in all matters falling within his or her official duties.

The duties of the Chancellor of Justice are also performed by the Deputy Chancellor of Justice and, when the latter is prevented from attending to his or her duties, by the Substitute to the Deputy Chancellor of Justice.

The Chancellor of Justice decides especially the matters relating to the supervision of the Government and all matters that are important in terms of principle or magnitude. After having heard the Deputy Chancellor of Justice, the Chancellor of Justice shall decide on the division of tasks between the Chancellor and the Deputy Chancellor.

Section 11 – Deputy Chancellor of Justice

The Deputy Chancellor of Justice decides the matters within his or her competence with the same authority as the Chancellor of Justice.

When the Chancellor of Justice is prevented from attending to his or her duties, the Deputy Chancellor of Justice shall see to them.

When the Deputy Chancellor of Justice is prevented from attending to his or her duties, the Chancellor of Justice may invite the Substitute to the Deputy Chancellor to see to them. When the Substitute to the Deputy Chancellor of Justice is attending to the duties of the Deputy Chancellor, the provisions on the Deputy Chancellor in this Act apply correspondingly to the Alternate.

Section 12 – Office of the Chancellor of Justice

There is an Office of the Chancellor of Justice attached to the Government for the preparation of cases to be decided by the Chancellor and for the perform-

ance of the other tasks within his or her competence; the Chancellor of Justice shall serve as the head of the Office.

Provisions on the organisation of the Office of the Chancellor of Justice, its officials and the consideration and deciding of matters in the Office shall be issued by a Decree of the Government. More precise rules on the same may be issued by the Rules of Procedure, to be adopted by the Chancellor of Justice.

Section 13 – Leave of absence for the Chancellor of Justice and the Deputy Chancellor of Justice

The Chancellor of Justice may take a leave of absence, and grant a leave of absence to the Deputy Chancellor of Justice, of at most thirty days per year. A leave of absence for the Chancellor or the Deputy Chancellor exceeding this limit shall be decided by the President of the Republic.

Section 14 – Appointment of the Secretary General

The Secretary General of the Office of the Chancellor of Justice shall be appointed by the President of the Republic on basis of a nomination by the Chancellor of Justice. The appointment shall be made without need of a vacancy announcement.

Section 15 has been repealed by the Act 962/2000.

Section 16 – Entry into force

This Act enters into force on 1 March 2000.

This Act repeals the [earlier provisions on the Chancellor of Justice].

Government Decree on the Office of the Chancellor of Justice (253/2000)

Section 1 – Tasks of the Office of the Chancellor of Justice

The Act on the Chancellor of Justice of the Government (193/2000; *laki valtioneuvoston oikeuskanslerista*) contains provisions on the tasks of the Office of the Chancellor of Justice.

Section 2 – Organisation

The Office of the Chancellor of Justice comprises the Department for Government Affairs, the Department for Legal Supervision, and the Administrative Unit.

The Chancellor of Justice decides on the placement of officials into the Departments and the Unit.

Section 3 – Rules of Procedure

The Rules of Procedure of the Office of the Chancellor of Justice contain provisions on the management of the Office, the steering committee, the tasks and organisation of the Departments and the Administrative Unit, the tasks and deputisation of officials, the preparation and decision of cases and, if necessary, the other administrative matters pertaining to the Office.

The Chancellor of Justice adopts the Rules of Procedure.

Section 4 – Officials

The Office of the Chancellor of Justice has a Secretary General, Referendary Counsellors serving as Heads of Department, Referendary Counsellors, Consulting Officials, Senior Chancellor's Clerks, Junior Chancellor's Clerks and Referendaries.

The Office may also have an information planner, a personnel secretary, department secretaries and other officials. In addition, the Office may have other personnel in temporary positions and experts appointed for specific tasks.

Matters are presented by decision in the Office by the officials referred to in paragraph (1) and by the officials specifically designated by the Chancellor of Justice.

Section 5 – Qualification requirements for officials

The qualification requirements for officials in the Office of the Chancellor of Justice are as follows:

For the Secretary General, a higher University degree in law, and judicial experience or good knowledge of administration, as well demonstrated leadership skills and management experience;

for a Referendary Counsellor serving as Head of Department, a higher University degree in law, and judicial experience or good knowledge of administration, as well as demonstrated leadership skills;

for a Referendary Counsellor, a Consulting Official, a Senior Chancellor's Clerk and a Junior Chancellor's Clerk, a higher University degree in law, and judicial experience or good knowledge of administration;

for a Referendary, a higher University degree in law;

for other officials, a suitable University degree or the other training or education necessary for the task.

Section 6 – Appointment of officials

The Chancellor of Justice appoints the officials of the Office of the Chancellor of Justice. Separate provisions apply to the appointment of the Secretary General.

The Chancellor of Justice appoints to temporary positions in the Office. However, the Government appoints to a temporary position as the Secretary General for a period longer than one year.

Section 7 – Leave of absence

The Chancellor of Justice grants leave of absence to the officials referred to in section 4(3).

The Government grants leave of absence to the Secretary General, if the period of leave is to be longer than one year and is not based on the Civil Service Act or the collective agreement applicable to civil servants.

The Secretary General grants leave of absence to other officials for at most three months; the Chancellor of Justice grants leave of absence for a period longer than three months.

Section 8 – Decision of matters

The Chancellor of Justice decides the matters that are to be decided in the Office of the Chancellor of Justice, unless this power of decision has in the Rules of Procedure been assigned to an official in the Office. The exercise of the power of decision in matters relating to the position of Chancellor of Justice is governed by the provisions of the Act on the Chancellor of Justice of the Government.

The Chancellor of Justice may reserve the power of decision in a matter that otherwise would be decided by an official. In individual cases, the Secretary General and a Head of Department have the same power in a matter that otherwise would be decided by a subordinate official.

Section 9 – Presentation of draft decisions

The matters to be decided by the Chancellor of Justice shall be decided upon presentation of a draft decision, unless the Chancellor otherwise orders. If necessary, provisions may be issued by the Rules of Procedure on the other matters that are to be decided upon presentation of a draft decision.

If, in a matter to be decided upon presentation of a draft decision, the position of the presenting official differs from the decision, the presenting official has the right to have the position entered into the archival copy of the decision.

Section 10 – Salary of the Substitute to the Deputy Chancellor of Justice

During the periods when the Substitute to the Deputy Chancellor of Justice is seeing to the duties of the Deputy Chancellor, the salary of the Substitute shall be determined on the same basis as that of the Deputy Chancellor.

Section 11 – Entry into force

This Decree shall enter into force on 1 March 2000.

This Decree repeals the [earlier Decree on the Office of the Chancellor of Justice].

Act on the Division of Duties between the Chancellor of Justice of the Government and the Parliamentary Ombudsman (1224/1990)

Section 1

The Chancellor of Justice of the Government is released from the duty to oversee legality in matters falling within the competence of the Parliamentary Ombudsman and concerning:

- 1) The Ministry of Defence, except for the oversight of the legality of the official acts of the Government and the Ministers, the Defence Forces, the Frontier Guard Service, crisis management personnel as referred to in the Military Crisis Management Act (211/2006; *laki sotilaallisesta kriisinhallinnasta*), and military court proceedings; (216/2006)
- 2) apprehension, arrest, detention and travel ban under the Coercive Measures Act (450/1987; *pakkokeinolaki*), and taking into custody and other deprivation of liberty;
- 3) prisons and other institutions where individuals are kept on an involuntary basis.

The Chancellor of Justice is likewise released from dealing with matters falling within the competence of the Parliamentary Ombudsman and lodged by persons who have been deprived of liberty through detention, arrest or other measures.

Section 2

In the cases referred to in section 1, the Chancellor of Justice shall transfer the matter to be dealt with by the Ombudsman, unless the Chancellor for special reasons considers it expedient to self decide the matter.

Section 3

The Chancellor of Justice and the Ombudsman may transfer between them also other matters falling within the competence of both authorities, when a transfer can be expected to expedite the processing of the case or when it is for some other special reason justified. In a complaint matter, the complainant shall be notified of any transfer.

Section 4

This Act shall enter into force on 1 January 1991.

This Act shall repeal [the earlier provisions on the bases of the division of duties between the Chancellor of Justice and the Parliamentary Ombudsman].

This Act shall apply also to matters pending at the Office of the Chancellor of Justice or the Office of the Parliamentary Ombudsman at its entry into force.

**Sections concerning the duties of the Chancellor of Justice
in the Advocates Act (1958/496)**

Section 6

(30 July 2004/697) The Board of the Bar Association shall supervise that advocates fulfil their obligations when appearing in a court of law or before another authority as well as in their other activities. An advocate has an obligation to supply the Board with the information required for this supervision. Moreover, an advocate shall permit a person designated by the Board to carry out an audit in his office, where the Board deems this necessary for the exercise of the supervision, and in this context present the documents required for carrying out the audit. A member of the Board and the auditor shall not without authorization disclose any secret information learned in the context of the supervision.

When deciding issues pertaining to membership in the Bar Association, the members of the Board shall have the responsibility of public officials.

The Chancellor of Justice has the right to initiate a supervision matter referred to in section 7c, if he deems that the advocate is in violation of his or her duties. The Chancellor of Justice has likewise the right to demand that the Board of the Bar Association undertake measures against an advocate, if he deems that the latter has no right to serve as an advocate. The Board of the Bar Association and the advocates shall supply the Chancellor of Justice with the information and accounts necessary for the performance of the duties assigned to him under this Act.

Section 7c

(30 July 2004/697) A supervision matter shall become pending when a written complaint against an advocate, a notice by the Chancellor of Justice or a notice issued by a court of law under chapter 15, section 10a, of the Code of Judicial Procedure is received at the Office of the Bar Association. A matter shall become pending also where the Board of the Bar Association has decided to refer a matter before it to be dealt with by the Disciplinary Board.

If a complaint contains such shortcomings that the matter cannot be taken up for a decision on the basis thereof, the complainant shall be exhorted to remedy

the shortcomings within a set period. At the same time, the complainant shall be advised of the nature of the shortcomings and of the fact that the Disciplinary Board may decline to consider the matter if the complainant fails to heed the exhortation. The Disciplinary Board shall not reopen the consideration of an already decided case on the basis of a new complaint, unless the complaint contains relevant new information.

If the events covered by the complaint have occurred more than five years previously, the Disciplinary Board may decline to consider the complaint.

Section 10

(30 July 2004/697) A person whose application under section 3, paragraph 4, or section 4, paragraph 1, has been rejected or who has not been entered into the EU register, or who has been sanctioned or struck from the Roll of Advocates or the EU register, has the right to appeal against the decision of the Board or the Disciplinary Board to the Helsinki Court of Appeal.

The Chancellor of Justice has the right to appeal the decisions of the Board or the Disciplinary Board on matters referred to in sections 7 and 9.

The period for filing an appeal is thirty days. The appeal period begins on the date of service of the decision on the recipient. At the latest on the last day of appeal period, before the end of government office hours, a written appeal addressed to the Helsinki Court of Appeal shall be delivered to the Office of the Bar Association, at the risk of loss of standing. The Bar Association shall without delay forward the appeal and its annexes, a copy of the decision, and its own statement on the appeal to the Court of Appeal.

When hearing the appeal, the Court of Appeal shall reserve the Chancellor of Justice, the Bar Association and the complainant an opportunity to be heard on the appeal and, where necessary, to submit evidence and other information.

The provisions on entry into force and implementation of the latest amendment Act (30 July 2004/697) are as follows:

This Act enters into force on 1 November 2004.

This Act applies also to supervision matters and fee disputes pending at its entry into force. As regards sanctions, any acts or omissions shall be assessed by applying the legislation resulting in the more lenient sanction against the advocate.

The term of the Disciplinary Board in office at the entry into force of this Act shall continue until its set conclusion. Notwithstanding the provision in section 7a, paragraph 1, the first appointment of the third non-member of the Bar and the respective alternate shall be for a term of one year.

Measures necessary for the implementation of this Act may be undertaken before its entry into force.

Rules of Procedure of the Office of the Chancellor of Justice
(5 March 2004)

General provisions

Section 1 – Scope of application

In addition to what has been provided in the Constitution, the Act on the Chancellor of Justice of the Government (193/2000), and the Government Decree on the Office of the Chancellor of Justice (253/2000), the provisions in these Rules of Procedure apply to the duties and the division of tasks between the Chancellor of Justice and the Deputy Chancellor of Justice, and the Departments, Units and personnel of the Office of the Chancellor of Justice.

Section 2 – Division of tasks between the Chancellor of Justice and the Deputy Chancellor of Justice

The Chancellor of Justice shall be the primary decision-maker in matters pertaining to

- 1) the Parliament;
- 2) the President of the Republic;
- 3) the Government, the Ministers, and the Ministries;
- 4) the most senior civil servants;
- 5) the Office of the Chancellor of Justice;
- 6) international co-operation and international affairs;
- 7) the national preparation of European Union affairs;
- 8) the supervision of advocates;
- 9) statements by the Chancellor of Justice; and
- 10) issues that are extensive or significant in terms of principle.

The Deputy Chancellor of Justice shall decide matters pertaining to

- 1) the complaints lodged with the Chancellor of Justice, in so far as these are not to be decided by the Chancellor of Justice,
- 2) criminal charges against officials in the judicial system for offences in office;
- 3) penal judgments and measures arising from the same;
- 4) extraordinary appeals; and
- 5) other similar issues which do not belong primarily to the Chancellor of Justice. the Chancellor of Justice.

The Deputy Chancellor of Justice shall revise the minutes of Government sessions. The Deputy Chancellor of Justice shall likewise carry out inspections in courts of law and other authorities.

The Chancellor of Justice may also decide for some other division of tasks for a given issue or type of issue. If it is not clear which official is to decide a matter, the Chancellor of Justice shall resolve this question.

Section 3 – Steering Committee

The Steering Committee is a consultative body for the consideration of matters pertaining to the Office of the Chancellor of Justice and its activities. The Steering Committee is composed of the Chancellor of Justice as chairman, the Deputy Chancellor of Justice as deputy chairman, the Secretary General, the Heads of Department and the Communications Officer, as well as two members of staff elected by the staff meeting for one year at a time. The Personnel Secretary serves as the secretary of the Steering Committee.

The Steering Committee is convened by the Chancellor of Justice. The chairman shall set the agendas of Committee meetings.

Departments and Units

Section 4 – Department of Government Affairs

The Department of Government Affairs deals with the following matters:

- Matters pertaining to the supervision of the Government;
- complaint matters connected to the supervision of the Government;
- matters pertaining to the supervision of advocates and public legal aid attorneys;
- matters pertaining to international organisations for the oversight of legality, as well as international matters pertaining to fundamental rights and human rights;
- matters pertaining to the national preparation of European Union affairs;
- and
- the preparation of statements on issues within the competence of the Department.

Section 5 – Department for Legal Supervision

The Department for Legal Supervision deals with the following matters:

- Complaints lodged with the Chancellor of Justice and matters pertaining to the supervision of courts of law and other oversight of legality, in so far as these do not fall within the competence of the Department of Government Affairs;

matters pertaining to criminal charges against officials in the judicial system for offences in office;
 the revision of penal judgments;
 matters pertaining to extraordinary appeals;
 the preparation of statements on issues within the competence of the Department;
 assistance in matters pertaining to the supervision of the Government; and
 assistance in international matters in accordance to specific instructions thereon.

Section 6 – Administrative Unit

The Administrative Unit deals with the following matters:

Matters pertaining to the internal administration and finances of the Office;
 matters pertaining to international co-operation, in so far as these do not fall within the competence of a Department;
 matters pertaining to personnel training;
 the editorial work on the Annual Report of the Chancellor of Justice;
 matters pertaining to communications and public relations; and
 other matters to be dealt with in the Office of the Chancellor of Justice, where these do not fall within the competence of either of the Departments.

Section 7 – Specific assignment of matters

The Chancellor of Justice may assign a matter to be dealt with by a Department or Unit other than that provided in sections 4-6 or jointly by more than one of them.

Section 8 – Assignment of officials

After having heard the Heads of Department, the Chancellor of Justice decides, upon presentation of a draft decision by the Secretary General, on the assignment of officials to the Departments and Units.

Duties of officials and deputisation

Section 9 – Secretary General

The duties of the Secretary General are:

To manage the internal activities of the Office of the Chancellor of Justice and to see to its performance and development;
 to present the Rules of Procedure of the Office of the Chancellor of Justice for adoption;

to prepare matters pertaining to the operational and financial planning and budgeting of the Office of the Chancellor of Justice;
 to deal with matters of appointment, leave of absence, termination and position rearrangement, as well as other personnel matters;
 to see to the preparation of the Annual Report of the Chancellor of Justice;
 to distribute the incoming matters to the Departments and the Administrative Unit;
 to participate in the preparation of the statements of the Chancellor of Justice; and
 to deal with the other matters that the Chancellor of Justice by their nature assigns to the Secretary General.

The Secretary General serves as the Head of the Administrative Unit; he or she is subject to the provisions in section 10 (1) and (3) in so far as appropriate. The Secretary General shall monitor the caseloads of the Departments and Units and, where necessary, make proposals for changes in the assignment of officials or for other arrangements.

Section 10 – Head of Department

The duties of a Head of Department are:

- to manage and develop the activities of the Department and to answer for its performance;
- to supervise that the matters in the Department are dealt with conscientiously, expediently and efficiently;
- to see to it that the officials in the Department are given the necessary support and guidance;
- to distribute the Department's incoming matters to the officials in the Department for preparation and presentation;
- to prepare and present the most important matters in the Department; and
- to perform the tasks specifically assigned by the Chancellor of Justice to him or her.

When distributing matters, the Head of Department shall strive to assign specifically the most important matters to Referendary Counsellors and similar matters to the same officials, as well as to distribute the workload evenly among the officials in the Department.

Where necessary, the Head of Department shall arrange departmental staff meetings for the development of the Department's activities and for discussion of issues of relevance to the Department.

In addition, the Head of the Department of Government Affairs shall participate in tasks pertaining to the supervision of the Government, as well as prepare and present statements of the Chancellor of Justice.

In addition, the Head of the Department for Legal Supervision shall participate in tasks pertaining to the supervision of the Government as instructed by the Chancellor of Justice.

Section 11 – Presenting officials

The officials tasked to present draft decisions shall prepare and present the matters assigned to them for a decision by the Chancellor of Justice or the Deputy Chancellor of Justice, as provided above in section 2.

Section 12 – Personnel Secretary

The duties of the Personnel Secretary are the preparation of the personnel, financial, training and other matters of the Office of the Chancellor of Justice, bookkeeping and the keeping of the official personnel records.

Section 13 – Communications Officer

The duties of the Communications Officer are to see to the external and internal communications of the Office of the Chancellor of Justice and to assist in the preparation of the Annual Report of the Chancellor of Justice.

Section 14 – Information Officer

The duties of the Information Officer are to serve as the librarian of the Office of the Chancellor of Justice, and to participate in the information services of the Office and the planning, search and maintenance of information sources.

Section 15 – Department Secretaries

The Department Secretaries, two of whom serve primarily as the personal secretaries of the Chancellor of Justice and the Deputy Chancellor of Justice, shall assist the presenting officials in their Department in the matters under preparation, as well as perform the tasks assigned to them by the Head of Department. Separate instructions shall be issued on the assignment of each Department Secretary to assist given presenting officials.

Section 16 – Registrar

The duties of the Registrar are to see to the registry and archiving functions of the Office of the Chancellor of Justice and to the customer service relating to the same.

Section 17 – IT Planner

The duties of the IT Planner are to maintain the IT equipment, network and databases of the Office of the Chancellor of Justice, to act as a liaison to suppliers and the other IT personnel in the Government, to serve as the IT support person of the Office, and to participate in the technical preparation of the Annual Report of the Chancellor of Justice.

Section 18 – Head Porter

The duties of the Head Porter are to see to the office services of the Office of the Chancellor of Justice, to see to the procurement of furniture and equipment, and to maintain a register of movable assets.
The Head Porter is the supervisor of the Senior Porter and the Porter.

Section 19 – Other officials

The other officials shall see to the tasks belonging to them by virtue of their position or function or otherwise specifically assigned to them.

Section 20 – Specifically assigned tasks

The Chancellor of Justice shall assign one of the presenting officials to act as an IT users' representative.
In addition, all officials shall see to the tasks specifically assigned to them.

Section 21 – Deputisation

When the Secretary General or a Head of Department are prevented from attending to their duties, they shall be deputised by the officials designated by the Chancellor of Justice.
The Secretary General or a Head of Department shall decide on other deputisations.

Decision-making*Section 22 – Presentation and signature of instruments*

Unless they otherwise resolve in an individual case, the Chancellor of Justice and the Deputy Chancellor of Justice decide the matters within their competence upon presentation of a draft decision.

The Secretary General shall decide the matters within his or her competence without presentation.

In a pending case, a Head of Department shall decide on the procurement of information and accounts upon presentation, unless it ensues from the nature of the matter that the official who is to decide the matter itself should decide also on these measures.

In matters decided upon presentation, the instrument shall be countersigned by the presenting official.

A letter by a presenting official shall be signed by that official only. Where a letter by a presenting official constitutes an instrument relating to a decision of the Chancellor of Justice or the Deputy Chancellor of Justice, this status must appear on the face of the letter.

Section 23 – Decision-making in matters pertaining to the Office of the Chancellor of Justice

The Chancellor of Justice decides the matters pertaining to the Office of the Chancellor of Justice which have not been assigned to someone else by the Decree on the Office of the Chancellor of Justice or by a provision below in this section.

Matters pertaining to access to documents are decided by the officials competent to decide the matter which the request for access concerns. In other cases and in matters pertaining to archived documents, the decision shall be made by the Secretary General.

With the exceptions referred to below, the Secretary General decides the matters pertaining to the use of appropriations for the activities of the Office of the Chancellor of Justice, travel expense sheets and reimbursement, seniority supplements for the officials of the Office of the Chancellor of Justice, personnel training and the registration and archiving of documents.

A Head of Department decides the matters pertaining to the use of appropriations for the activities of the Department, as stated in the Office's internal allocation of appropriations confirmed by the Chancellor of Justice, travel expense sheets and reimbursement, and personnel training in the Department.

Miscellaneous provisions

Section 24 – Incoming matters

When registering incoming documents, the registrar shall mark the document and make an entry in the register as to which Department or Unit is to deal with the matter.

Once the Chancellor of Justice and the Deputy Chancellor of Justice have perused the incoming documents, the Secretary General shall verify the assignment of matters.

The matters assigned to a Department are delivered to the Head of Department, who distributes them to the officials in the Department.

If it is unclear as to which Department or Unit is to deal with a matter, the Secretary General shall resolve this issue.

Section 25 – Register of decisions

A register of decisions is kept on those matters decided in the Office where no instrument is issued.

The register of decisions shall indicate the matter concerned, the date and number of the decision, the decision-maker, the presenting official and those issued an extract of the register.

Section 26 – Annual vacation schedule

After having heard the Heads of Department, the Chancellor of Justice adopts the annual vacation schedule upon presentation by the Secretary General.

Section 27 – Official travel

The official trips of the Chancellor of Justice and the Deputy Chancellor of Justice are entered in a list kept by the personal secretary of the Chancellor of Justice; all trips are entered in the list immediately after the travel decision has been made. The official preparing the trip draws up an expense estimate and delivers it to the Personnel Secretary.

The Secretary General goes on official trips by the instructions or permission of the Chancellor of Justice. The Chancellor of Justice and the Deputy Chancellor of Justice issue travel instructions to the officials accompanying them. In other cases, officials' travel instructions are issued by the Secretary General.

Section 28 – Personnel involvement

The personnel involvement in the Office of the Chancellor of Justice proceeds in accordance with the provisions of the Act on Co-operation in State Offices and Institutions (651/1988; *laki yhteistoiminnasta valtion virastoissa ja laitoksissa*) and the terms in the agreements concluded on the basis of that Act.

Section 29 – Other rules and guidelines

In addition, the provisions in the archival rules of the Office of the Chancellor of Justice and in the financial rules of the Cabinet Office, in so far as these pertain to the Office, shall be complied with.

Moreover, the operational and financial plan of the Office of the Chancellor of Justice, the workplace safety and equality programme, the personnel training plan, the communications plan of the Office and the other guidelines adopted by the Chancellor of Justice shall be taken into account.

Section 30 – Entry into force

These Rules of Procedure enter into force on 1 April 2004.

These Rules of Procedure repeal the [earlier Rules of Procedure].

Procedure for lodging a complaint

In practice, the supervision of legality primarily takes the form of ruling on a citizen's complaint filed with the Chancellor of Justice concerning the actions of an authority or public official.

What kinds of complaints are filed with the Chancellor of Justice?

All citizens are entitled to apply to the Chancellor of Justice in matters that directly concern them, or in any other matter, should the complainant believe that an authority, public official or public body has acted in a manner that violates his or her rights, or that a member of the Bar has neglected his or her responsibilities. All citizens may also apply to the Chancellor of Justice if they believe that a constitutional or human right guaranteed under the Constitution has not been observed.

How is a complaint filed?

Complaints are made in writing. The following points should be mentioned:

- the identity of the public official, authority or public corporation that is the subject of the complaint;
- a description of the action that the complainant regards as illegal; and
- the name, address and signature of the complainant.

Any relevant documents may be appended to the complaint. These documents will be returned when the matter is resolved, or even earlier if so requested.

The Chancellor of Justice will not investigate a complaint if five years or more have elapsed since the alleged violation, unless warranted by some special reason.

How are complaints dealt with?

Legally trained personnel process complaints and obtain any necessary supplementary documentation. The Chancellor of Justice is entitled to approach any authority for information and documents, including material classified as secret. If necessary, the Chancellor of Justice may ask the police to carry out an investigation.

Complainants are usually given an opportunity to file a rejoinder before the matter is resolved, and they will receive a written response by mail.

How are complaints resolved?

The Chancellor of Justice may

- issue a reprimand to an official or body;
- issue instructions on the proper procedure for future reference;
- or, in more serious cases, order charges to be brought against the official.

The Chancellor of Justice is not authorized to annul or amend a decision taken by an authority, nor can he order payment of damages. If a clear error is noted, the Chancellor of Justice will strive to have it corrected.

The Chancellor of Justice has the power, if he deems it necessary, to recommend the amendment of provisions or regulations, and to initiate proceedings to annul a court ruling or for some other extraordinary appeal.

The Chancellor of Justice is empowered to initiate disciplinary proceedings against a member of the Bar and has the right to appeal decisions of the Board of the Finnish Bar Association on disciplinary matters.

An investigation carried out by the Chancellor of Justice may in itself result in the authority or public official correcting an error.

The services of the Office of the Chancellor of Justice are free of charge to the complainant.

COMPLAINT TO THE CHANCELLOR OF JUSTICE

Complainant's name and address: Telephone (during office hours):

Subject of the complaint (authority, official or other person or institution):

Procedure, action or decision considered illegal by the applicant:

Brief description of the course of events and the dates:

Unlawful aspects of the procedure, action or decision:

Recommended action by the Chancellor of Justice:

Time and place

Signature

If necessary, please continue on the other side of this form or on another sheet.

THE OFFICE OF THE CHANCELLOR OF JUSTICE

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