



REPORT OF THE
FINNISH CHANCELLOR
OF JUSTICE
2008

SUMMARY

HELSINKI 2009

This report is an abridged version of the Finnish text. The majority of the rulings for the administrative branches have been removed from this version so that each section describes only one ruling.

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TO PARLIAMENT AND THE GOVERNMENT

Under Section 108 (3) of the Constitution of Finland I respectfully submit to Parliament and the Government a report of the Chancellor of Justice's activities and observations concerning compliance with the law in 2008.

During the reporting year, the office of the Chancellor of Justice was exercised by Mr Jaakko Jonkka, Doctor of Laws, LL.M. trained on the bench. Deputy Chancellor of Justice Mr Mikko Puumalainen, Licentiate of Laws, LL.M trained on the bench, attended to the duties of the Chancellor of Justice when the Chancellor of Justice was prevented from exercising his office. Appointed as a substitute to the Deputy Chancellor of Justice, Mr Risto Hiekkataipale, LL.M trained on the bench, Head of the Department of Government Affairs of the Office of the Chancellor of Justice, attended to the duties for a total of 109 days during the year under review.

The activities of the Chancellor of Justice are primarily reported according to the type of activity. The various sections consist of an overview of the sector and a review of the relevant provisions as well as a report on actions taken and observations made.

The report opens with an overview of the activities of the Office of the Chancellor of Justice and proceeds to describe the actions of the Chancellor of Justice in respect of the Government. The relative powers of the highest central government bodies are also discussed in this section, followed by a section that deals with supervision of the implementation of fundamental and human rights. The section concerning the supervision of legality in central government is preceded by accounts of certain important decisions and other opinions of the Chancellor of Justice and Deputy Chancellor of Justice that are deemed to be of general and fundamental importance. This is followed by a section on central government presented according to ministerial purview. The sections concerning central government are followed by a section on legality supervision in municipal administration and other autonomous government. Supervision of the Bar has also been allocated its own section.

The final section provides statistical data on the activities of the Office of the Chancellor of Justice.

The report closes with an English translation of the legislation and regulations concerning the Chancellor of Justice and the Office of the Chancellor of Justice, and an index and a list of the staff at the Office of the Chancellor of Justice.

Helsinki, 31 March 2009

Jaakko Jonkka Chancellor of Justice

Nils Wirtanen Secretary General

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1

OVERVIEW

DUTIES

Provisions on the duties of the Chancellor of Justice and his key powers appear in Chapter 10 of the Constitution of Finland. The Constitution also mentions the Deputy Chancellor of Justice and his or her substitute, to whom the provisions on the Chancellor of Justice apply insofar as appropriate.

The Act on the Chancellor of Justice of the Government (193/2000) contains provisions concerning the methods of execution of supervision of legality by the Chancellor of Justice, the admissibility and investigation of matters, the measures available to the Chancellor of Justice, the right of the Chancellor of Justice to executive assistance and information, as well as basic provisions regarding the Office of the Chancellor of Justice and certain other provisions.

The Government Decree on the Office of the Chancellor of Justice has been issued pursuant to the act. More detailed regulations governing the organisation and officials of the Office of the Chancellor of Justice as well as the resolution of matters by the Office of the Chancellor of Justice have been issued in the Rules of Procedure adopted by the Chancellor of Justice. English translations of the legislation and regulations concerning the Chancellor of Justice and the Office of the Chancellor of Justice can be found appended to this report (appendices 1–6).

Supervision of the Government

Under the Constitution, the Chancellor of Justice is tasked with supervising the lawfulness of the official acts of the Government and the President of the Republic. The Chancellor of Justice must attend government plenary sessions as well as presidential sessions, in which matters are put before the President of the Republic. However, his presence is not a judicial prerequisite to decision-making by the Government or the President of the Republic. In practice, the Chancellor of Justice or his deputy or substitute is always present at such sessions.

Provisions on the measures available to the Chancellor of Justice in the exercising of his supervisory duties are laid down in the Constitution and the Act on the Chancellor of Justice of the Government, which to a certain extent supplements the constitutional provisions. In practice, the focus in supervision of the Government is on advance supervision. This is accomplished by the Chancellor of Justice by reviewing the presentation agendas, inclusive of appendices, of government plenary sessions and presidential sessions. The chancellor also reviews the memoranda submitted by the Government to Parliament in matters related to the European Union. The Department for Government Affairs is the unit of the Office of the Chancellor of Justice responsible for preparation of the matters referred to herein.

Supervision of the Government is discussed in greater detail in Section 2 of this report.

Issuing opinions

Issuing opinions is closely related to the supervision of the Government covered above. According to the Constitution, the Chancellor of Justice must, upon request, provide the President of the Republic, the Government and the ministries with information and opinions on legal issues. Opinions are mainly requested directly by the ministries. Although usually issued in writing, opinions may in some cases also be provided orally.

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

Supervision of fundamental and human rights

Under the Constitution, the Chancellor of Justice must also monitor the implementation of fundamental rights and liberties and human rights. In practice, this obligation is observed in all fields of activity: in supervision of the Government and other supervision as well as the handling of complaints and the initiation of investigations.

Supervision of human rights is based on international human rights conventions binding on Finland. The Convention for the Protection of Human Rights and Fundamental Freedoms – the European Convention on Human Rights – is a key instrument in this respect, along with conventions that are of more restricted scope and which address issues such as discrimination or the rights of the child.

In its report concerning the fundamental rights reform (PeVM 25/1994 vp), the Constitutional Law Committee of the Parliament proposed that the relevant supervisors of legality – the Chancellor of Justice and the Parliamentary Ombudsman – include in their annual reports on activities a dedicated section on the implementation of fundamental and human rights. This topic is discussed in Section 3 of this report.

Prosecutorial duties

The Chancellor of Justice serves as a special prosecutor in matters within the purview of his supervision of legality, particularly offences in office. The decision to bring charges against a judge for an offence in office is taken by the Chancellor of Justice or the Parliamentary Ombudsman. Courts of appeal must notify the Chancellor of Justice of any facts of which they have become aware that may result in official charges being brought in a court of appeal. The police must forward to the Chancellor of Justice any police reports involving alleged offences in office by judges. The manner in which the Office of the Chancellor of Justice deals with alleged offences in office by judges is discussed below in Section 5, page 80.

Investigation of complaints

One of the ways in which the Chancellor of Justice monitors the legality of the activities of authorities and other public officials is by dealing with complaints lodged against them. Both private individuals and organisations who feel that a person, authority or other organisation within the supervisory ambit of the Chancellor of Justice has acted unlawfully or failed to fulfil their duties may lodge a complaint with the Chancellor of Justice. A total of 1,737 such complaints were filed in 2008.

The Chancellor of Justice must investigate a complaint if there is reason to suspect that a person, authority or other organisation has acted unlawfully or failed to fulfil their duties, or if deemed warranted for other reasons by the Chancellor of Justice. The Chancellor of Justice is entitled to approach any authority for information and documents deemed warranted for the investigation.

The Chancellor of Justice will not investigate a complaint lodged more than five years after the alleged infringement has taken place, unless there are special grounds for doing so. However, since the time limit is not absolute, cases of exceptional gravity or importance may be investigated irrespective of the time that has elapsed between the infringement and the lodging of the complaint.

Review of penal judgments

According to the Act on the Chancellor of Justice, the Office of the Chancellor of Justice has the right to review penal judgments imposed by courts of law. For this purpose, the office receives notifications of decisions on sentences and their enforcement. Actions taken on the basis of these documents are described in greater detail on page 83 in the subsection concerning the activities of the courts.

Supervision of the Bar

The Chancellor of Justice's duty to supervise the actions of advocates, i.e. members of the Finnish Bar Association, is based on the Advocates Act. Supervision takes the form of reviewing the decisions taken by the Board of the Finnish Bar Association in matters concerning its supervisory duties and fee disputes, including consideration of appeal, and investigating complaints pertaining to advocates.

Supervision of the Bar is discussed in greater detail in Section 7 of this report.

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

The division of duties between the Chancellor of Justice and the Parliamentary Ombudsman is provided for in an Act of Parliament.

The act enumerates the matters which the Chancellor of Justice must transfer to the Parliamentary Ombudsman for consideration unless he deems their resolution in the Office of the Chancellor of Justice

expedient. As a rule, matters transferred concern: 1) the Defence Forces, Border Guard and peacekeeping forces as well as matters concerning military court proceedings; 2) apprehension, arrest, detention and travel bans referred to in the Coercive Measures Act as well as matters pertaining to taking into custody and other deprivation of liberty; and 3) matters pertaining to prisons and other facilities where persons have been committed against their will. Complaints lodged by inmates and other detainees are also transferable matters, while matters pertaining to the supervision of the Government shall not be transferred to the Parliamentary Ombudsman even in respect of the Ministry of Defence.

Pursuant to the Act on the Division of Duties, the Chancellor and the Ombudsman may agree on a transfer of a matter if such transfer can be estimated to facilitate dealing with the matter or when transfer is justified for other particular reasons.

During the year under review, a total of 68 complaints were transferred to the chancellor and 20 to the ombudsman.

The year in figures

The figures below represent the activities of the Office of the Chancellor of Justice during the year under review (corresponding figures for 2007 in parentheses).

During the year under review, the Office of the Chancellor of Justice received 1,737 (1,352) complaints and resolved 1,496 (1,275) complaints. In all, 23 (11) matters were taken under investigation on the chancellor's own initiative and 159 (103) matters became pending as a result of the review of penal judgements.

The number of decisions involving measures in respect of complaints was 129 (123), equivalent to 16% (17%) of all admissible complaints (738). A study conducted in 2008 determined that the median resolution time of all complaints was approximately 4 (6) weeks and the average resolution time was approximately 28 (27) weeks.

A total of 39 matters taken under investigation as a result of supervision of the courts led to action being taken. A total of 6,875 penal judgments were submitted for review.

In all, 34 (31) written opinions were issued to the President of the Republic, the Government and the ministries.

At the end of the year under review, 1,076 (844) cases remained pending. Statistical data on activities is presented in Section 8.

International cooperation

Deputy Chancellor of Justice Mikko Puumalainen attended a meeting of the Management Board of the European Union Agency for Fundamental Rights in Vienna on 6–7 March 2008.

Professor Ronald Dworkin met the Deputy Chancellor of Justice and visited the Office of the Chancellor of Justice on 7 May 2008.

DUTIES

Estonian Chancellor of Justice Indrek Teder and his delegation met senior officials of the Office of the Chancellor of Justice on 9 May 2008.

Visiting Romanian prosecutors were introduced to the activities of the Office of the Chancellor of Justice on 14 May and 4 June 2008. The visits were arranged as part of a training programme by HAUS Finnish Institute of Public Management Ltd.

The Deputy Chancellor of Justice attended a meeting of the Management Board of the European Union Agency for Fundamental Rights in Vienna on 2–4 June 2008.

The Deputy Chancellor of Justice attended a consultative expert meeting, “Access to Efficient and Independent Justice”, of the European Union Agency for Fundamental Rights in Malta on 9–11 June 2008.

Senior Chancellor’s Clerk Pekka Liesivuori attended a seminar, “The European Network of Ombudsmen Liaison Officers”, in Strasbourg on 1–3 June 2008.

Spain’s Ambassador to Finland, Embajador D. Ricardo Zalacain, met Chancellor of Justice Jaakko Jonkka on 16 June 2008.

Chancellor of Justice Jaakko Jonkka and Secretary General Nils Wirtanen presented the activities of the Office of the Chancellor of Justice to the Chairman of the Supreme Arbitration Court of the Russian Federation Anton Ivanov and his delegation on 14 October 2008.

The Deputy Chancellor of Justice attended a meeting of the Management Board of the European Union Agency for Fundamental Rights in Vienna on 22–24 October 2008.

The Deputy Chancellor of Justice presented the activities of the Office of the Chancellor of Justice to a delegation of the Finnish NGO Foundation for Human Rights KIOS on 27 October 2008.

Secretary General Nils Wirtanen presented the activities of the Office of the Chancellor of Justice to the Partnership Project Group of Danish and Central American Ombudsman Institutions on 26 November 2008.

Organisation and staff

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. Exercising the decision-making power vested in the Chancellor of Justice, the Chancellor of Justice and Deputy Chancellor of Justice are outside the departmental division. Decisions concerning the placement of officials under the departments and unit are made by the Chancellor of Justice.

Detailed provisions regarding the organisation and the tasks of the units can be found in the Rules of Procedure of the Office of the Chancellor of Justice. 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 in respect of legality supervision organisations and fundamental and human rights as well as 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

1 OVERVIEW

other legality supervision not falling within the ambit of the Department for Government Affairs. The Department for Legal Supervision also attends to matters of actions against officials of the court system and the review of penal judgments, prepares the opinions issued in its particular sector and provides assistance in matters pertaining to the supervision of the Government and in certain enumerated international matters. The Administrative Unit deals with internal administration, financial affairs, employee training and information and media services. It also edits and publishes the annual report and deals with matters pertaining to international cooperation not within the ambit of either of the above departments.

At the end of the year under review, the Office of the Chancellor of Justice had the following staff in addition to the Chancellor of Justice and the Deputy Chancellor of Justice: the Secretary General, two referendary counsellors serving as heads of department, four other referendary counsellors, a consulting official, eight senior legal advisers, three junior legal advisers, a human resources officer, an information officer, an information specialist, three notaries, a clerk, four clerical secretaries, a chief porter, a porter and a caretaker. The Office of the Chancellor of Justice also employed two part-time presenting officials and, from 1 June until 31 August 2008, two student law trainees.

At year-end the office had a total of 37 employees. In addition to the Chancellor of Justice and the Deputy Chancellor of Justice, staff in a public service employment relationship position requiring a higher university degree in law totalled 19 officials.

A list of the staff at the Office of the Chancellor of Justice can be found appended to this report.



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**THE CHANCELLOR
OF JUSTICE AND
THE GOVERNMENT**

GENERAL

The Constitution divides the supervision of the legality of government decisions as performed by the Chancellor of Justice into two parts judicially and in terms of methods and timing of execution. The focus in the supervision of the Government by the Chancellor of Justice and the work of the Department for Government Affairs assisting the chancellor in related duties has always been on advance inspection and supervision of matters being prepared by ministries and of those that, on preparation having been completed, are submitted to government plenary sessions or the President of the Republic for a decision. The aim is to perform advance measures to ensure that decision-making by the Government and the President of the Republic in the Government is in conformity with law and that government proposals brought before Parliament meet the various basic legal requirements and can thus be presented to Parliament.

The duty of the Chancellor of Justice to perform advance supervision of the Government is based on Section 108 of the Constitution. The Constitution does not lay down detailed provisions regarding the methods of execution of advance supervision, nor are there detailed provisions on the issue in the Act on the Chancellor of Justice of the Government. Since the Chancellor of Justice supervises matters prepared by the relevant ministries and forwarded for decision-making, the practical performance of supervision is dependent on the matter in question and the relevant needs arising at the ministry in question. Externally more visible among the methods of government supervision is the weekly advance review of the presentation agendas of bills and proposals to be submitted to plenary sessions and presidential sessions. This is covered in greater detail later in this report. Smaller in terms of number, but more challenging in terms of time consumption and legal expertise and attention required, are requests for a legal opinion on matters to be submitted to the Government or those related to government decision-making made by ministerial rapporteurs and members of the Government, to which the Chancellor of Justice has the power and duty to respond under Section 108 (2) of the Constitution.

The Chancellor of Justice's power of supervision of the lawfulness of the decisions made by the Government and the President of the Republic is based on Section 112 of the Constitution. Powers of supervision regarding decisions that have already been made must naturally be based on provisions more specific than those regarding preparation and drafting laid down in the Constitution and the Act on the Chancellor of Justice of the Government. Furthermore, it is obvious that the need to apply provisions regarding retrospective investigation into and ascertainment of the lawfulness of decisions made by the highest governmental power should arise extremely rarely, as such investigations would pertain to decisions made by the Government or the President of the Republic where the advance supervision of legality is of primary importance. In 2007 there were no matters pertaining to the lawfulness of decisions by plenary sessions of the Government or by the President of the Republic referred to in Section 112 of the Constitution.

Under Section 108 of the Constitution, the first task assigned to the Chancellor of Justice is the duty to supervise the lawfulness of the official acts of the Government and the President of the Republic. Based on long-term practice, it is recorded in the detailed reasonings of Section 108 of the Constitution (HE 1/1998 vp) that the supervision of the legality of the official acts of the Government and the President of the Republic have been emphasised in the overall attendance by the Chancellor of Justice to the duty of legality supervision. The supervision of the Government also covers government plenary sessions and the ministries and their officials. Under Section 58 of the Constitution, the President of the Republic makes decisions in the Government on the basis of proposals for decisions put forward by the Government. Therefore the supervision of legality performed by the Chancellor of Justice is targeted specifically at government plenary sessions and matters considered therein either for a final decision or for forwarding as proposals to the President of the Republic.

In agreement with the detailed reasonings of Section 108 of the Constitution, it can be stated that the provision of information and opinions on legal issues to the President, the Government and the ministries referred to in Section 108 (2) of the Constitution remains an important area in the Chancellor of Justice's activity. This is about the performance of one of the core duties (alongside complaints) imposed on the Chancellor of Justice by the Constitution. Legal opinions, instructions and statements preceding government decisions are provided specifically in response to needs arising in the Government and the ministries to obtain an opinion on the correct interpretation of the law or further legal information to enable the formation of opinion in the ministry preparing and presenting the matter, or legal information about government practice in similar matters. The purpose of more extensive written requests for an opinion, requests for a legal opinion and discussions with ministry representatives responsible for the preparation of matters is to examine, in advance, the legal issues related to the matter under preparation and related decision-making as well as the legality of the actions taken by the ministry in order to make sure that there will not be any legal obstacles preventing a decision on the matter and that the proposal for a decision or its reasonings will not need to be supplemented or corrected immediately prior to the decision-making situation.

The submission of requests for investigation to and investigation of matters by the Office of the Chancellor of Justice is free from prescriptions regarding form and manner. Legal issues within the scope of supervision of the Government are often submitted to the Chancellor of Justice in a manner whereby relevant members of the Government or rapporteurs preparing matters in a ministry refer a legal issue arising during the preparation process for investigation by the Chancellor. Efforts are made to provide a legal response to inquiries regarding matters to be presented to the Government promptly enough to prevent any delay to the processing of the matter. Accordingly, matters are often investigated and responses provided during telephone discussions with ministries' rapporteurs.

With regard to legal issues related to matters prepared at ministries, email has become an increasingly common tool, as it allows rapid communication. It also provides the Chancellor of Justice and officials at the Department for Government Affairs attending to supervision of the Government access to all the documents necessary for the legal assessment of a matter as email attachments. This expands the knowledge base available for assessment and shortens processing times. In cases where a ministry's rapporteur is provided with a previously established opinion regarding government practice, the informa-

tion is provided by an official of the Department for Government Affairs attending to supervision of the Government. Other requests for an opinion are referred to the Chancellor of Justice.

In response to requests for opinions on more significant legal issues, the Department for Governmental Affairs draws up memoranda which, on the Chancellor of Justice's approval, are delivered to those requesting the opinion.

In addition to legal issues related to matters submitted to government plenary sessions and presidential sessions and their handling, requests by ministries for an opinion or statement can also pertain to individual issues decided by a ministerial decision or decree. Complaints made regarding governmental affairs are also quite often anticipatory in nature, pertaining to an individual issue being prepared by a ministry or to be submitted to the Government, or sometimes also to a legislative project to be presented. In addition to complaints lodged by citizens, such written communications have also been received from central organisations operating in the sector in question.

In 2008, government plenary sessions handled a total of 1,605 matters (1,705 in 2007), and the President of the Republic made 765 (712) decisions at presidential sessions. The number of government plenary sessions totalled 67 (63) and presidential sessions 46 (35). The Government's decision-making also involved 86 memoranda submitted by the Government to Parliament in matters related to the European Union.

The Chancellor of Justice or the Deputy Chancellor of Justice or his substitute was, as provided under Section 111 (2) of the Constitution, present at government plenary sessions and presidential sessions. They were also present at government negotiations and evening sessions.

DECISIONS OF THE PRESIDENT OF THE REPUBLIC IN THE GOVERNMENT

The 2001 report includes a more extensive description of the legal framework for presidential and government decision-making and the implementation of the decision-making procedures under Section 58 of the Constitution. During 2008, there was one occasion on which the President did not accept the solution proposed by the Government. On 8 August 2008, the President did not approve the Government's proposal for the appointment to office of the Secretary General of the Ministry of the Interior. The matter was therefore returned under Section 58(2) of the Constitution for further preparation by the Government. At the presidential session of 15 August 2008, the President of the Republic appointed the serving secretary general to continue in the office of the Secretary General of the Ministry of the Interior for a fixed period until 30 September 2013.

During the year under review, the Office of the Chancellor of Justice did not process any matters concerning military orders or other matters referred to in Section 58(5) of the Constitution.

As in previous years, the President of the Republic resolved all matters proposed by the Government immediately, without the requests for opinion provided for under Section 108(2) of the Constitution.

In the ordinary review of presentation agendas, the questions of powers are invariably taken into account. The relevant legal basis for the use of powers by the highest organs of government is also checked. No particular interpretation problems have occurred in this context. In some cases, a request has been made to add a reference to a specific provision concerning powers, if it has not been noted in the Government's presentation agenda.

With regard to supervising government affairs concerning Finland's international relationships, the common policy, as described in Section 2.2.1 of the 2001 report, has been followed.

REVIEW OF PRESENTATION AGENDAS

For the purpose of the examination of government affairs, the Chancellor of Justice and the Department for Governmental affairs of the Office of the Chancellor of Justice receive all the presentation agendas of government plenary sessions and presidential sessions in advance. The presentation agendas are distributed using the government decision support system, an electronic system for documenting government sessions. This provides the Chancellor of Justice with access to the presentation agendas of government plenary sessions and presidential sessions simultaneously with the members of the Government. This means the Chancellor of Justice examines agendas already distributed to the Government, allowing very little time for the process of reviewing the presentation agendas of government plenary sessions and presidential sessions. In particular, government proposals regarding finance and expenditure laws, which are submitted in the autumn, and proposals related to the national implementation of European Union legislation are legislative issues with specific time limits. Due to reasons including lack of time available for drafting or shortage of ministerial preparatory staff with sufficient expertise and experience, government proposals do not always meet the technical or content requirements set for drafting of high quality, an issue to which the Chancellor of Justice has drawn attention in the media. If the submission of a proposal cannot be postponed, the Office of the Chancellor of Justice checks that the proposal meets the basic requirements of a government proposal and can therefore be brought before Parliament within the prescribed time period. The Chancellor of Justice has no legal means to completely withdraw a proposal with technical deficiencies or insufficient grounds. Similarly, the final review of the requirement for legislation belongs to the remit of Parliament, which decides on the final content of the act.

On issues reviewed

The number of new statutes, amendments and government proposals regarding new legislation on which decisions are made by government plenary sessions and the President of the Republic has remained quite high. No amendments were made to the Constitution, the Act on the Chancellor of Justice of the Government, the Government Act or other legislation pertaining to the principles or objects of supervision of the Government performed by the Chancellor of Justice during the year under review. However, due to the implementation of the Government Programme and for other reasons, new legislation has been enacted and several changes have been effected in the legislation, which is under preparation or presented by the ministries subjected to the supervision of Government, as performed by the Chancellor of Justice.

As was the case in the previous year, particular attention was paid in government proposals to Parliament to the order of enactment applied to government bills. Since the 1995 constitutional reform and the entry into force of Finland's new Constitution, the review process has not been about a technical examination of the order of enactment pertaining to bills, but rather a content review of bills and their individual provisions to ensure that bills and their individual provisions, as well as the relevant reasonings, meet the requirements of fundamental rights implementation and that, where a bill is closely related to fundamental rights, the consideration of fundamental rights meets the requirements set for government proposals.

Opinions of the Constitutional Law Committee have also been employed in the review of the order of enactment of government proposals. Government proposals are reviewed with a view to ensuring that where appropriate, they address the bill from the perspective of fundamental rights and human rights provisions. The general reasonings for more extensive legislative reforms contain a chapter on the implementation of basic and human rights. Individual provisions of bills need to be addressed and assessed with regard to their relationship with the fundamental rights under Chapter 2 of the Constitution. In reviews of bills, attention is paid to the specificity and circumscription of provisions pertaining to the basis of the rights and obligations of the individual and the power to issue decrees. If it is not possible to refer to an opinion issued by the Constitutional Law Committee of Parliament in the reasonings regarding an issue, the issue must be assessed more thoroughly in the reasonings for the bill. If the issue is new and to an extent open, the reasonings for the bill must include a mention that the opinion of the Constitutional Law Committee will be obtained. A general observation is that fundamental rights consideration has become a regular part of reasonings for government proposals, and fundamental rights consideration has gained depth.

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

Matters pertaining to Parliament's replies to government bills are usually unambiguous and clear. As before, observations made in them mainly concerned deficiencies and inaccuracies regarding the date on which the act enters into force which, were they not to have been corrected, might have resulted in difficulties in the implementation and application of the act.

The legal norm examination regarding the content of government decrees is more thorough than that applied to government bills, because correcting any errors after the Government's decision would require an amendment to the decree in question. Under Section 80 of the Constitution, specific authorisation is required for the issuance of decrees. The review process also involves checks to ascertain that the level of statute selected for the matter is correct and that government decrees do not contain matters on which provisions should be laid down in an act. Supplementation of provisions regarding the authorisation to issue decrees is usually not about erroneous conduct by a ministry's rapporteur but, at least to a certain extent, about differences in views regarding the substance requirements of provisions delegating legislative powers.

The year under review also saw proposals for amendments to acts presented by ministries whereby defective or unspecific authorisations to issue decrees laid down by earlier acts, with some of these enacted years ago, were made more specific or provisions issued at decree level were taken to the level of an act. In particular, changes in the level from decree to act have taken place in the context of a comprehensive legislative reform of an administrative branch.

When examining appointments to public office, the Office of the Chancellor of Justice checks that the process is open and the procedure is conducted in the appropriate manner. In addition to the required qualifications and further competence requirements specific to the position, the office ensures that the proposed appointment is based on an objective and otherwise appropriate assessment of competence and a comparison of merit between the applicants. The Office of the Chancellor of Justice and the Government do not usually have access to the application documents. Therefore presentation memoranda regarding appointments to public office must be consistent and otherwise drawn up in a manner enabling the verification, on the basis of the memorandum and the curriculum vitae details, of the fact that the applicant with the highest merit and professional competence is appointed to the office. Decisions on appointments to public office call for careful consideration and deliberation between those shortlisted for the office, particularly in cases where provisions regarding the competence requirements are less specific or the scope of activity covered by the position is extensive. Such consideration and deliberation is part of the preparatory process pertaining to the filling of a public office, but the legal requirement that must be observed in this case is that the consideration and deliberation is based on issues that are objective and significant to the decision and that all essential factors are openly documented. In cases where a complaint is lodged, and in some other individual cases, the Office of the Chancellor of Justice has obtained access to the application documents before the resolution of matters pertaining to appointments to public office.

The realisation of the 40% quota requirement laid down in the Act on Equality between Women and Men in central government committees, advisory boards and other corresponding bodies was supervised in the manner established for the purpose. Attention was also paid to the realisation of the equality objective provided under the Equality Act in other bodies, presently also including the negotiation delegations.

When considering whether high-ranking ministerial officials should be members of governing bodies of agencies and unincorporated state enterprises of their administrative branch, particular consideration is given to ascertaining that the independence and impartiality required in government activity and public servants' liability for acts in office are realised. With regard to memberships of the governing bodies of incorporated state companies and associated companies, the transfer of central government ownership steering issues to one ministry that is as independent as possible from such companies was a major reform. In addition to the above, attention is paid to the independence of expert members of boards and committees serving as statutory appeal bodies in fields including pension insurance and social security issues as well as those of administrative and special courts.

Supervision of the Government in EU affairs

The matters pertaining to the European Union considered in government plenary sessions mainly concern directives and agreements under preparation in the European Union. On request, the Chancellor of Justice issues an opinion on matters pertaining to the national implementation of EU legislation. Before submitting the matter to the Chancellor of Justice for resolution, ministries are advised to employ inter-ministerial bodies for negotiation and reconciliation of EU affairs to resolve any differences in views re-

garding ministerial powers which emerge from time to time in the preparation of proposals underway in the EU or the national implementation of EU legislation.

Section 96 of the Constitution lays down provisions on the national preparation of European Union matters. In government communications to Parliament, attention was drawn to the proper and immediate submission of proposals for legislation and agreements to be decided in the European Union to Parliament for determination of its position, as required under Section 96 of the Constitution. If submission of a matter to Parliament has been delayed, the stages of consideration of the matter within the EU must be laid out in the communication. As legal basis plays a vital role in the determination of the division of competence between the EU and the individual member states, legal basis must be made apparent in the memorandum. Any ambiguity concerning the basis for authority to act and the position of the Government concerning competence must also be stated.

Attention was also drawn to the clarity of the memoranda accompanying such proposals and the inclusion therein of a report on the relationship between the proposal and national legislation. Furthermore, memoranda are required to indicate the Government's position on the proposal, including cases in which the position is only preliminary.

In cases with problems related to the timeliness or content of communications, the time constraints set in Section 96 of the Constitution only allows for limited intervention by the Office of the Chancellor of Justice. As the participation by Parliament in the national drafting of EU affairs demands that Parliament be provided with information without delay, no extensive modification of communications and related memoranda to be submitted to Parliament was required in the review of presentation agendas of government plenary sessions. Instead, any necessary additional information was obtained orally so as to prevent further delay due to rectification.

On 18 January 2008, the Ministry of Justice issued instructions on collaboration between Parliament and the Government in the national preparation of European Union matters. Due to the instructions and occasional delays observed in delivering communications to Parliament, the Chancellor of Justice issued a request for a report and an opinion to four ministries. The request for a report and an opinion requested information about several issues, such as the time when the ministries received communication about the legislative proposal, whether Parliament had been informed about the matter earlier, and the processing schedule for the statute in the European Union bodies. In addition, the Chancellor of Justice requested a report on how the ministry has organised the processing and follow-up of European Union communications in order to ensure opportunities for Parliament to influence the matter. The purpose of the Chancellor of Justice is to obtain more comprehensive information about the reasons behind the delayed communications, including any possible structural causes.

Some rulings related to supervision

The following matters and rulings are included as examples of the measures taken by the Chancellor of Justice in the context of the supervision of the Government and legal questions related to the Government's actions.

Including an opinion issued by a minister in the Government's minutes

Ministers can express their views on matters being decided in the government plenary sessions by including an opinion in the Government's minutes.

Such opinions attempt to clarify the reasonings and objectives of the decision. An opinion can also be proposed by the presenting minister. However, an opinion cannot oppose or contradict the decision concerned. It is not a part of the decision and may request action only insofar as it initiates preparations for a new decision or other measure or impact assessment of a decision made earlier.

For further information about distributing the opinion proposal and the procedures for processing the matter, see the Government Rapporteur's Handbook (Valtioneuvoston esittelijän opas), p. 8 (February 2004). In addition, the Chancellor of Justice stated that the text of the opinion proposal is not part of the agenda of the government plenary session, even when the opinion was issued by the minister presenting the matter. For the purpose of expressing the views of other ministers, the matter related to the opinion proposal is discussed as part of the presentation procedure.

Disqualification arising from state ownership steering (Prime Minister's Office)

The (defence) minister responsible for the ownership steering of state-owned companies invited the Chancellor of Justice to comment on several issues, such as the taxation of windfall profits arising from energy companies' emission trading, when these matters were discussed in the Cabinet Committee on Economic Policy and in other bodies.

The Chancellor of Justice stated that the state was a majority shareholder in a company which held a significant position in the energy market as well as a minority shareholder in other important energy companies. Under the main provision, the minister was not disqualified in the matter concerning the use of legislative power. However, the minister's link to the matter concerned under the statute had been fairly general, whereas in another case of an economically significant and tangible matter pertaining to certain energy companies, whose names were recognisable and which held significant market positions, and in some of which the state was a majority shareholder, the Chancellor of Justice concluded that, taking into consideration the obligation to treat energy companies equally, the minister responsible for the ownership steering had cause to withdraw from the procedure in bodies such as the Cabinet Committee on Economic Policy, including when legislative matters were being discussed.

Conduct of the Ministry of Foreign Affairs in drawing up presentation agendas (Ministry of Foreign Affairs)

Presented by the Ministry of Foreign Affairs, the appointments of government representatives and specialists to the 59th Session of the Nordic Council were discussed at the government plenary session of 4 October 2007 and the presidential session of 5 October 2007.

Distributed on 2 October, the ministry's presentation agendas proposed that the Government appoint the specialists while the President of the Republic would appoint the government representatives. However, in the original distribution of presentation agendas, the appointment of government repre-

sentatives to the Nordic Council had not been proposed to be decided by the government plenary session before the presidential session.

The Deputy Chancellor of Justice held that, under Section 58 of the Constitution, the President of the Republic makes decisions in the Government on the basis of proposals for decisions put forward by the Government. Presidential decision-making is tied primarily to the motions proposed by the Government. Tying the presidential decision-making to the motions proposed by the Government is legally significant for the separation of powers under the Constitution. Had the President of the Republic made a decision based on the original distribution of agendas proposed by the Ministry of Foreign Affairs without the Government's motion, the decision would have been in breach of the Constitution, despite the nature of the mistake that led to the decision.

The Deputy Chancellor of Justice brought to the attention of the rapporteur responsible for the presentation agendas the responsibility of rapporteurs laid down in Section 58 and Section 118(2) of the Constitution. The Deputy Chancellor of Justice also drew the Ministry for Foreign Affairs' attention to quality control, including the drawing up and careful reviewing of the presentation agendas for the government plenary sessions and presidential sessions. The Deputy Chancellor of Justice issued the ruling to the Ministry for Foreign Affairs for information and to be forwarded to the units responsible for the presentation agendas for the government plenary sessions and presidential sessions (OKV/9/50/2007).

Disqualification of a ministry's director general in forming an appeal board (Ministry of Social Affairs and Health)

The Social Security Appeal Board is the first instance of appeal for income security matters considered by the Social Insurance Institution of Finland. An independent judicial body, the appeal board is formed by the Government on the basis of a proposal put forward by the Ministry of Social Affairs and Health. The Director General of the Insurance Department in the Ministry of Social Affairs and Health, who was also a member of the Board of Directors of the Social Insurance Institution of Finland, was disqualified to present the matters pertaining to the appointment of the Chairman, Vice-Chairman and members of the Social Security Appeal Board.

STATEMENTS ISSUED AS OPINIONS OR MEMORANDA

AMENDING THE ALIENS ACT (MINISTRY OF THE INTERIOR)

Opinion of Mikko Puumalainen, Deputy Chancellor of Justice, to the Ministry of the Interior on 29 January 2008 (OKV/44/20/2007)

The Ministry of the Interior has requested an opinion from the Chancellor of Justice on the government bill on amending the Aliens Act. The bill will transpose the Procedures Directive (2005/85/EC) into national legislation. The objective of the directive is to lay down minimum standards on procedures in member states for granting and withdrawing refugee status.

According to the government bill, enclosed with the request for opinion, the bill would supplement the Aliens Act so that it would better direct the investigation and resolution of applications for international protection. The additions to the Aliens Act proposed under the directive correspond to the common enforcement practice, and the interpretation of the government bill (HE 28/2003 vp.) and asylum guidelines which steer the enforcement practice. The inclusion of the regulations in the act would improve the legal protection of foreign nationals seeking international protection, equal treatment, and the transparency and predictability of decision-making.

Even though the attempts to harmonise the European Union immigration and refugee policy guided the reform of the Aliens Act (HE 28/2003 vp), at the time when the Aliens Act was being enacted it was acknowledged that several EU legislation initiatives were underway which would effect changes in the new act. In its report on the Aliens Act (HaVM 4/2004 vp), the Administration Committee considered it necessary to introduce more uniform legislation and application procedures for matters concerning foreign nationals at the EU level.

The Procedures Directive lays down the minimum standards for the procedures for granting and withdrawing refugee status. It is proposed that the provisions pertaining to the information offered to persons seeking international protection, the cancelling or revoking of the application for international protection and the asylum interview are added to the act.

Since the provisions of the Aliens Act largely correspond to the directive or are more favourable than the provisions of the directive, I refer to the points presented in the general reasonings. The articles of the directive on the basis of which the changes to the Alien Act are proposed improve the

rights of asylum seekers, and promote equal treatment and the transparency of good governance and decision-making.

Even though the directive is technical in nature, it includes provisions on decision-making and the appeal process, which affect the applicant. Therefore, and despite the fact that the directive's purpose is to lay down minimum standards, I present some points of view on the proposal to be reviewed and considered in further preparations.

The importance of legal assistance has been emphasised during the preparation stages of the Aliens Act and in the opinions issued, particularly in the accelerated asylum procedure. As legal assistance is an essential part of the provision of legal protection for the applicant, the asylum seeker's right to receive legal assistance and a competent advisor should be safeguarded at each stage of the process. Therefore, the right to legal assistance and the obligation to provide it should be included in the Aliens Act.

The proposal includes a provision on cancelling and revoking the application for international protection. Including these provisions in the Aliens Act will clarify the situation both for the applicants and the competent authorities, and it is the correct level of enactment with regard to the Constitution.

Section 97a(1) of the proposed Aliens Act would lay down a provision which under normal circumstances disallows the family members from participating in the asylum interview. This provision is not clear and it is open to different interpretations. According to the wording of Article 13(1) of the Procedures Directive, a personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present. Considering the directive's wording and the purpose of the provision, the wording should be more precise. For instance, the provision could state that a family member can be present only for a special reason. In addition, I find it justified to leave open the opportunity that the presence of a family member could be restricted to a part of the interview.

The Aliens Act decrees that the applications are assessed sufficiently individually for each applicant (Section 98(2) of the Aliens Act), which *per se* could meet the provisions under Section 8(2)(a) on applications being examined and decisions being taken individually, objectively and impartially. However, it is justified to include a proposal for providing up-to-date information in the presentation. It would be appropriate to provide in the reasonings of the provision a more detailed examination of the content of the judgement by the European Court of Human Rights of 11 January 2007 in the case of Salah Sheekh v. the Netherlands, which is currently merely referred to in the presentation, along with the requirements issued for the information on the country of origin.

Enforcement of the decisions made in the appeal process is another stage during which the applicant may experience problems with legal protection. In this context, I refer to the relevant section in the report by the Ombudsman for Minorities on the legal protection guarantees in the accelerated asylum process (Helsinki 2005).

The efficiency of the appeal process and, in particular, the significance of the application for the interruption of enforcement are essential factors when ensuring the right to appeal. The police have not been prescribed a particular obligation to wait for the processing of the application for the interruption of enforcement. In practice, the decision can be issued and enforced with immediate effect, when the right to appeal cannot be efficiently guaranteed. According to the report published by the Ombudsman for Minorities, cases have been come to light where the decision on refusal of entry has been enforced

before there has been sufficient time to process the interruption of enforcement. For the most part, in these cases the information about the application for and the decision on the interruption of enforcement has not been communicated efficiently between the Supreme Administrative Court, the police and the applicant/advisor. However, such cases fundamentally indicate that the act does not provide for the obligation to wait for the processing of the application for the interruption of enforcement.

Since the current system has proven unsatisfactory in certain cases, the situation should be clarified in order to better safeguard the equality of asylum seekers and individual legal protection. This could be achieved by adding to Section 201 of the current Aliens Act a provision which enables enforcement of the decision after the applicant has been notified but no earlier than after the Supreme Administrative Court has issued a judgement on the application for the interruption of enforcement.

Asylum seekers must receive the highest guarantees that their legal protection is being implemented effectively. During the asylum process, the appeal process and enforcement of the decision on refusal of entry, it must be ensured that cases have been heard with appropriate guarantees for legal protection, without a risk of breaching the non-refoulement rule or other violations of the applicant's rights. For the applicant, non-refoulement and the related procedure are the key issues, as subsequent assessment of the correctness of the decision is insignificant if the person has already been deported.

Article 23(2) of the Procedures Directive specifies a time limit of six months. The reasonings for the presentation state that the provisions in the Constitution, the Administrative Procedure Act and the Aliens Act meet the requirements of Article 23(2). Despite the national legislation mentioned in the reasonings, I propose that the inclusion in the Aliens Act of the time limit, as prescribed in the aforementioned article, should be considered in order to ensure appropriate implementation of the directive.

PARLIAMENTARY COMMITTEE HEARINGS

PERFORMANCE OF INFORMATION STEERING IN SOCIAL SERVICES AND HEALTH CARE

Opinion of Jaakko Jonkka, Chancellor of Justice, to Parliament's Audit Committee on 25 September 2008 (OKV/15/21/2008)

The Chancellor of Justice was heard at the Parliament's Audit Committee meeting in the context of a report being compiled by the committee on the performance of information steering in social services and health care. The Audit Committee was particularly interested to seek the Chancellor of Justice's opinion on whether a) the realisation of fundamental rights and securing equal services call for stronger regulating laws; b) the regulating laws on services are in conflict with the principles of municipal self-government; and c) there are any regulatory obstacles for steering service provision with the help of sector-specific legislation. The Chancellor of Justice stated the following.

Need for stronger regulating laws

My empirical knowledge on this matter is largely based on the observations I have made in my position as a supervisor of legality. In 2006–2007, I reviewed the effects of information steering in the context of school health care provision (my ruling of 13 February 2007 (6/50/06); published in our 2007 report, pp. 71–78 [pp. 121–124 of the English language version]). I have also come across the matter in my other supervisory duties. However, my experience of this matter is limited and does not allow comprehensive conclusions. A more comprehensive analysis, supplementing the views I present here, would require further information about the factual effects of the 1993 reform of central government transfers to local government, particularly about the manner in which the transfers are allocated in municipalities.

In light of the material available to me, I can say that, at least in school health care provision, information steering appears inadequate to a certain degree, leading to issues such as inequalities between municipalities. The findings in the aforementioned ruling show that the quality recommendations for

school health care, issued as part of information steering, have not been fully realised, and the differences are so distinctive as to cause concern whether fundamental rights are being realised.

Based on my observations, I can offer a cautious conclusion that impacts sought by steering in the form of quality recommendations remain selective and insufficient in municipal decision making (and distribution of resources) but that this type of argumentation based on “good models” can play a role in developing practices. I consider it likely that, in particular, information steering loses its effectiveness in decision-making if there are competing needs for resources. When municipalities prioritise needs, the resources are easily allocated to areas that feel more tangible than preventative health care or are predominantly allocated to needs that may lead to negative implications for the municipality were they not met.

Consequently, this can lead to unjustified differences in the realisation of fundamental rights in social services and health care not only between municipalities, but also between various groups within the municipality (the real needs of quantitative marginal groups and “the meek” can be forgotten), because the basis of decision-making differs from one municipality to another.

Therefore, I find that, in order to ensure equal realisation of fundamental rights, there appears to be a need for regulation that is normatively more binding than information steering (at least in some areas of social services and health care), particularly in determining and laying down minimum standards. There is a need for an assessment of the areas where information steering is sufficient or normatively more binding rules are required.

Opportunities for strengthening regulative laws

In general terms it can be noted that, in principle, binding steering is in conflict with municipal self-government. In legislation, the Constitution includes the following provision on municipalities: Provisions on the general principles governing municipal administration and the duties of the municipalities are laid down by an act (Section 121(2) of the Constitution).

Further provisions may be given by decree. Pursuant to Section 80 of the Constitution, the issuance of decrees must be based on authorisation given by an act. According to the definition of policy issued by Parliament’s Constitutional Law Committee, further content and organisation of municipal obligations may be laid down by decree based on authorisation given by an act (PeVm 37/2000).

The important provisions related to this assessment can be found in Sections 19 and 22 of the Constitution in particular. The public authorities shall guarantee for everyone, as provided in more detail by an act, adequate social, health and medical services and promote the health of the population, and guarantee the observance of basic rights and liberties and human rights. In the context of nationwide observance of the fundamental rights in a manner complying with equality, this means, first and foremost, that the central government is obligated to realise these rights, ultimately by issuing binding norms combined with supervision where necessary. Naturally, in laying down provisions on municipal obligations, it must be ensured that the municipalities have the means to fulfil them (PeVM 25/1994).

On the basis of legislative authorisation, municipalities can be issued further provisions on the content of social security and health care legislation. However, I think it possible that, when binding regu-

lations are being considered, in some borderline cases the significance of municipal self-government on one hand and the requirements of fundamental and human rights on the other may have to be weighed against each other (for instance, when defining service levels). Nevertheless, it could be said that where the realisation of equality at the minimum level of fundamental rights is concerned, the principle of equality carries considerable weight.

I should add that binding norms often involve the question of supervision. On one hand, only binding regulations enable supervision, since the observance of recommendations cannot be supervised in practice because they do not involve legal obligation. On the other hand, binding regulations in a sense necessitate the opportunity for supervision, since the nature of binding regulations is lost if the regulations cannot be supervised – and this may lead to the weakening of fundamental rights.



3

**SUPERVISION OF
FUNDAMENTAL AND
HUMAN RIGHTS**

GENERAL

Fundamental and human rights

Fundamental rights mean the general and particularly important rights in respect of public authority guaranteed for people, and in certain cases groups of people, under the Finnish Constitution, although fundamental rights are also relevant in relationships between people. Fundamental rights are safeguarded in Chapter II of the Constitution of Finland, comprising liberties (civil and political rights) and economic, social and cultural rights (ESC rights). The chapter also contains fundamental right provisions pertaining to the environment, fair trial and good governance.

Human rights mean liberties and provisions similar to ESC rights in international human rights conventions and other international instruments. Finland has acceded to more than 50 instruments that can be regarded as human rights conventions. 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. These include the Convention on the Protection of Human Rights and Fundamental Freedoms (FTS 18-19/1990) including its protocols, the European Social Charter (FTS 43-44/1991, amended FTS 78-79/2002), the International Covenant on Civil and Political Rights (FTS 7-8/1976) including its supplementary protocols, and the International Covenant on Economic, Social and Cultural Rights (FTS 6/1976). Generally the human rights conventions have been transposed into the Finnish national judicial system by so-called blanket laws. In this procedure, Parliament adopts the convention and enacts an act, according to which the provisions in the area of legislation of the convention are enforced as law. When the President of the Republic has passed the convention and approved the bill, the convention and the bill are enforced by a decree of the President of the Republic, when the provisions of the convention are transposed into the national judicial system and must therefore be observed in administration and jurisdiction.

Fundamental and human rights complement each other. Human rights instruments set the targeted minimum level of protection. National provisions, therefore, cannot be such that their application would result in a situation, where the protection level set under the human rights obligations is not achieved; however, nations are allowed to enact better and wider protection at their discretion. This has been the case to some extent in the Finnish Constitution.

The Chancellor of Justice as the supervisor of fundamental and human rights

Compliance with human rights is monitored through the supervisory systems agreed in the relevant treaties, while compliance with the system of fundamental rights is monitored nationally. Under Section 22 of the Constitution, public authorities must guarantee the observance of basic rights and liberties and human rights. This provision issues an active obligation on them with regard to the implementation of fundamental and human rights.

Connected with this provision is the provision laid down in Section 108 (1) of the Constitution that the Chancellor of Justice must monitor the implementation of basic rights and liberties and human rights in the performance of their duties. 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 duty imposed in the Constitution and the nature of the supervision of the Government entails that the provisions concerning fundamental rights and human rights treaty provisions are taken into account *ex officio* (i.e. they need not be invoked in a complaint).

On the development of the fundamental and human rights system in 2008

The international system of human rights

As fundamental rights and human rights are intertwined, they are applied simultaneously in the Chancellor of Justice's supervision of legality. In the context of human rights obligations, both the material content of the regulations and the manner in which they are applied by the relevant international judicial and investigative bodies are important. Consequently, the manner in which the human rights issues have been handled and resolved by international judicial and investigative bodies is significant when assessing the observance of fundamental and human rights in the supervision of legality.

With regard to the bodies supervising human rights, the judgements of the European Court of Human Rights are particularly significant not only for the application practices of human rights obligations, but also for those of fundamental rights obligations. During the year under review, the European Court of Human Rights issued nine judgements pertaining to Finland, eight of which involved violation of human rights. In the majority of cases, it was concluded that the complainant's right to a fair trial had not been observed under Article 6 of the European Convention on Human Rights, often because the trial had extended beyond reasonable time as laid down in Article 6(1) of the Convention. In two cases, it was found that the right to enjoy respect for private and family life, as set out under Article 8, was violated. One case involved a violation of freedom of expression secured under Article 10. The European Court of Human Rights removed ten complaints from its agenda, seven of these following settlement, one following the Government's unilateral declaration and two when the matter was otherwise resolved.

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In three cases, the court decided not to admit the matter for investigation following the Government's response. Over 70 new complaints were delivered for the Finnish Government's response. The number of requests for response has clearly increased since 2007.

During the year under review, the European Court of Human Rights did not issue any judgements pertaining to Finland where the provisions of the European Union's system of fundamental rights were applied. With regard to other international judicial and investigative bodies, one complaint pertaining to Finland remained pending before the United Nations' Human Rights Committee. No new cases became pending in other international judicial and investigative bodies.

FUNDAMENTAL AND HUMAN RIGHTS IN THE SUPERVISION OF THE GOVERNMENT

The duty imposed on the Chancellor of Justice in Section 108 of the Constitution to supervise fundamental and human rights also concerns matters before the Government. As mentioned earlier, in Chapter 2, the supervision of the Government extends to the government plenary sessions, ministries and their officials.

Broadly speaking, government matters can be divided into those pertaining to the exercising of legislative power (especially government bills and decrees), application and petition matters resolved by administrative decisions issued to the parties concerned (appealable and non-appealable decisions) and those resolved by administrative decisions pertaining to the administrative system's own conduct regarding the exercising of administrative power. The need to assess and consider fundamental and human rights issues may arise regardless of the type of government matter. The most common matters include the selection of the correct level of statute, the existence and scope of the application of provisions on the delegation of powers to issue decrees, the retroactivity of legal provisions, the principle of legality, equality, the protection of property rights and legal protection, and the guarantees of good governance.

The issue of fundamental rights and human rights mostly arises when the presentation agendas for bills are reviewed prior to government plenary sessions and presidential sessions. There is a need to evaluate how the requirements of the fundamental rights laid down in the Constitution and the human rights obligations under international treaties have been catered for in the drafting work and how these are manifested in the bills and in the reasonings of government proposals.

The supervision of fundamental rights regarding proposed legislation is about ensuring appropriate awareness of the possible fundamental rights issues involved in the legislative project, the identification of any issues of importance to fundamental rights consideration, and the assessment of the alternatives available and the impacts of the proposed legislation selected against fundamental rights requirements. The supervision of fundamental rights involves an assessment of the degree to which the observance of the aforementioned matters in the legislative preparation is conveyed in the proposal. If a proposal has obvious links to fundamental rights, their assessment should not be restricted to the section describing the relationship of the proposal to the Constitution and the Order of Enactment. In addition to the aforementioned section, the links to the fundamental rights can be examined in the sections describing the current status and the objectives and key points of the proposal. A far-reaching reform of legislation concerning an administrative sector and wide circles of society may involve both a number of individual concerns and some broader views and questions pertaining to fundamental rights. For instance, they can concern the economic prerequisites or other resources in the practical implementation of a comprehensive legislative reform involving the fundamental rights or the status of a number of sectors in society. From this perspective, supervision of the examination and documentation of the proposal's economic impacts falls within the supervision of legality in the Chancellor of Justice's remit.

The Order of Enactment section of the reasonings of the draft government proposal is examined in order to ensure that the proposal has been assessed appropriately vis-à-vis conditions for general fundamental rights restrictions. The review of the general conditions for fundamental rights restrictions must also be based on the opinions of the Constitutional Law Committee of Parliament and the decision-making practice derived therefrom. If the Constitutional Law Committee's decision-making practice does not exist, the text of the Order of Enactment section of the reasonings of the government proposal must specify that the view has been created during the drafting of the proposal in question and is appropriately justified. This is important to ensure the legal quality of the government proposal as well as the general credibility of its reasoning. Proposed solutions selected for inclusion in a government proposal must be founded on substantively and legally sustainable reasons that are in line with the opinion practice adopted by the Constitutional Law Committee of Parliament in similar issues.

The means of implementation and implications of extensive legislative reforms must be assessed at all stages of the legislative process from the outset. The assessment of the fundamental rights issues and impacts of a bill has not been competent and credible if fundamental questions pertaining to these need to be presented at a stage as advanced as when the bill is due to be submitted for decision. The timeliness of impact assessment and deliberation on the means of implementing new legislation is thus vital to the quality of legislation and its successful enforcement.

FUNDAMENTAL AND HUMAN RIGHTS IN THE SUPERVISION OF OTHER AUTHORITIES

Recent national and international legal development has brought greater clarity and tangibility to the substance of fundamental and human rights. In drafting, efforts are made to take obligations arising from fundamental rights provisions and human rights instruments into consideration when drafting new statutes and amending existing ones.

However, Finnish authorities – and the courts in particular – have exercised restraint in referring to fundamental rights and human rights provisions in their decisions. With regard to fundamental rights provisions, and correspondingly to provisions agreed under human rights instruments, this is due to the fact that fundamental rights provisions usually require that further provisions on the fundamental right in question be laid down under an act, whereby the more specific content and extent of the fundamental right is determined on the basis of special legislation, and decisions and judgments are based on special legislation. Most cases can be decided by reference to regular legislation and other subordinate norms without there being a need to resort to fundamental rights provisions. Deciding a case solely by reference to a fundamental rights provision or a stipulation of a human rights instrument is, therefore, highly exceptional.

The same applies to decisions taken by the Chancellor of Justice when supervising legality, with reference made to relevant constitutional provisions or human rights instrument stipulations whenever their direct application was considered regarding a matter. When a matter is decided upon on the basis of provisions laid down in special legislation, the decision may also specify the fundamental right obligation or provision that was violated.

Issues related to the implementation of fundamental and human rights primarily come up in the supervision of the activities of public authorities and servants and others performing a public duty on the basis of complaints, inspections and self-initiated investigations. Cases where fundamental and human rights provisions have been applied indicate that several different fundamental rights provisions have been considered, although similar issues remain current year after year.

During the year under review, most complaints about the conduct of public authorities with regard to fundamental rights pertained to the right to a fair trial and guarantees of good governance. Even though the selection of fundamental and human rights applied in the judgements was diverse, as in previous years there have been a fair number of cases where the official procedure has not met the requirement for dealing with cases without undue delay, as laid down in Section 21(1) of the Constitution.

In addition to receiving complaints, delays have been investigated during on-site inspections, as in previous years. The authority which was inspected has been requested beforehand to present details about its longest-running cases. During and after the on-site inspection, the matters have been investigated and the causes for possible delays clarified.

The reports filed by the authorities rarely point to negligence by individual officials as the reason for delay. Rather, delays are mainly caused by the backlog of cases, when the workload exceeds the available personnel resources. The requirement for dealing with cases without undue delay, as laid down in Section 21(1) of the Constitution, is not completely unambiguous. However, where the process has unquestionably exceeded the period provided for by the law, the situation remains unlawful, whether or not it has been caused by an individual official. In such cases, the situation must be examined more widely. For instance, the processing and follow-up of cases can be investigated. Following the inspection, a proposal is submitted to the relevant ministry under Section 68 of the Constitution, designed to help reorganise the process so that it meets the legal requirements. If resources are the source of the problem, achieving balance will ultimately require budgetary solutions, which often remain outside the supervision of legality.

In some cases, the authority deals with the matter from one year to the next for a variety of reasons. From the perspective of observing fundamental and human rights, this state of affairs has given grounds for monitoring the process in the longer term, particularly where more extensive reporting and the planning and implementation of corrective measures by the authority have been in question.

RULINGS

EQUALITY

Views on the development of a system of personal assistants

Certain disability-related organisations complained that both the current and previous Governments had neglected their obligation to secure a system of personal assistants for severely disabled persons under the Disability Services Act as laid down in the Constitution.

In his resolution, the Chancellor of Justice stated that the right to receive indispensable subsistence and care under Section 19(1) of the Constitution is a subjective right, whereas Section 19(3), which lays down the obligation for public authorities to guarantee for everyone adequate social, health and medical services, does not imply a subjective right to services.

With regard to the services and forms of support (cost liability) specified in the Disability Services Act, taking into account the provisions laid down in Sections 8(1) and 9(1), personal assistants fall within the municipalities' obligation to provide general services, which do not entail a subjective right.

Municipalities assess the requirement for disability services and support measures under Section 3 of the Disability Services Act and allocate the appropriations accordingly. Since there is no subjective right to a personal assistant, this support measure depends on the appropriations. The significant expense involved in this measure may tempt the authority to assess the requirement for personal assistants to be less significant than it actually is. With regard to equality, this may lead to different treatment of disabled persons from one municipality to the next. The fact that, in this situation, the realisation of the fundamental right depends on municipal appropriations emphasises the importance of central government transfers to local government and the state's responsibility to ensure the observance of fundamental rights.

The Chancellor of Justice held that, in the supervision of legality, it should be assessed whether changes in the circumstances and values since the entry into force of the Disability Services Act in 1987 had rendered the act obsolete. It should also be considered whether a wider interpretation than that laid down in the government proposal (309/1993 vp) at the time of the fundamental rights reform could be possible under Section 19(1) of the Constitution, so that safeguarding a life of dignity could be seen to imply more than merely securing "a minimum of existence". A more positive interpretation would provide a starting point for considering the elements of dignified life in general and the available measures which could be taken to secure such elements for severely disabled persons and other groups. With regard to Section 19(3) of the Constitution, the process would involve an assessment of the level of appropriate social services and the legal measures which could secure access to such services for severely disabled persons.

In his response to the complaint, the Chancellor of Justice stated that, in this case, no grounds had been found for the current system of personal assistants for disabled persons as being in apparent breach of the Constitution. Therefore, the case lacked the legal justification to conclude that the Governments had neglected their obligation to take measures to guarantee the observance of constitutional rights under Section 22 of the Constitution.

However, the Chancellor of Justice noted that, during the complaint process, significant arguments had been presented to defend the point that a more comprehensive system of personal assistants for disabled persons would better meet the current expectations, particularly in observing the equality of severely disabled persons. With regard to jurisdiction, the question is what kind of requirements Section 19(1) of the Constitution is deemed to present to public authorities. As presented in legal literature, we can take the expression used in the aforementioned section, securing "a life of dignity", as a starting point – even when taking into consideration the current cultural values – and with good reasons interpret it as something more than simply securing the prerequisites for mere biological existence.

The Chancellor of Justice found it justified that the Disability Services Act and any need for its reform were examined in the light of the aforementioned wider interpretation of Section 19(1) of the Constitution. However, defining the tangible legal methods of developing the circumstances of disabled persons is not possible in the context of the supervision of legality. Therefore, and due to the pending disability legislation reform in the Ministry of Social Affairs and Health, the Chancellor of Justice submitted the above opinion for information for the ministry (OKV/1052/1/2006).

Legality of social assistance guidance

The Deputy Chancellor of Justice stated in his opinion that persons transacting business with the administration must be treated equally and impartially in accordance with Section 6 of the Constitution and the Administrative Procedure Act. With regard to a city council's guidance on social assistance, he considered a point about tax refunds to be problematic under the aforementioned regulations because, according to the guidance, tax refunds as income were treated differently when the person in question was a long-term or recurrent customer and when he was not. The Deputy Chancellor of Justice notified the city council of his opinion (OKV/407/1/2008).

The grounds for, and the amount of, municipal marketplace trading rates

A situation described in a letter of complaint, where residents and non-residents of a municipality who were market traders by profession were charged different confirmed rates when hiring a marketplace stand from the city council, was considered a breach of the principle of equal treatment and non-discrimination under the Constitution and the Non-Discrimination Act. The opportunity to trade in the municipal marketplace created a comparable situation where a non-resident trader was treated less favourably due to their place of residence. The Deputy Chancellor of Justice drew the city council's attention to the relevant interpretation of the Constitution and the Non-Discrimination Act (OKV/339/1/2006).

RIGHT TO PRIVACY

Inviolability of the secrecy of correspondence

A letter of complaint criticised a private service provider for opening a letter addressed to one of the residents of the provider's institute.

Having been taken into custody, A was placed in an institute run by a private provider. The staff at the institute opened a letter sent to A but did not read it. They immediately noticed their mistake and, after a while, delivered the letter to A's parents.

In his opinion, the Deputy Chancellor of Justice stated that the secrecy of correspondence, telephony and other confidential communications is inviolable under Section 10(2) of the Constitution.

The Child Welfare Act did not give any grounds for opening the letter. In addition, the letter could have contained documents which required a response within a certain period of time. The staff should have delivered the letter to A without delay. The Deputy Chancellor of Justice drew attention to the importance of the section concerning the secrecy of correspondence (OKV/1267/1/2007).

FAIR TRIAL AND GUARANTEES OF GOOD GOVERNANCE

Delay in serving summons

The Chancellor of Justice issued a reprimand to a District Court Judge for serving the summons to the defendants in a criminal case after the statute of limitations had expired.

As the statute of limitations had expired, the offences that the defendants were alleged to have committed could not be processed in legal order. The Chancellor of Justice stated that the right of the injured parties to access justice under Section 21 of the Constitution had been restricted. The undue delay in the serving of the summons and the consequent failure to process a criminal case in legal order are also conducive to undermining confidence in the effectiveness of the administration of justice. See also page 82 (OKV/824/1/2007).

Reasoning of a District Court judgement

As part of the sentence in a criminal case concerning animal welfare, the District Court had prohibited the defendant from keeping animals for a fixed term. In its judgement, the District Court had stated that the forfeiture included in the charge was rejected because the prosecutor had abandoned the forfeiture claim. However, in accordance with the law, forfeiture must be established *ex officio* if the requirements are met. Therefore, the reasoning of the District Court judgement was not based on law. In his resolution, the Chancellor of Justice also commented on the fact that the presiding District Court Judge presented in his statement suppositions of the reasons why the prosecutor had abandoned the forfeiture claim (OKV/453/1/2006).

Promulgating a judgement at the court of appeal within the given timeframe

At the end of the trial, the court of appeal had informed the parties that the judgement would be issued within 30 days, providing that there was no impediment. The court of appeal actually issued the judgement approximately three and a half months from the end of the trial. In accordance with the Code of Procedure, the judgement must be issued within 30 days in the absence of any special reasons. The parties had not been notified of the delay.

In the opinion of the Deputy Chancellor of Justice, the court of appeal had issued the judgement following some delay after the decision, and the Deputy Chancellor of Justice did not consider that factors related to the internal work arrangements at the court of appeal could be regarded as the special reasons provided by the act. The Deputy Chancellor of Justice also deemed that, according to the service principle specified in good governance, the parties should have been notified of the delay. Among other factors, the Deputy Chancellor of Justice based his opinion on the view that a service principle can be applied by courts in situations where jurisdiction regulations *per se* do not contain any specific or individual obligations for action. In the opinion of the Deputy Chancellor of Justice, a service principle can be connected to the right to have cases dealt with appropriately by authorities under the Constitution, even though jurisdiction itself does not fall within the scope of the Administrative Procedure Act (OKV/34/31/2006).

Long processing time for a civil case

A civil action case had been dealt with by different court instances for a period of a little over seven years.

Effectively, the process had been drawn out because the case had been returned from the Supreme Court to the court of appeal. With regard to the powers of discretion applied by the courts in matters of jurisdiction, the Deputy Chancellor of Justice highlighted that he did not have any legal basis for criticising the conduct of the court of appeal in the matter, despite the lengthy total processing time due to the case having been returned by the Supreme Court.

According to the Deputy Chancellor of Justice, he did not have any reason to suspect that any of the courts involved had caused undue delay in dealing with the case. However, he also considered that the total processing time of the case was so long that the period had to be considered to be beyond the reasonable time provided under the requirements pertaining to fair trial (OKV/367/2007)

Significance of language in the context of the right to be heard and fair trial

The Deputy Chancellor of Justice stated as his opinion that, even though authorities were not obliged to use any other languages than Finnish or Swedish under the imperative provisions of the Language Act and the Administrative Judicial Procedure Act, the choice of language in the case had to be considered under the principles contained in the aforementioned acts since it was uncertain whether the right to be heard in a fair trial under Article 6 of the European Convention on Human Rights and Section 6 of the

Constitution of Finland was observed in reality, when the request for a rejoinder had been delivered in Finnish to a person living abroad and when it was known that the person did not understand Finnish. Any considerations based on the observance of fair trial must be carried out case by case. Even though, based on the authority's discretion, the request for a rejoinder could be delivered in Finnish, taking into consideration the language used in the case, sufficient time had to be reserved for delivering the rejoinder in order for the right to be heard to be fully observed (OKV/1065/1/2006).

Long processing time for a criminal case

A complainant criticised the long period of consideration of charges – close to four years – in a criminal case.

The substitute to the Deputy Chancellor of Justice stated in his ruling that timeliness of the consideration of charges is generally deemed important, taking into account the right to have one's case heard without undue delay and within a reasonable timeframe guaranteed in Section 21 of the Constitution and Article 6 of the European Convention on Human Rights. He agreed with the view expressed by the substitute to the Deputy Prosecutor General in his statement that the period of the consideration of charges could not be deemed reasonable. The substitute to the Deputy Chancellor of Justice held that the conduct of the prosecutor had not been judicially acceptable because the consideration of charges was not finalised until approximately four years after the charges were first considered.

For the case in question, the total processing time (from the first investigation to the decision by the Supreme Court on the leave to appeal) was over seven years and seven months. The substitute to the Deputy Chancellor of Justice found that the processing of the case had taken so long that the period had to be considered beyond the reasonable time provided under Article 6 of the European Convention on Human Rights. Therefore, the total processing time was considered to be beyond the time provided under the requirements pertaining to fair trial.

The substitute to the Deputy Chancellor of Justice brought his view on the incorrect procedure to the attention of the prosecutor. He also informed the Office of the Prosecutor General and the Ministry of Justice of his ruling. See also page 84 (OKV/1033/1/2007).

Timeliness of pre-trial investigation

The Chancellor of Justice and his deputy criticised the timeliness of pre-trial investigation carried out by the police in four decisions. In one of the decisions, the Chancellor of Justice issued police officers acting as head of the investigation and investigator in the case a reprimand for having failed to ensure the performance of pre-trial investigations without undue delay. The statute of limitations had expired during pre-trial investigations into the alleged offences. In his decision, the Chancellor of Justice referred to the right to have one's case heard without undue delay by a legally competent court of law or other authority, as provided under Section 21 of the Constitution (OKV/927/1/2007).

In the other decisions, the attention of the police was called to ensuring the timeliness of the pre-trial investigation in general. In accordance with the Criminal Investigations Act, the pre-trial investigation must be conducted without undue delay. This obligation does not only apply to the actions car-

ried out following a decision to begin pre-trial investigation, i.e. pre-trial investigation in its narrow meaning, but also to the decision to begin pre-trial investigation and any measures taken prior to that (OKV/733/1/2006, OKV/759/1/2006, OKV/84/1/2007).

Reasoning of the pre-trial investigation decision

The Chancellor of Justice and his deputy criticised the reasonings of the pre-trial investigation decisions issued by the police in six decisions. The reasonings failed to specify clearly and comprehensively for all the constituent elements how the event information had been assessed. The police were reminded of the fact that a pre-trial investigation decision must specify the underlying legal provision, as the right to receive a reasoned decision is included in the guarantees of fair trial and good governance. A pre-trial investigation decision must also indicate unambiguously whether the investigation is not begun or whether it is discontinued See also page 87 (OKV/610/1/2008).

Legal protection in arranging interpretation

According to the aforementioned section, the investigating authorities must arrange interpretation or, at the expense of the state, find an interpreter when the authority does not use the language of the suspect as provided under the Language Act. The actions of the police patrol did not guarantee the impartiality and appropriateness of the interpretation. Furthermore, in such procedure any suspicions of criminal offences may be disclosed to outsiders, which may cause damage to the person being questioned, particularly in situations where the suspicions are later shown to be unfounded. See also page 87 (OKV/668/1/2006).

Right to receive an appealable decision

The council directive concerning the status of third-country nationals who are long-term residents has not been transposed into the Finnish legislation in the given timeframe. Due to the lack of national legislation, the complainant was not allowed submit the application for an EC residence permit at the police station. Therefore, the complainant submitted the application to the Ministry of the Interior, which transferred it to the Directorate of Immigration, which then returned the application documents to the complainant. Consequently, the complainant did not receive an appealable decision on the application.

The Deputy Chancellor of Justice stated that a situation where the applicant is demanding that their case be heard and the application is not received but is returned without a decision cannot be considered a lawful official procedure which meets the requirements for good governance. Consequently, the complainant was not able to have their case heard by a court. See also page 89 (OKV/451/1/2006).

Appropriate handling of a civic letter by a ministry

In case of further instances of the same issue, the Chancellor of Justice called the ministry's attention to his views on replying to an appropriate civic letter within the ministry's mandate and addressed to the

minister and to the requirement of dealing with such matters without undue delay. The ministry could not find the letter, which, according to the complainant, had been delivered to the ministry in December. The ministry had been notified of the letter no later than in April, when the Deputy Chancellor of Justice submitted a request for a statement on the matter. The complainant did not receive a reply until July, after the Chancellor of Justice had requested that the minister submit an opinion on the matter (OKV/101/1/2006).

Conduct of a tax authority in registering data

The tax office of Tornionlaakso had entered incorrect details in the tax administration register when a timeshare apartment located in the municipality of Kolari had been entered in the complainant's assets. The tax authority was not able to clarify the basis of the incorrect entry. Consequently, the complainant had been registered as having limited liability to pay tax in the municipality of Kolari, even though at this stage the complainant lived permanently abroad and had never had any association with the municipality of Kolari. After the complainant notified the tax authority of the mistake, the register details had been corrected but the customer data had not been deactivated. As the data was not deactivated, the complainant had become liable to pay tax in the municipality of Kolari and, in addition, had been entered as a member of the Evangelical Lutheran Church in the tax administration database. After the complainant had again contacted the Tornionlaakso tax office to clarify the mistakes, the tax office, having received guidance from the Tax Administration, had deactivated the customer data related to the complainant in the tax administration register. After the complainant moved back to Finland, the tax office in Porvoo had printed a revised tax card which continued to state Kolari as the complainant's place of residence. When the complainant contacted the tax card service by telephone, according to the complainant, the customer service representative had refused to give their name or position.

The substitute to the Deputy Chancellor of Justice called the tax office's attention to the responsibility of ensuring that data is entered correctly into the Tax Administration database and instructed the Tax Administration to ensure that the mistakes referred to in the complaint would not be repeated. The substitute to the Deputy Chancellor of Justice also drew the Tax Administration's attention to providing necessary guidelines for any problems occurring with the database software applications referred to in the complaint, and prompted the Tax Administration to ensure that its personnel act in accordance with good governance and state their name and position when requested to do so (OKV/1178/1/2006).

Long processing times for vehicle tax

The processing period of a complaint about vehicle tax submitted to the customs district by the complainant was approximately 31 months, which did not considerably differ from the general average processing time at the time. Such long processing periods are in conflict with the requirement of dealing with matters without undue delay, as provided under Section 21(1) of the Constitution. The Deputy Chancellor of Justice called the attention of the National Board of Customs to his opinion on the importance of ensuring processing without undue delay and informed the board of his request issued to the Ministry of Finance for a statement on the measures the ministry has taken from 2004 onwards to en-

sure appropriate implementation of vehicle taxation which meet the provisions under the Constitution. See also page 98 (OKV/593/1/2005).

Even though the customs officials were not found guilty of reprehensible conduct in the handling of the complaint about vehicle taxation and, in particular, of the related prohibition of transfer, the total processing time in the customs district was regarded as unreasonably long for the complainant under the provisions of Section 21(1) of the Constitution. The Deputy Chancellor of Justice called the attention of the National Board of Customs to his opinion on the importance of ensuring processing without undue delay, as provided under the Constitution. See also page 98 (OKV/1152/1/2005).

Appropriate handling of a complaint

In case of further instances of the same issue, the Deputy Chancellor of Justice called the attention of the customs district to his view that the district had not met the requirement of appropriate processing without undue delay, as provided under Section 21 of the Constitution. In early 2006, the processing of a complaint about vehicle tax was postponed until the judgement would be submitted in a court case initiated by the complainant's legal counsel pertaining to the disclosure of documents. The customs district was informed of the legally valid decision for said case before the end of 2006. On 8 May 2008, the National Board of Customs prompted the customs district to continue the processing of the complaint, but by 4 November 2008 the complaint was still not pending in the Administrative Court of Helsinki (OKV/101/1/2006).

Delay in the processing of patent applications

In case of further instances of the same issue, the Chancellor of Justice issued a reprimand to the National Board of Patents and Registration pertaining to a procedure in the processing of two patent applications which was in conflict with Section 21(1) of the Constitution. The patent applications were pending at the National Board of Patents and Registration for 11 and six years respectively. Even though the applicant could be considered to have influenced the delay to a certain extent, in both cases the processing period was unduly long for the applicant. No grounds which could be considered to justify the delay in the processing of the applications had been presented in either of the cases (OKV/298/1/2007).

Timeliness of service under good governance

The Deputy Chancellor of Justice informed an authority of his opinion that a period exceeding five months for delivering to the counsel of the complainant an extract of the minutes pertaining to the complaint could not be considered good governance guaranteed by Section 21(2) of the Constitution. See also page 111 (OKV/475/1/2008).

Delay in the processing of a complaint about parental allowance

The complaint about parental allowance had been received by the Social Insurance Board at the end of 2006. At the beginning of 2007, the complaint documents had been transferred to the Social Security Appeal Board to be processed. In May 2008 the matter pertaining to parental allowance was still pending.

During his on-site inspection of the Social Security Appeal Board on 13 February 2008, the Deputy Chancellor of Justice found that the processing of complaints in the Social Security Appeal Board was backlogged. In 2007, the average processing time for complaints was in excess of 13 months and continuing to grow. The Deputy Chancellor of Justice stated that said processing time was not in any way acceptable with regard to guaranteeing legal protection and the livelihoods of citizens.

It appeared that the matter about which the complaint was made had also been subject to the delay in processing complaints. The Deputy Chancellor of Justice drew the attention of the Social Security Appeal Board to the timely processing of complaints (OKV/678/1/2007).

Performance of the Social Security Appeal Board and the realisation of legal protection

Following the on-site inspection, the Deputy Chancellor of Justice initiated an investigation into the performance of the Social Security Appeal Board, with special focus on the processing times, and into the opportunities to develop the Board's performance so as to ensure legal protection of complainants. The report on the on-site inspection by the Deputy Chancellor of Justice (OKV/1/51/2008) and the decision on a self-initiated investigation (OKV/6/50/2008) can be found on page 69.

Delay in the processing of support applications

The processing of applications for labour market support and housing allowance had been taking six weeks at the Social Insurance Institution of Finland. The processing period for labour market support had clearly exceeded the average processing time.

The substitute to the Deputy Chancellor of Justice stated in his opinion that no sufficient reasons had been presented for the delay. The attention of the Social Insurance Institution of Finland was called to the processing times of matters pertaining to benefits (OKV/788/1/2006).

Appropriate service required by good governance

Following a traffic accident suffered by the complainant, the insurance company had taken close to two years to process the claims application.

In the statement issued following the complaint, the company admitted the delay and made a decision on the matter. According to the statement, the delay had been caused by the negligence of a claims administrator. Furthermore, according to the statement by the company, the management did not have opportunities to check the appropriate handling of claims applications due to the large number of incoming matters.

The Deputy Chancellor of Justice informed the insurance company of his opinion that the conduct of the company did not comply with the requirement stipulated in the Constitution and the Administrative Procedure Act about the processing of matters without delay. The reprehensibility of the delay in processing the claims was increased by the fact that an undue delay in the processing of claims based on statutory motor insurance also endangered the basic subsistence guaranteed by the Constitution.

In order to prevent similar incidents in the future, the Deputy Chancellor of Justice ordered the company to submit a report on the instigation of an appropriate customer service system and a related follow-up system in order to meet the requirements stipulated in the Administrative Procedure Act (OKV/314/1/2007).

Responding to a request for document disclosure

The complainant had requested that the social security office disclose documents related to the complainant on 19 May 2005. By 11 March 2007 the complainant had not received the requested documents. The complainant had previously requested documents pertaining to the complainant and their children on 19 February 2002. According to the statement issued by the social security office, the documents had been delivered on 8 April 2002. However, the complainant requested the same document on 4 April 2003 and 25 November 2004. As the complainant had moved to a different municipality in 1998, no new documents pertaining to the complainant had been created since. When the documents were being collected, it appeared that the documents had already been delivered to the complainant along with responses to several complaints. The social security office therefore deemed that any further responses were unnecessary.

Information indicating which documents have already been delivered may be useful to the customer, as this allows the customer to specify their request in more detail. If the customer does not receive a response to the request to disclose documents, they cannot take the matter to a instance of appeal. By his decision of 6 September 2006, the Deputy Chancellor of Justice had called the attention of the city social security office to the procedure laid down in Section 14 of the Act on the Openness of Government Activities concerning the disclosure of documents and appropriate responses to letters addressed to the authorities. According to the findings of a report by the social services and health care department, the number of matters where access to documents was requested has increased. The processes related to document disclosure have been streamlined by providing training and drawing up guidelines and forms. The Deputy Chancellor of Justice called the attention of the social security office to the principle presented in the decision issued on 6 September 2006 concerning responses to letters (OKV/311/1/2007).

Conduct of a building inspection authority in processing a permit application

The registering of the complainant's permit application, submitted under the Land Use and Building Act, had been carried out incorrectly. The application had not been registered as pending until a year after it had been received. The Deputy Chancellor of Justice considered it important for good governance that the dates when documents were received and registered could be checked without difficulty from the city's information system.

The processing period of the permit application submitted by the complainant had been unduly long. The Deputy Chancellor of Justice stated that, with regard to permit matters processed under the Land Use and Building Act, the authority must first and foremost ensure that the neighbours are consulted.

The authority had acted incorrectly by not responding to the letters from the complainant and by not providing an estimate of the processing time for the permit, despite this information having been requested by the complainant. Furthermore, the permit architect had acted unlawfully by not replying to an email (OKV/699/1/2006).

Processing of an administrative matter by church authorities

The Deputy Chancellor of Justice reprimanded the office holders of two parishes for failing to observe the right of the complainant, who had requested information about the use of the church, to good governance as provided under Section 21 of the Constitution, including: 1) the right to receive advice under the Administrative Procedure Act and the right to be treated by authorities applying the principles of proportionality and service, and 2) the right to have one's case dealt with by a legally competent authority, the right to receive a reasoned decision and the right of appeal. The office holders had first failed to inform the complainant about the decision-making process pertaining to the use of the church, as provided under the Church Rules of Procedure (*kirkkojärjestys*), then failed to deliver the written request to one of the parish councils concerned in the matter, and finally responded to the request without any reference to said decision-making process.

The Deputy Chancellor of Justice issued a serious reprimand to two diocesan chapters (the Finnish- and Swedish-speaking chapters), which, by ignoring the aforementioned mistakes made by the church office holders, had failed to pay attention in their ruling on the complaint to the fact that the fundamental right of the complainant to good governance, as provided under Section 21 of the Constitution, had not been observed. See also page 120 (OKV/69/1/2006).



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**MORE EXTENSIVE STATEMENTS
OF OPINION IN THE FIELD
OF LEGALITY SUPERVISION**

STATEMENTS BY THE MINISTER OF JUSTICE CONCERNING THE COURTS

Decision issued by Jaakko Jonkka, Chancellor of Justice,
on 28 January 2008 (OKV/195/1/2005)

In his letter of complaint of 23 February 2005, Professor Jyrki Virolainen requests that the Chancellor of Justice investigate and elucidate the lawfulness of actions carried out by Minister of Justice Johannes Koskinen. Professor Virolainen's letter of complaint concerns comments made by Mr Koskinen in the media about matters pertaining to cases which were either decided by or pending in independent courts of law. In his letter of complaint, Professor Virolainen requests that the Chancellor of Justice investigate whether the actions carried out by Mr Koskinen have been appropriate and lawful, where his objective has been to influence the courts' decisions in appeal cases or the procedures applied by the courts in individual cases. Professor Virolainen also asks the Chancellor of Justice to clarify whether Mr Koskinen, by acting in said manner, has violated his official duty, which entails the duty to respect the independence of the courts of law, as provided under Section 3(3) of the Constitution.

In his letter of complaint, Professor Virolainen deems it necessary that the investigation carried out by the Chancellor of Justice include separate and individual comments on all the cases presented in section V of the letter.

In section I of the letter, Professor Virolainen discusses the independence of the courts of law. According to Professor Virolainen, the core concept of independence implies that bodies and actors outside the courts may not attempt to inappropriately influence the actions of the courts or steer the jurisdiction in individual cases. In their decision-making, the courts must be bound solely by legislation and other binding sources of law. The courts may not accept any guidance from the authorities or other external bodies concerning the application of legislation in individual cases or the courts' decisions on either an individual case or on certain types of cases. Representatives of the legislative bodies and the Government are obligated to respect the independence of the courts.

In section II concerning the role of the Ministry of Justice, Professor Virolainen discusses the mandate of the Ministry of Justice as the body preparing legislation and dealing with the central administration of the courts. Professor Virolainen further considers freedom of speech as part of the fundamental rights guaranteed for everyone and the limitations deriving from the position of the Ministry of Justice in using this right.

Section V includes nine comments given by Mr Koskinen in the media, the majority of which concerned legal cases pending in the courts of law at the time. According to Professor Virolainen, the sam-

ple comments indicate that Mr Koskinen has, over a number of years (1999–2004), repeatedly interfered with the decisions and procedures of the courts in individual cases.

In section VI Professor Virolainen presents comments given by a number of bodies on account of Mr Koskinen's statements.

In section VII Professor Virolainen refers to the reprimand issued in October 2004 by the United Nations' Human Rights Committee to the Government of Finland concerning the interference by Finnish members of Parliament and ministers with the activities of the judicial system in individual cases.

In section VIII Professor Virolainen summarises Mr Koskinen's comments on the articles concerning his actions and presents his own response to the views expressed by Mr Koskinen.

Professor Virolainen also submitted an additional letter, dated 8 November 2007, where he refers to the judgement of the same date delivered by the Helsinki District Court on the so-called Rusi Trial. According to the judgement, it was ordered that the plaintiff receive compensation on account of an information leak during the pre-trial investigation. Among other factors, the decision to grant compensation was based on the conclusion of the District Court that the statement given in the media on 12 June 2003 by the serving Minister of Justice violated the presumption of innocence as specifically stipulated under the European Convention on Human Rights and understood to be included in the principles of fair trial in Section 21 of the Constitution.

Acquired statement

Minister of Justice Johannes Koskinen submitted a statement on 8 June 2005 concerning Professor Virolainen's letter of complaint. In his statement, Mr Koskinen maintains that he has not interfered with any pending individual legal cases or decisions or procedures applied by the courts with regard to the cases mentioned in the letter of complaint or in any other cases. Mr Koskinen further states that he has only commented on topical legal questions which have risen from the decisions made by the courts. Mr Koskinen is of the opinion that by acting in this way he has not endangered the independence of the courts.

Response

In his response of 12 August 2005 to the statement issued by Minister of Justice Johannes Koskinen, Professor Virolainen finds the line drawn by Mr Koskinen between influencing and commenting on decisions unconvincing. An opinion issued by the Minister of Justice on a decision in an individual court case is, or at any rate can be easily interpreted as, an attempt to influence the decisions made by the courts in similar cases.

Statement issued by the Minister of Justice regarding the response

Minister of Justice Johannes Koskinen submitted a further statement on 15 August 2005 concerning Professor Virolainen's response.

Resolution

Regarding the legal grounds for the independence of the courts

In this complaint, the key question concerns the relation of the limitations and freedoms governing the actions of individual members of the highest central government bodies, performing governmental duties under the Constitution, to the separation of central government powers as provided in Section 3 of the Constitution. More specifically, the issue concerns the actions of a member of the Government, exercising the highest governmental power laid down in Section 3(2) of the Constitution, in relation to the courts of law exercising the judicial powers under Section 3(3) of the Constitution in general, and more explicitly in matters concerning individual courts and trials, as described in the enclosures to the letter of complaint.

In our constitution, we have adopted the classic separation of the highest governmental powers into legislative, governmental and judicial powers. As laid down in Section 3(2), the governmental powers are exercised by the President of the Republic and the Government. According to Section 3(3) of the Constitution, the judicial powers are exercised by independent courts of law, with the Supreme Court and the Supreme Administrative Court as the highest institutions. Provisions on the grounds for the powers of the highest governmental bodies and the main obligations of said bodies are laid down in further detail in the corresponding chapters of the Constitution.

With regard to the investigation of the complaint issued by Professor Jyrki Virolainen and the consequent resolution, the key question concerns the remit of an individual government member, namely a minister, exercising the highest governmental powers, in relation to the independent courts and the exercising of judicial power. The provision laid down in Section 3(3) of the Constitution Act on the independence of the courts is not merely a symbolic expression of the general principles of the Constitution. The requirement for the independence of the courts, and the jurisdiction in particular, is judicially significant and involves substantively tangible content pertaining to the demands made on other decision-making and actions of the central government.

The doctrine of the independence of the courts and the subsequent explicit provision laid down in the legislation were originally directed against arbitrary interference with the exercising of judicial powers. A demand for the independence of courts and jurisdiction was a reaction against the absolute monarchy. Historically, the regulations and actions of the organs exercising the highest governmental powers and their members have not been allowed to undermine the independence of the courts so as to influence the outcome of their judgements or the opportunities to assess and decide, free from any external influences, what must be regarded as the truth in each individual case and resolve the matters in accordance with the law.

The current case law of the European Court of Human Rights includes judgements pertaining to the independence of the courts. They concern cases where the sovereign, or the organs exercising the highest governmental powers or their members, have attempted to directly or indirectly pressurise or otherwise tangibly influence the courts of law or the outcome of an individual case investigated by the court. The cases described in the letter of complaint in question did not involve such conduct, and bearing in mind the stable social conditions and the sophisticated judicial and social order found in Finland, such conduct could not have been possible. As the judgements issued by the European Court of Human

Rights concern countries which are essentially different from Finland with regard to their social conditions, stability of their judiciary and the development of their constitutional systems, said judgements have not been of direct and tangible use in the legal assessment and resolution of this complaint, even though they pertain to the independence of the courts.

Aspects of the principle concerning the independence of the courts

To a certain extent, the independence of the courts and, in particular, the independence of their jurisdiction, as laid down in Section 3(3) of the Constitution, protect the courts from inappropriate interference, especially by those exercising governmental and administrative powers.

When the judicial system, including the courts dealing with the jurisdiction, is based on appropriately enacted legislation, it will have structures enabling it to administrate justice in a manner which meets the basic requirements for a constitutional state. In addition to the structure of the judicial system, the permanence of the courts and the judges dealing with the application of the law have significance. At the practical level, the judicial system must be allowed appropriate and stable financial and operational conditions to administrate justice as laid down in the legislation in order for independent jurisdiction to be observed.

Notwithstanding the basic requirements for the structure and operating conditions of the judicial system and individual courts, the independence of the courts cannot be observed unless the members of the courts, all parties involved in judicial matters and society in general have confidence that any external bodies are not allowed to influence trials or the outcome of any legal judgements. In accordance with the government proposal (HE 1/1998 vp p. 76), ensuring the independence of the courts is necessary specifically in order to guarantee the legal protection of individuals.

The requirements pertaining to the structure of the judicial system, the legal status of the judges and the procedures of the courts when issuing judgements are related to the guarantee of fair trial, as laid down in Section 21 of the Constitution, and Article 6 of the European Convention on Human Rights.

Assessment of the conduct by Minister of Justice Johannes Koskinen within the supervision of legality

Interview comments in the of the judicial system and the jurisdiction by the courts

Within the supervision of legality, the judgement issued by the Chancellor of Justice on the conduct and actions of a public servant or a member of the Government involves a legal assessment of the conduct or actions described in the complaint, along with a consideration whether such conduct or actions are found to be reprehensible from the perspective of the demands made by the person's official duties and position. This complaint does not concern the legal assessment of the conduct by the Minister of Justice with regard to his individual actions carried out or primary material created in public office. Instead, the material contains interview comments and writings published in the media. Therefore, prior to carrying out any legal assessments, attention must be called to the way in which the interview com-

ments emerged and the context in which they are presented. Newspaper interviews and articles, which are based on secondary material by nature, should be subject to appropriate reservations when assessing the significance of the statements.

In his letter of complaint, Professor Virolainen presents a total of 33 interview comments made by Minister of Justice Johannes Koskinen, published in the media between 9 July 2001 and 28 August 2004, and subsequent commentary by the journalists and readers of the newspapers that published the minister's interviews. According to the received statements, all or nearly all of the interview comments were formed after a journalist contacted the Minister of Justice without prior notice and asked for a comment on a topical legal case which had raised general public interest. For example, some journalists had invited the Minister of Justice to comment on the need for appeal. In some cases, the minister's comments were published as part of other interviews or they were included in a more extensive article written by the editorial staff.

The key issue of the complaint is not the detailed content of the comments issued by the Minister of Justice *per se* or the outcome of the comments, but the conduct and deliberation expected of a member of the Government exercising the highest governmental powers, in this case the Minister of Justice, when giving interview comments regarding or related to the courts and their judgement. However, the aforementioned factors must be taken into consideration when assessing any possible reprehensibility of the minister's actions. With regard to the supervision of legality, articles written by the minister, interviews arranged with prior notice and with an opportunity to check the text before publication, and generally writings and interviews where the Minister has realistically been able to influence the published text, should be assessed in a different way. In his response, Mr Koskinen notes that the enclosures did not include any examples of material which he could have checked prior to publication. In the aforementioned context, I find this a significant fact.

It is a generally accepted principle that, in matters unconnected to their duties, public servants do not present polemic or critical, and certainly not judgemental, comments about competent government officials and public servants of their own administrative branch, at any rate not during a pending court case.

According to Section 2 of the Government Act, the mandates of ministries and the division of labour between them are laid down by an act or a government decree. In accordance with Section 14 of the Government Rules of Procedure, the mandate of the Ministry of Justice includes the preparation of legislation in civil law and criminal and procedural law. Further, the judicial system is part of the ministry's mandate. As laid down in Section 1 of the Government Decree on the Ministry of Justice, the ministry's mandate covers the courts of law, legal proceedings and judicial division. The courts of law, as stipulated in Section 2 of the decree, fall within the Ministry of Justice's mandate.

The mandate and responsibilities of the Ministry of Justice include a number of administrative and legislative matters which are directly or loosely connected to the courts and their jurisdiction. The first of these includes the responsibilities of the ministry in preparing the appointments of judges and presenting the matter to the President of the Republic, even though the committee appointing the judges, as laid down by an act, occupies a key role in preparing any appointments to public office. The second extensive and significant administrative responsibility encompasses taking care of the financial and operational resources of the courts, particularly in the budget cycle. The third, more content-based connection is

the responsibility of the Ministry of Justice in preparing legislation concerning the court procedures and legislation concerning civil, criminal and administrative laws as applied by the courts.

No intention to influence the court procedure and the outcome of the judgement issued by the court in an individual legal case can be shown to exist in the interview comments made by the Minister of Justice and other similar statements published in the media and enclosed to the letter of complaint. Furthermore, there cannot be considered to exist a serious risk of the minister's statements and comments being understood by the courts in question as actual attempts to influence the jurisdiction of an independent court. However, the matter must be assessed from a wider, more general perspective than that of individual trials. In this setting, it is problematic that a member of the Government, the Minister of Justice in particular, whose mandate covers the judicial system and essentially also the preparation of legislation applied by the courts, publicly comments on cases pending in the courts. Even though the interview comments do not refer to matters prepared in the ministry under the liability for acts in office, but rather include comments, assessments and opinions presented in the minister's own name in public, in principle the risk exists that the followers of the media may be under the impression that the minister's comments somehow express the official standpoint or line of the Ministry of Justice in the matter discussed.

With regard to the grounds for his conduct, Minister of Justice Johannes Koskinen has stated that the question has been about exercising freedom of speech on one hand and on the other about presenting his views, particularly on legal policy, in cases where an individual trial seemed to give rise to a need for a wider legal review and an assessment of law reform.

With regard to freedom of speech, I maintain that this fundamental right guaranteed for everyone under Section 12 of the Constitution has been understood, first and foremost, as a political fundamental right (HE 309/1993 vp and PeVL 19/1998 vp). As such, freedom of speech provides strong protection, particularly in communication about political activities. The freedom of political communication also provides everyone with the right to criticise the actions and decisions of the Government, the courts and other authorities exercising public power. On the other hand, freedom of speech also contains the right of persons holding politically and socially responsible positions to present their views on the outcomes and basis of social decision-making and to participate in the debate about social issues in other ways.

In assessing the interview comments issued by the Minister of Justice, the question is how exercising one's freedom of speech can be weighed against the demands made by the position in question. With regard to the matters described in the letter of complaint, neither the Ministry of Justice nor the minister himself were responsible for the decisions in question; instead, they were judgements issued by the courts exercising independent judicial powers under Section 3(3) of the Constitution. Naturally, such judgements can be assessed and criticised. However, this case is concerned with the limitations placed by the position and duties of the Minister of Justice, who is responsible for the judicial system, the judicial administration and, to a great extent, the legislation applied by the courts, in relation to the organs of society exercising independent judicial powers and the related decision-making. The fact that this was a member of the Government exercising the highest governmental powers and, in particular, holding a ministerial position in the branch of administration in question, presents legally justified and accepted

limitations on the extent to which the minister can exercise his freedom of speech insofar as the independent courts of law and their jurisdiction under the Constitution are in question.

The interview comments did not relate to any actions by the Minister of Justice in public office. However, the interview invitations were given and the comments were made specifically based on Mr Koskinen's position as the Minister of Justice rather than as a private citizen or a lawyer.

In practice, situations have occurred where a general need for debate on legal policy has risen following an individual trial, or the persons who examine the related questions under liability for acts in office are required to assess the need for legal reform. However, it is difficult to see what would constitute a situation where a representative of the authority responsible for the legislation in question would have an acute need to initiate or participate in a debate on the assessment of legal reform or in other legal policy discussion concerning a matter presently being investigated by the court. Firstly, this is a question of allowing the courts to work without interference. Secondly, issuing a public comment on, say, the need or "wish" for appeal can in itself raise justified suspicions in the followers of the media about the performance of the court of first instance which originally judged the case. Thirdly, any legal assessments presented on the state of the jurisdiction or legislation are premature at this stage, since the case is resolved only when the final and legally competent decision has been issued. If the higher instance amends the judgement issued by a lower instance, it is a sign of a functioning appeal system. Naturally, it is possible that, from a professional point of view, the decision issued by the lower instance is considered so inadequate that there are grounds for expecting the judgement to be amended in the higher instance. However, it is justified to leave the assessment of the need for appeal to the organs responsible for the matter in each trial under the judicial system.

The interview comments in the context of the courts judging the cases and the parties involved in the trials

The enclosures to the letter of complaint by Professor Virolainen includes certain interview comments referring to trials that have received significant publicity, such as the civil case concerning a child custody case where the mother, who lived in Finland, had brought her children over from the United States, where their father lived. The interview comments show that the Minister of Justice has in this individual case emphasised the importance of the children's right to be heard in custody matters. The account claims that the newspaper article could have given a mistaken impression that the minister was taking a stand on the custody case even though the Finnish courts were evidently not involved in the matter at all, or that by emphasising the children's right to be heard he was implying that it should influence the decision. Consequently, a correction was published on the Minister of Justice's website following the newspaper article.

With regard to criminal cases, the enclosures refer to two homicide cases, the types of which were subject to public debate, namely, whether the offences were manslaughter or murders. One of these homicide cases, where both the offender and the victim were schoolchildren, attracted widespread national interest.

With regard to the civil case and particularly the criminal case, any interview comments or other media statements issued by the Minister of Justice – or any other person holding an important public of-

fice – have been problematic. With interviews, one must take into account the fact that the message can take a different emphasis than what was intended, while the interview situations themselves often provide opportunities for mistaken emphases and interpretations.

Also it should be noted that, according to a common and accepted rule followed in decision-making in society, the bodies who have the closest insight into the matter, having legally examined it based on factual evidence, and who issued the decision, can also participate in the debate or issue their own statements. With regard to court cases, such a rule cannot be fully observed, since the court responsible for the decision cannot assess its own actions or participate in a related debate and, therefore, has fairly limited opportunities to correct any factual mistakes arising in the debate.

Trials involving private citizens, children and the young in particular are especially sensitive, also with regard to public statements. Such matters are difficult and place a heavy mental strain on all parties concerned in the trial. Statements and assessments, no matter what their content and even when issued on professional grounds, can be distressing for the parties and cause further suffering.

Additional statement of 8 November 2007 by Professor Virolainen

In his additional statement, Professor Virolainen requests the Chancellor of Justice to investigate Minister of Justice Johannes Koskinen's conduct on account of his comments of 12 June 2003 issued in conflict with the presumption of innocence following the Prosecutor General's decision to waive charges in the criminal investigation case concerning Alpo Rusi.

With regard to Professor Virolainen's additional statement, I note that the conduct of Minister of Justice Johannes Koskinen has been assessed by the Helsinki District Court in a case instigated by Mr Rusi. Since the judgement by the Helsinki District Court has been appealed in the Helsinki Court of Appeal, the matter is pending at the court of appeal. Therefore, the Chancellor of Justice has no reason to investigate the matter further.

Summary and my actions

When presenting public statements on the jurisdiction, two important principles of the constitutional democratic state must be considered, namely the independence of the courts and freedom of speech. These principles cannot be placed in a universally applicable and definite order of importance, but must be weighed separately in each situation.

The independence of the courts is one of the basic structures of a constitutional state – one of its key supports – and an essential guarantee against the arbitrary exercising of power. It is confirmed by our Constitution and international human rights conventions. Crucially, independence must be observed in practice and confidence in the jurisdiction, which is free from any inappropriate influences, must remain strong. Doubts about the highest government authorities intervening in the actions of the courts are conducive to corroding such confidence.

Nevertheless, freedom of legal policy debate and social debate in general are not possible unless the actions of the courts, including their jurisdiction, can be assessed and criticised when necessary. Naturally, politicians, public servants in high positions and ministers cannot be exempt from the freedom to

participate in public debate. In reality, the more influential the person issuing the statement, the easier it is to claim that the statement interferes with the independence of the courts. It is important to pay attention to the role of the person presenting the statement and the influence that derives from their position: in this respect, a scientist is in a different position from a member of Government, who has access to influential methods on account of their role laid down in the law. Even though a comment can be legally justified, it can take on inappropriate connotations when issued by the Minister of Justice. Other essential factors include the level of detail, content and target of the comment. The more tangible the link to an individual trial, the more sensitive the matter is for raising justified doubts. The situation can only be exacerbated if the comment concerns a pending trial.

Where the independence of the courts and freedom of speech are truly in conflict, one can defend the view that, as a rule, the importance of independence increases when the comments are made in public by a member of the Government in the position of Minister of Justice regarding the jurisdiction in individual cases. This combination is conducive to easily and deeply endangering the independence of the courts. The practical conclusion is that, on judicial grounds, the Minister of Justice should apply special caution and deliberately remain undemonstrative when presenting such comments so as to avoid unintentional misunderstandings and so as to avoid giving rise to doubts about endangering the independence of the courts.

On the basis of the available material, it has not been possible to demonstrate that Minister of Justice Johannes Koskinen had intended to intervene inappropriately with the exercising of judicial powers.

The newspaper material enclosed to Professor Virolainen's letter of complaint includes certain comments attributed to Mr Koskinen which can be considered problematic for the independence of the courts in the form in which they are presented. However, in the assessment of this material I have taken into account the points Mr Koskinen presented in his statement. I therefore maintain that it is not necessarily possible to discover the actual content of Mr Koskinen's statements from the articles as they are secondary sources. Even with these reservations, it is nevertheless evident that Mr Koskinen's comments were conducive to creating a justifiable risk of being understood as interference with the actions of the courts.

During the period referred to in the letter of complaint when Mr Koskinen served as the Minister of Justice, he has not been shown to act unlawfully when issuing the statements in question. However, I will inform Mr Koskinen about the points of view I have presented in this ruling.

LEGAL ASSESSMENT OF THE CONDUCT OF A MINISTER IN THE MATTER OF FUNDING AN ELECTION CAMPAIGN

Memorandum of Jaakko Jonkka, Chancellor of Justice, 9 June 2008, concerning the legal assessment of the matter in which Minister Mauri Pekkarinen signed an investment aid decision for Suomi-Soffa Tehdas Ltd in 2006 and the election funding acquired in 2007 by selling paintings to Suomi-Soffa SSF Ltd, a subsidiary of the same group (OKV/17/20/2008)

Visit of Minister Mauri Pekkarinen to the Office of the Chancellor of Justice

Minister of Trade and Industry Mauri Pekkarinen visited the Office of the Chancellor of Justice on the morning of 30 May 2008 in order to inform the Chancellor of Justice of the following matter.

Mr Pekkarinen disclosed that he had only recently awoken to the fact that in the autumn of 2006, the Ministry of Trade and Industry (MTI) had probably granted investment aid to a group which a few months later had purchased paintings from his election campaign organisation prior to the elections. Mr Pekkarinen explained that, having checked the details with the civil servants of his ministry, he consequently discovered that the matter had been presented to him and he had signed the investment aid decision as Minister of Trade and Industry in November 2006. Having discovered this, Mr Pekkarinen had immediately disclosed the matter to the Prime Minister and was disclosing it now to the Chancellor of Justice. Mr Pekkarinen assured the chancellor that he had not remembered the investment decision any earlier.

The Chancellor of Justice requested that Mr Pekkarinen submit a written report on the matter. He also asked the civil servants handling the investment matter at the MTI at the time to submit a written report as well as the documents related to the investment decision.

Acquired reports

On 2 June 2008, Industrial Counsellor Heikki Vesa personally delivered a report signed by Undersecretary of State Kalle J. Korhonen, Senior Adviser Kari Alanko and Heikki Vesa himself, civil servants of the current Ministry of Employment and the Economy (MEE), concerning the preparation for the investment decision in question and the role of Mr Pekkarinen in the process. The report states that the application had been received and prepared by Kainuu T&E Centre, which had proposed a grant of

EUR 842,490 as investment aid. The matter had been processed according to the normal procedures at the MTI. Neither Mr Pekkarinen nor his aides had participated in the preparation. Mr Pekkarinen had signed the decision on 7 November 2006.

The written report of 30 May 2008 submitted by Mr Pekkarinen was received by the Office of the Chancellor of Justice on 3 June 2008.

Mr Pekkarinen states that he had signed the investment aid decision along with a number of other documents on 7 November 2006. The rapporteur had not been present at the time of signing. Mr Pekkarinen could not recall the name of the beneficiary of the investment aid "most likely because it probably became immediately evident from the preparations carried out by the civil servants that the grounds for the decision were indisputable."

Contributions for Mr Pekkarinen's election campaign were acquired – as in prior elections – by his support organisation, Keski-Suomen Kehitystyö ry, a registered association. The methods of acquiring contributions included organising seminars and selling paintings.

In January and February 2007, Suomi-Soffa SSF Ltd, among other contributors, had purchased paintings from the association for a total of EUR 5,000. Mr Pekkarinen says that he heard about the purchase at the end of February. According to Mr Pekkarinen's statement, at the time he did not recall signing the investment aid decision about three months earlier, although he states that he remembers making a short visit to the company's Vantaa salesroom at the end of 2006.

In his written statement, Mr Pekkarinen concurs with his spoken statement, given at the Office of Chancellor of Justice, how he had not recollected until 23 May 2008 that a company called Suomi-Soffa had received investment aid a couple of years earlier. Mr Pekkarinen then confirmed the matter, as described above, with the civil servants at the ministry. "I had totally and from the outset forgotten about the investment aid decision I had made."

Mr Pekkarinen states that he had checked with the Ministry of Justice in May 2008 whether any sales of paintings over EUR 1,700 were required to be itemised. The Ministry of Justice had informed him that there is no definite obligation to itemise the sales. Nevertheless, Mr Pekkarinen decided to disclose the sale of paintings on 27 May 2008.

Assessment

The following provisions laid down in the Constitution apply to the responsibilities of the Chancellor of Justice in handling this matter:

In accordance with Section 108(1) of the Constitution, the Chancellor of Justice shall oversee the lawfulness of the official acts of the Government and the President of the Republic. According to Section 108(2), the Chancellor of Justice shall, upon request, provide the President, the Government and the ministries with information and opinions on legal issues.

In the preparatory work for the act, the reasonings for the responsibility to provide opinions include the following: "They are provided specifically in response to needs arising in the Government and ministries to obtain an opinion on the correct interpretation of law and to ensure beforehand the lawfulness of their measures." (HE 1/1998 vp p. 166). Naturally, this requirement applies only to legal statements pertaining to official responsibilities. In practice, the ministries and ministers often request statements

LEGAL ASSESSMENT OF THE CONDUCT
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informally, for example in conversation, but sometimes also more officially in writing. Depending on the situation, both spoken and written statements are provided.

According to my understanding, Mr Pekkarinen requested a legal statement on his conduct as a minister for making his own conclusions. In addition, the Chancellor of Justice has a duty under the supervision of legality as laid down in Section 108(1) of the Constitution to carry out an assessment of whether the conduct of the minister raises any reason for taking action.

In this case, the official act of the minister was to make the investment aid decision in November 2006. On the basis of the documents and other reports provided, it involved no exceptions to the normal procedure and therefore does not give rise to any doubts about unlawful conduct.

Accepting contributions for election campaign funds as a parliamentary candidate while holding a ministerial position is not an official act *per se* and consequently does not fall within the supervisory ambit of the Chancellor of Justice.

However, the setting in this case – the investment aid decision on one hand and the contribution to the election campaign received from the same company on the other – provided the Chancellor of Justice with grounds to carry out a legal assessment of the decision to accept the contribution and to consider whether there was a legally significant link between the investment aid decision and the offer of election campaign support.

The provision laid down in the Administrative Procedure Act concerning disqualification was not appropriate in this case, because the investment aid decision was made before the sale of the paintings and there was no evidence to show that the contribution to the election campaign had been discussed when the investment aid decision was being prepared and issued. The minister was not disqualified from making the investment aid decision. The provisions under the Public Servants Act were also invalid, as the act does not apply to the minister.

The Chancellor of Justice also had to consider whether the acts of the minister met the conditions of unlawful conduct in office. Were sufficient grounds found to suspect any unlawful conduct in office by the minister, the Chancellor of Justice would be required to notify the Constitutional Law Committee under the provisions laid down in Section 115. (For further details on the procedure, I refer to my article “Valittuja kysymyksiä esitutinnan aloittamisesta ja kohdentamisesta”, pp. 78–81 in particular, in Rikosoikeudellisia kirjoituksia VIII. Suomalainen Lakimiesyhdistys 2006.)

The assessment of this case fell within the provisions laid down in Section 1 of Chapter 40 of the Penal Code concerning the conditions for acceptance of a bribe and Section 3 concerning the conditions for bribery violation. The first provision is applied if, for instance, “a public official, for his/her actions while in service” accepts the benefit stipulated in the provision. According to the latter provision, the act is punishable if a public official “accepts or agrees to a gift or other benefit --- so that the actions are conducive to weakening confidence in the impartiality of the actions of authorities.” Even though the provisions refer to public officials, they also apply to ministers.

The provisions about accepting a bribe and committing a bribery violation require intent.

As a result of my assessment, I conclude the following:

Nothing in the reports available to me suggests that Mr Pekkarinen had accepted a bribe in the form of a sale of paintings in return for issuing a positive decision on investment aid some time earlier. Therefore, the application of Section 1 of Chapter 40 of the Penal Code is excluded.

In principle, the conduct whereby the minister had accepted election contributions from the same group to which he had granted a considerable sum in investment aid a few months previously could be considered to create a situation "conducive to weakening confidence in the impartiality of the actions of authorities."

However, on the basis of the report available to me, Mr Pekkarinen cannot be shown to have acted intentionally in a manner which would meet the conditions for bribery violation. I consider plausible Mr Pekkarinen's description of how the situation evolved. I base my assessment on both the written report and the hearing of Mr Pekkarinen. Mr Pekkarinen's inability to recall the investment aid decision is indirectly supported by the fact that he did not in any way refer to his own involvement in his inaugural speech given at the factory in August 2007. – Therefore, the case lacks any legal basis for suspecting that Mr Pekkarinen had committed the offence stipulated in Section 3 of Chapter 40 of the Penal Code.

All in all, the conduct of Mr Pekkarinen as described here has not given me any reason to take measures under the supervision of legality. I informed Mr Pekkarinen of my decision in a conversation on 4 June 2008.

DECISION ON THE CASE OF A DISTRICT COURT JUDGE SUSPECTED OF UNLAWFULNESS IN OFFICE

Account of a decision issued by Jaakko Jonkka,
Chancellor of Justice, on 18 August 2008 (OKV/353/1/2007)

Judgement issued by a district court and initiating the case

The complainant criticised the district court for neglecting to confirm the plaintiff's standing when issuing a judgement by default in favour of the plaintiff in an action on a debt.

The district court had issued a judgement by default because the defendants had not entered an appearance within the prescribed time period. The district court had given a public notice of the summons when it had failed to reach the defendants by performing the service by post to the address in Belgium stated in the application for a summons. The case was ruled by District Court Judge A.

Having been informed of the decision, the defendants appealed the judgement by default. Consequently, the district court had dismissed the suit without prejudice, as the investigation did not fall within its jurisdiction, and ordered the plaintiff to compensate the defendants for legal expenses in excess of EUR 3,000. The case was ruled by District Court Judge B.

The district enforcement officer had notified the counsel of the complainant, who was a defendant in the case, that the latter judgement of the district court could not be enforced because the plaintiff was not a legal or natural person.

The Chancellor of Justice requested the National Bureau of Investigation to launch a pre-trial investigation into the conduct of District Court Judge A. Following the pre-trial investigation, the Office of the Chancellor of Justice performed the consideration of charges and requested District Court Judge B to submit a report on their conduct.

Assessment of the conduct of District Court Judge A

In accordance with Article 2(1) of the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, subject to this regulation, persons domiciled in a member state shall, whatever their nationality, be sued in the courts of that member state. Under the provision laid out in Article 3(2) of the regulation, the rules of national jurisdiction set out in Annex I of the regulation shall not be applicable as against persons domiciled in a member state. The rules of national jurisdiction set out in Annex I include the third sentence of the

first paragraph of Section 1 of Chapter 10 of the Code of Judicial Procedure, whereby if a Finnish citizen is living abroad, he/she may also be summoned to the court of the locality where he/she was last domiciled in Finland.

Under Article 26(1) of the regulation, where a defendant domiciled in one member state is sued in a court of another member state and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this regulation. Therefore, District Court Judge A should have dismissed the case without prejudice *ex officio* and not issue a judgement by default.

In the pre-trial investigation, A justified their conduct by the discretionary nature of the matter and by the fact that they were not aware of the defendants' view on the place of jurisdiction when they were presiding over the case. In his ruling, the Chancellor of Justice stated that the discretionary nature of the matter had no bearing on the jurisdiction of the court. According to the Chancellor of Justice, it is clear that where the defendants fail to respond to the summons, the court must clarify *ex officio*, without exception, whether it has jurisdiction in the matter.

Furthermore, District Court Judge A had ruled in favour of the plaintiff without confirming their standing. According to A's opinion, nothing in the case presumed that the plaintiff's standing should have been confirmed, as the case was handled by a solicitor's office, which dealt with legal matters as its principal occupation. District Court Judge A further maintained that the clarification of the standing would have been necessary only if somebody had entered a plea concerning it. The Chancellor of Justice stated that the standing of the plaintiff was a peremptory procedural requirement, the existence of which had to be investigated by the court *ex officio*.

The case documents did not describe the entitlement of the person who had signed the application for a summons to represent the plaintiff. District Court Judge A would have been likely to discover that the plaintiff had no standing had they investigated the plaintiff's right of action. However, A had not done so.

Having failed to perform the service by post, A had decided to give public notice of the service upon the plaintiff's request. According to the Code of Judicial Procedure, if the whereabouts of the recipient of the service cannot be discovered, the court shall perform the service by way of a public notice. It is stated in the preparatory work of the provision that the service can be performed by way of a public notice only when no other methods of performing the service are available and that a public notice can be given only when the court is fully convinced that the domicile of the party is unknown. Case law determines that performing a service by way of a public notice cannot be justified solely due to the failure to perform the service by post.

The Chancellor of Justice held that, taking into consideration the method adopted by District Court Judge A, whereby the District Court investigates its jurisdiction, the standing of the plaintiff and the right of action of the person representing the plaintiff solely based on the claims made by the defendant, it would have been especially important for the defendants' legal protection that they had actually received the information about the case taken on by the District Court without jurisdiction.

In this case, legal protection of the defendants was particularly dependent on the appropriate action taken by the District Court, since the summons had been served by a public notice and the defendants had failed to enter an appearance. As described above, A had ruled in favour of the plaintiff with a judgement by default, even though the case should have been dismissed without prejudice ac-

according to the law. When assessing A's conduct, it must be taken into consideration that he had presided over the case.

A's conduct, as described here, caused damage to the defendants since they had to appeal against the judgement by default and consequently remained liable for the legal costs. The Chancellor of Justice found that A's conduct was in material conflict with the requirements expected of appropriate conduct by a person holding the office of judge. The questionable procedure was conducive to corroding confidence in appropriate jurisdiction. According to the assessment by the Chancellor of Justice, A's act could not be regarded as petty in the context of the constituents of negligent violation of official duty.

Assessment of the conduct of District Court Judge B

District Court Judge B, who dealt with the appeal, had ordered the plaintiff to compensate the defendants for their legal fees without also investigating the standing of the plaintiff. In his report, District Court Judge B refers to the view presented in legal literature, according to which the standing of a foreign legal person will be investigated only if a plea is entered at court. B had not investigated the standing because the defendants had failed to enter such a plea and a judgement by default had already been issued.

The Chancellor of Justice held that the court must establish of its own motion the lack of an unconditional prerequisite for legal proceedings regardless of whether the party has entered a procedural plea and that a deficiency in the unconditional procedural prerequisites must be taken into consideration through the legal proceedings. B justified their conduct by the fact that a judgement by default had already been issued. To a certain extent, this did make the failure to investigate the standing of the parties understandable, as B had cause to expect that the district court had already investigated the standing of the plaintiff when issuing the judgement by default. However, the Chancellor of Justice found that the value of B's other grounds for failing to investigate the standing of the parties could be called into question.

Measures

The Chancellor of Justice decided to bring charges against District Court Judge A for negligent violation of official duty by virtue of Section 10 of Chapter 40 of the Penal Code. He also notified District Court Judge B of his views on the investigation of the existence of standing as presented in his ruling.

Judgement by the court of appeal

In the judgement issued on 7 May 2009, the court of appeal held that the District Court Judge should have dismissed the case without prejudice of its own motion under Article 26(2) of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Furthermore, having failed to perform the service by post and having received the request to give public notice, the District Court Judge should have attempted to discover the defendants' address in the population register or with the help of the Belgian authorities. The court of appeal found the District Court Judge guilty of negligent violation of official duty but waived the sentence.

PERFORMANCE OF THE SOCIAL SECURITY APPEAL BOARD AND THE REALISATION OF LEGAL PROTECTION

Report on the on-site inspection by the Deputy Chancellor of Justice on 13 February 2008 (OKV/1/51/2008) and the decision on a self-initiated investigation (OKV/6/50/2008)

On-site inspection and launching an investigation

I made an inspection visit to the Social Security Appeal Board on 13 February 2008.

The Social Security Appeal Board (known as the Inspection Board until 31 December 2006, hereinafter 'the Board') is a statutory appeal organ for social insurance matters operating in the administrative branch of the Ministry of Social Affairs and Health by virtue of the Social Security Appeal Board Act. The Board is the first instance of appeal for the decisions issued by the Social Insurance Institution of Finland, excluding matters concerning student financial aid and unemployment. The Board is an accounting office of the Ministry of Social Affairs and Health and its annual accounts are reported as part of the ministry's annual report. Since 2004, the ministry and the Board have had a performance agreement which covers performance targets and the Board's resources.

The 2007 organisational reform

The organisational reform entered into force at the beginning of 2007 changed the organisation and name of the Inspection Board, acting as the appeal organ for social security matters, to the Social Security Appeal Board. Its responsibilities were increased by transferring the duties of five abolished social insurance boards to the new Board from the beginning of 2007. Allocation of the Board's resources emerged in Parliament during a debate about the government proposal concerning the Social Security Appeal Board (HE 167/2006). Prior to the organisational reform, the Board employed 12 rapporteurs, 12 notaries and seven administrative assistants. During the organisational reform, the expected increase in the number of cases was handled by establishing 11 new posts for rapporteurs. As a result of the 2007 reform, the Board has 23 rapporteurs. In addition, new office staff were recruited, increasing the human resources by a total of 15 man-years.

Number of complaints and processing times

In 2006, the Inspection Board received some 14,000 complaints. Following the discontinuation of the Social Insurance Boards, the number of complaints received by the Social Security Appeal Board increased to approximately 21,500 in 2007. In addition, 3,200 pending complaints were transferred from the Social Insurance Boards to the new Board, increasing the total number of cases received by the Board to approximately 24,700 in 2007. Based on my findings during the on-site inspection, the processing of complaints by the Board had become backlogged and the situation was becoming more difficult. The average processing time in the Board was slightly over 13 months in 2007, to which was added an average delay of one month for posting. In 2007, the Board resolved approximately 13,600 complaints. Some 20,400 complaints are expected to be initiated each year. The Board estimated that it would resolve an average of 19,400 complaints in 2008. According to its calculations, the processing time will increase because the Board cannot deal with even the newly initiated cases with its current human resources. In addition, 26,400 cases remained pending on 31 December 2007.

It was discovered during the inspection that the Board had presented the Ministry of Social Affairs and Health with various calculations and proposals for acquiring additional resources and developing the case procedures. According to the calculations, the Board required a significant increase in human resources and possibly an extra fixed-term department for 2008–2009. In addition, proposals for amending the legislation had been made in order to alleviate the operation of the departments.

Based on the inspection, I found problems and faults in the operation of the Board which were conducive to endangering the performance of the Board and thus the legal protection of the appellants and where intervention was necessary from the perspective of the supervision of legality. I therefore decided to initiate an investigation into the performance of the Social Security Appeal Board, with special focus on the processing times, and into the opportunities to develop the Board's performance so as to ensure the legal protection of complainants.

On this basis, I requested the Ministry of Social Affairs and Health to provide a statement on the measures which the ministry is intending to take in order to secure and develop the operation of the Board so as to ensure the right to have one's case dealt with appropriately and without undue delay as provided in Section 21(1) of the Constitution.

Statement by the Ministry of Social affairs and Health

The Ministry of Social Affairs and Health submitted a statement dated 29 April 2008 and signed by Secretary General Kari Välimäki and Senior Adviser Milla Meretniemi.

With regard to the legal protection of citizens, the insurance department of the Ministry of Social Affairs and Health had launched preparations at the beginning of 2008 to reduce the unreasonably long processing times. Specialists from the Social Security Appeal Board, the Insurance Court, the Ministry of Justice and the Social Insurance Institution of Finland had been invited to participate in the preparations. The project was divided into two parts: changes implemented by internal measures in the Board and necessary amendments to the legislation. In addition, the resources of the Board were revised.

In the decision on spending limits of 13 March 2008, the Social Security Appeal Board had received an annual budget of EUR 300,000 for 2009–2011 to recruit additional personnel in order to clear the

backlog and shorten processing times. The Ministry of Social Affairs and Health expected the Board to present a plan in the spring of 2008 for the appropriate use of the additional resources. Furthermore, the Board was proposed to receive an additional appropriation of EUR 150,000 on the basis of the supplementary budget proposal, which at the time remained unconfirmed, for clearing the 2008 backlog. These funds would be available as of 1 July 2008. According to the statement, the civil service management team in the Ministry of Social Affairs and Health maintains that the Board will require considerable extra resources to top up the proposed additional appropriations for 2009.

According to the ministry, plans had been made to submit to Parliament a government proposal on amending the Social Security Appeal Board Act during the 2008 spring plenary sessions. The government proposal was submitted to Parliament on 16 May 2008. It proposed certain changes to the operation of the Social Security Appeal Board which would accelerate the processing of cases, to be enforced as early as from 1 August 2008. According to the government proposal, the Board would be divided into two departments headed by full-time chairpersons. The proposal included a suggestion to reduce the number of cases handled by the resolution team of five members and introduce a new method of processing simple matters in a resolution team comprising a judge and the chair or deputy chair of the Board, who would resolve the cases following a presentation. It was also proposed that the notaries of the Board could present simple complaint matters.

Preparations were launched in the spring of 2008 in the Ministry of Social Affairs and Health to investigate whether appeals for the right to claim disability pension under the National Pensions Act could be transferred to the Earnings-based Pension Appeal Board.

The ministry states that, before acting on the aforementioned amendments to the legislation, it will monitor at three-month intervals, as laid down in the performance agreement, whether the proposed measures will shorten processing times, which are currently considered unreasonable. The 2008–2011 performance agreement also stipulates that an investigation will be launched into merging the Social Security Appeal Board and the Unemployment Security Appeal Board.

Resolution

On fundamental rights regulations

Under Section 21(1) of the Constitution, everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

The right to social security is laid down by virtue of Section 19 of the Constitution. According to Section 19(2) of the Constitution, everyone shall be guaranteed by an act the right to basic subsistence in the event of unemployment, illness and disability as well as during old age and at the birth of a child or the loss of a provider. The concept of the welfare state includes the right to secure subsistence, independent of the person's position at work, family relations and social status or other similar factors. According to this principle, the Constitution imposes the obligation on the legislators to guarantee basic subsistence in circumstances where an individual does not have the possibility of making a living. Un-

PERFORMANCE OF THE SOCIAL SECURITY APPEAL BOARD AND THE REALISATION OF LEGAL PROTECTION

employment, sickness, incapacity for work, old age, the birth of a child and loss of a provider are typical circumstances where the individual's opportunities to make a living have been significantly reduced. This provision guarantees basic subsistence in the aforementioned situations. The social security systems are laid down by an act (HE 309/1993 vp).

The purpose of the Social Security Appeal Board is, therefore, not only to guarantee fair jurisdiction without delay in its own branch of administration but also to guarantee the right to basic subsistence. A person appealing a negative decision on the right to basic subsistence remains without this guarantee during the appeal process, and often the only remaining solution is to apply for social assistance.

Under Section 22 of the Constitution, the public authorities shall guarantee the observance of basic rights and liberties and human rights. The fundamental rights provisions bind the public authorities in all their actions, including legislation, government and jurisdiction. The actual realisation of fundamental rights requires the public authorities to take active measures, for example in safeguarding an individual's basic rights from external violation or creating tangible opportunities for exercising fundamental rights. Therefore, the fundamental rights regulations include an explicit provision by virtue of which the public authorities shall guarantee the observance of fundamental and human rights. The provision emphasises the intention to ensure the material guarantees for fundamental rights along with the procedural requirements. Therefore, in the context of observing fundamental rights, it is not sufficient for the public authorities to simply abstain from interfering with fundamental rights.

The selection of methods depends on each case, but some of the key procedures include enacting legislation which ensures and defines the exercise of fundamental rights and allocating sufficient financial resources.

Assessment

Current status

Based on my on-site inspection, the ministry's statement and other reports, the processing times of complaints at the Social Security Appeal Board were unreasonably long. The average processing time, at the time exceeding 13 months plus the posting delay, was not in any way acceptable with regard to guaranteeing legal protection and the basic subsistence of citizens. It was particularly concerning to find that the lack resources at the time would increase the processing time even further. There was a significant disparity between the 2007 performance target of 22,000 and the actual number of resolved cases of 13,593. According to the ministry's view, based on the statistics of resolved cases at the time, the Board was able to resolve some 17,000 cases per year. However, at the same time, the Board received some 20,000 new cases annually. Various parties have suggested that a reasonable average processing time would be a maximum of six months. In other words, the Board was lagging behind its target, and the disparity between the initiated and resolved cases was increasing. The danger was that the already long processing time would continue to grow. Problems were also discovered in employee well-being and workplace atmosphere, which further endangered the performance of the Board.

On this basis, it was clear that measures had to be implemented in the operation of the Board in order to ensure the right to have one's case dealt with appropriately and without undue delay as provid-

ed in Section 21(1) of the Constitution. The complaints handled by the Social Security Appeal Board also pertain to the right to basic subsistence, as laid down in Section 19(2) of the Constitution, increasing the significance of the requirement to process cases without undue delay.

The processing times of the Social Security Appeal Board have also been discussed in the report published by the Social Affairs and Health Committee concerning the Annual Report of the Social Insurance Institution of Finland (StVM 3/2007 vp). According to the committee, the purpose of the harmonisation of the appeal system launched at the beginning of 2007 was not only to increase the independence of the appeal organ, but also to shorten the processing times of complaints. The committee found it essential that the processing times were shortened without delay in line with the target of the reform.

In my opinion, the problems in the operation of the Social Security Appeal Board and the backlog of cases arose from the insufficient human resources in proportion to the number of complaints and the related problems with the allocation and use of resources as well as the management and workplace atmosphere. The backlog and the number of resolved cases, which remains significantly lower than the target, partly arose from the difficulties experienced during the launch of the new organisation.

The Social Security Appeal Board cannot independently establish new permanent positions. It is an accounting office of the Ministry of Social Affairs and Health, and the ministry and the Board have a performance agreement which covers performance targets and available resources. The Ministry of Social Affairs and Health is responsible for allocating human and other resources to the Board, but it must be able to independently allocate the available resources correctly, use them efficiently and maintain good leadership and workplace atmosphere.

The implementation of the organisational reform could have further impeded the operation of the Board, but there may be other long-term structural reasons in the background, such as overly complicated procedures or legislative factors. It is obvious that the planned measures should aim not only to solve the current problems but also to create permanent solutions whose effectiveness is monitored in the long term.

On the pending measures

Under the aforementioned Section 22 of the Constitution, the public authorities shall guarantee the observance of basic rights and liberties and human rights, for instance by enacting legislation and allocating financial resources. The requirement to guarantee the fundamental rights binds the public authorities in all its actions, including legislation, government and jurisdiction. Under Section 22 of the Constitution, these actions can include the additions to the human resources and the amendments to the legislation, as proposed by the Ministry of Social Affairs and Health.

I find the pending measures proposed by the ministry to develop the operations of the Social Security Appeal Board to be a step in the right direction. Additional human resources and the measures to ensure their efficient and sustainable use are in my opinion the most important method of making sure that the requirement to deal with matters without undue delay is being observed. The proposed amendments to the legislation designed to streamline the resolution teams and divide the Board into two administrative structures may also support the Board in observing this requirement. However, it should be noted that the streamlining of the departmental resolution teams will not immediately increase the

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number of resolved cases. The departments require prepared resolution proposals. In such preparatory work, the contribution of notaries and rapporteurs is crucial but has so far remained insufficient. The standard of the resolution proposals should not be undermined during the preparatory work. Furthermore, backlogs have also been detected in the administrative tasks, at least in recording the incoming complaints and posting the decisions.

The Ministry of Social Affairs and Health maintains that, according to the management team of the ministry comprising civil servants, the Social Security Appeal Board will require considerable extra resources to top up the proposed additional appropriations for 2009. I presume this means that the additional resources are considered insufficient. The decision to issue an opinion on the matter at this early stage is worth observing, and indicates that there are significant demands placed on the use and allocation of the planned additional resources.

The ministry plays an important role in encouraging the Board – while bearing in mind the independence and the primary responsibility of the Board – to work more efficiently. The processing of cases can be accelerated by developing internal procedures and working methods. It should be noted that the Social Security Appeal Board is an organ exercising jurisdiction by virtue of Section 21 of the Constitution, while its resolutions are governed by dedicated legislation. Therefore, it must be able to resolve cases and organise its related operations independently. The division of responsibilities regarding the development measures should respect this position of the Board.

The other problems faced by the Board, such as well-being and atmosphere at work, can also be influenced primarily by the Board's own measures. The Board has initiated measures to recruit an external consultant to develop the workflow and well-being of employees. This can be considered a useful method to test in practice, but ultimately the Board must bear the responsibility for these matters.

Conclusions and measures

The Ministry of Social Affairs and Health states that it was first informed of the problems with the Social Security Appeal Board's operations in December 2006. The ministry has applied performance guidance, among other measures, in an attempt to resolve the problems, particularly those arising from the organisational reform. The Board has reported to the ministry at three-month intervals about the realisation of the performance targets, and the adequacy of the Board's resources has been monitored with the help of reports submitted in May and September on the sufficiency of the appropriations.

The ministry has reported on the pending plans to allocate additional resources to the Board and make amendments to the legislation. As yet, it is too early to estimate the impact of these measures on reducing the average processing time to six months, which is understood to be a reasonable period.

I have informed the Ministry of Social Affairs and Health of my points of view presented in this resolution. I have also asked the ministry to submit a new statement no later than 30 April 2009 on the implementation of the measures presented here, including any achieved results. The statement must indicate the realisation of the performance targets set for the Social Security Appeal Board for the current year and the status of the Board at the beginning of 2009.

I will make another on-site inspection at the Board in 2009.



5

**SUPERVISION OF LEGALITY
IN CENTRAL GOVERNMENT**

PURVIEW OF PARLIAMENT

As the highest organ of government, Parliament supervises the legality of its own actions along with its compliance with the Constitution and decides on the order of processing bills and other matters. Subject to certain conditions, the operations and conduct of the employees of the Parliamentary Office have also been considered to fall within the supervision of legality. During the year under review, the Office of the Chancellor of Justice did not handle any complaints about the actions of Parliament, which would have given rise to measures by the Chancellor of Justice.

PURVIEW OF THE OFFICE OF THE PRESIDENT OF THE REPUBLIC

Under Section 2(1) of the Act concerning the Office of the President of the Republic (1382/1995), the Office assists the President of the Republic in carrying out her official duties, manages the President's administrative business and organises personal services required by the President and her family following the directions given by the President. The office is also responsible for the personal security of the President and the security of the buildings used by her.

During the year under review, the Office of the Chancellor of Justice did not handle any complaints or other initiatives pertaining to the Office of the President of the Republic. Carried out by the Office of the Chancellor of Justice, the review of the presentation agendas for the presidential sessions is described in Section 2 of this report.

PURVIEW OF THE PRIME MINISTER'S OFFICE

No resolutions leading to measures pertaining to the Prime Minister's Office were issued during the year under review.

PURVIEW OF THE MINISTRY FOR FOREIGN AFFAIRS

The Ministry for Foreign Affairs focuses on foreign and security policy, international affairs of significance for foreign policy and international relations in general. In addition, the ministry assists other branches of administration in the reconciliation of treaties and other international obligations.

Besides overseeing the lawfulness of the official acts of the government and the President of the Republic and performing general legality supervision, the Chancellor of Justice also supervises the Ministry for Foreign Affairs pursuant to Section 108 of the Constitution.

Annual statistics show that, excluding occasional complaints about the conduct of embassies and consulates in granting tourist visas, complaints are rare in matters within the purview of the Ministry for Foreign Affairs.

International treaties and government bills concerning such treaties can be mentioned as a special group which involves elements that are connected with fundamental and human rights and which require consideration in Parliament. In respect of these, the ministry concerned has, at its own discretion, afforded the Chancellor of Justice an opportunity to issue an opinion on the government Bill. This opportunity has usually also related to an existing international treaty with obligations of follow-up reports or reports at regular intervals. During the year under review, the Chancellor of Justice issued an opinion on the initiative to draw up a protocol establishing an individual complaint mechanism under the UN Convention on the Rights of the Child (SopS 59-60/1001); the European Council Framework Convention for the protection of national minorities; the drawing up of Finland's third Progress Report, the enforcement of the UN Convention on the Rights of the Child; the preparation of the Finland's fourth Progress Report, and the drawing up of Finland's fourth Progress Report regarding the European Charter for Regional or Minority Languages.

The Deputy Chancellor of Justice issued a resolution on 7 January 2008 pertaining to the supervision of the decision-making by the Government and the President of the Republic (OKV/9/50/07). The resolution concerns the conduct of the Ministry for Foreign Affairs in drawing up presentation agendas for the government plenary session of 4 October 2007 and the presidential session of 5 October 2007 pertaining to nominating government representatives and specialists. Had the President of the Republic made a decision based on the original distribution of agendas proposed by the Ministry of Foreign Affairs without the Government's motion, the decision would have been in breach of the Constitution, despite the nature of the mistake that led to the decision. The Deputy Chancellor of Justice called the attention of the rapporteur responsible for the presentation agendas to Section 58 and Section 118(2) of the Constitution. The Deputy Chancellor of Justice also drew the Ministry for Foreign Affairs' attention to quality control, including the drawing up and careful reviewing of the presentation agendas for the government plenary sessions and presidential sessions. For further information, see page 25.

PURVIEW OF THE MINISTRY OF JUSTICE

The duties of the Chancellor of Justice include the supervision of the legality of the activities of courts of law both on the basis of complaints and on his own initiative. As in previous years, the majority of complaints concerning the purview of the Ministry of Justice pertained to court activity. Complaints pertaining entirely or in part to this activity numbered 253 in the year under review, a slight increase on the year before (with 216 complaints received in 2007), with the number of decisions made on complaints totalling 237 (with 192 decisions in 2007). In all, 10 complaints of those decided upon during the year under review resulted in measures being taken. With regard to the matters leading to measures, in one case the Chancellor of Justice decided to bring charges against a District Court Judge for negligent violation of official duty and, in another case, issue a reprimand to a District Court Judge.

An essential element of the supervision of legality in courts is monitoring that the right guaranteed for all to a fair trial is realised. Indeed, in the year under review, complaints often pertained to the issue whether this right, guaranteed as a fundamental and human right, is actually realised in practice. Most decisions made by the chancellor that resulted in measures regarding general courts of law were about errors detected in procedure. Unreasonably long legal proceedings and delays in the serving of summons and judgments also resulted in measures.

The number of complaints about other authorities under the purview of the Ministry of Justice was considerably smaller than those pertaining to general courts of law. For example, the number of complaints received regarding prosecutors was 127, administrative courts 51, enforcement authorities 48 and special courts 31. However, the number of complaints increased significantly from the previous year. For example, the number of complaints pertaining to prosecutors, enforcement authorities and special courts nearly doubled compared to the previous year. With regard to the aforementioned authorities, resolutions pertaining to three complaints which concerned prosecutors either fully or in part and one complaint about the Administrative Courts resulted in measures during the year under review.

Two groups of matters involve the reports of offences made by the injured parties on the conduct of judges, which the police delivers to the Chancellor of Justice for information, and the notifications issued by the courts of appeal to the Chancellor of Justice of matters which may result in bringing action against an official at the court of appeal. During the year under review, one case in each group resulted in measures. In one of the cases, the substitute to the Deputy Chancellor of Justice reprimanded a District Court Judge for unlawful conduct.

The review procedure of penal judgements and the errors noted therein are described in further detail later in this report.

During the year under review, the Deputy Chancellor of Justice inspected the courts of appeal in Helsinki and Turku, the district courts in Joensuu and Savonlinna, the Insurance Court and the Prosecu-

tion Departments of Päijät-Häme and Eastern Finland. The Deputy Chancellor of Justice also visited the Office of the Prosecutor General. The Chancellor of Justice and the Deputy Chancellor of Justice made an on-site inspection visit to the Ministry of Justice. The inspections did not result in any measures. However, based on his observations during the inspection visits to the court of appeal in Turku and the Prosecution Department of Eastern Finland, the Deputy Chancellor of Justice initiated an investigation into the delay in pronouncing judgements following the decision-making at the court of appeal and the guidance issued to the parties when a decision was made to waive prosecution.

Rulings

MINISTRY

Conduct of the authorities in dealing with a damages claim brought against the state

The complainant had claimed damages from the state because he was ordered to serve the sentence of imprisonment for failure to pay fines even though he had already paid the fine in question. The assistant enforcement officer had made a mistake in entering the complainant's payment into the records.

Following the guidance issued by the District Court, the complainant had delivered the damages claim to the State Treasury on 21 February 2005. The State Treasury had handled the case under the Act on Compensation from State Funds for the Arrest or Detention of an Innocent Person (422/1974) and refused the claim because the imprisonment for failure to pay fines had not been reduced or cancelled. Following this decision, the State Treasury had transferred the compensation case to the Criminal Sanctions Agency on 24 February 2005.

However, the Criminal Sanctions Agency considered it had no jurisdiction on the matter and consequently transferred the case to the Legal Register Centre on 10 March 2005.

The Legal Register Centre transferred the complainant's damages claim to the Ministry of Justice on 18 April 2005.

At the Ministry of Justice, the case was allocated to the Department of Criminal Policy, which then transferred the case to the Department of Judicial Administration on 25 May 2005. The department transferred the damages claim concerning enforcement to the Department of Judicial Administration of the State Provincial Office of Southern Finland on 28 June 2005. By the decision of the State Provincial Office of 14 December 2005, the complainant was awarded EUR 500 compensation by virtue of Section 2 of Chapter 3 and Section 6 of Chapter 5 of the Tort Liability Act (412/1974).

In his resolution, the Deputy Chancellor of Justice found that by transferring the damages claim the State Treasury, the Criminal Sanctions Agency, the Legal Register Centre and the Ministry of Justice had acted in conflict with the service principle and the cooperation provision laid down in the Administrative Procedure Act when failing to exercise appropriate care in determining the competent body to han-

dle the damages claim. Consequently, the damages claim had been transferred unnecessarily and the handling of the case had been delayed by some four months. The Deputy Chancellor of Justice found it unsatisfactory that the authorities, which all belonged to the administrative branch of the Ministry of Justice, were not able to demonstrate a greater degree of flexibility in determining which of them was the competent authority. The Deputy Chancellor of Justice held that in order to ensure the basics of good governance and the processing of cases without undue delay, closely intertwined with good governance, an authority can be expected to clarify the receiving authority's position prior to transferring a case and resolve any judicial questions in cooperation with other authorities where necessary.

According to the report and statement issued by the Ministry of Finance, the handling of damages claims is distributed between various central government bodies. Consequently, central government employees can find the legislation and practices pertaining to damages claims somewhat unclear. The Ministry of Finance found the aforementioned situation a contributing factor in this case. According to the Deputy Chancellor of Justice, this view of the Ministry of Finance was manifested in the lengthy chain of transfers from one authority to another with references to various legal provisions. The Deputy Chancellor of Justice further stated that in assessing the conduct of the Ministry of Justice and the authorities in administrative branch, it should be remembered that the Ministry of Justice bears responsibility for ensuring that the relevant legislation and the related guidance issued to the authorities are appropriate. The Deputy Chancellor of Justice noted that even though regulations can be difficult to understand, the authorities are nevertheless responsible for obtaining the necessary information and reports in order to ensure that the matter is brought to a sufficient and appropriate conclusion.

The Deputy Chancellor of Justice drew the attention of the relevant authorities to the service principle and cooperation provision, as laid down in the Administrative Procedure Act, in the processing of damages claims brought against the state, and requested that the ministry investigate by the end of the year whether there was any need for reviewing the guidance issued to the authorities and to streamline and centralise the handling of damages actions concerning jurisdiction and brought against the state (OKV/24/1/2006).

The Ministry of Finance submitted its report on 17 December 2008, stating that the handling of damages claims by the state should be streamlined and, as a starting point for any further considerations, the handling of claims should be concentrated at the State Treasury. The Ministry of Finance submitted the report to the Ministry of Justice for a statement.

COURTS

Delay in serving summons

Among other issues, the complainant criticised the District Court for the delay in serving a summons, resulting in the expiry of the statute of limitations.

According to the submitted report, the District Court Judge had by oversight served the summons after the expiry of the statute of limitations. In his report, the District Court Judge admitted their mistake and responsibility for the matter.

Under Section 8 of Chapter 5 of the Criminal Procedure Act, the court shall serve the summons without delay when the prosecutor has delivered the application for a summons to the District Court in a criminal case. In handling a criminal case, as part of their official duties the presiding judges must attempt to ensure that the summons is served to the defendant prior to the expiry of the statute of limitations.

As the statute of limitations had expired, the offences which the defendants were alleged to have committed could not be processed in legal order. The right of the injured parties to access justice under Section 21 of the Constitution had been restricted. The undue delay in the serving of the summons and the consequent failure to process a criminal case in legal order are also conducive to undermining confidence in the effectiveness of the administration of justice.

Almost four months had elapsed between the initiation of the case at the District Court and the expiry of the statute of limitations. No excuse was found for the presiding District Court Judge serving the summons late, neither could it be shown that the case had been in any way open to legal interpretations or that there was any other reason why the District Court Judge could not have easily observed the statute of limitations.

The Chancellor of Justice issued a reprimand to the District Court Judge for future reference for neglecting the serving of the summons to the defendants resulting in the expiry of the statute of limitations in a criminal case. See also page 43 (OKV/824/1/2007).

REVIEW OF PENAL JUDGEMENTS

The Legal Register Centre of the Ministry of Justice, in line with instructions issued by the Chancellor of Justice, forwards for examination a portion of the notifications on sentences lodged with it by the courts. A notification of sentence contains the same information as the operative part of a penal decision and allows the examination of individual judgments for formal error and certain systemic errors. The review is based on random sampling, and it is thus impossible to detect every error made by the courts, but the system effectively weeds out any recurring and common errors which the penal review system is designed to address.

Errors detected may lead to reprimand, the issue of a position or an order of bringing action against an official. An error noted during penal judgment review last led to charges against an official in 2005. A reprimand may be issued if the nature of the offence does not warrant charges. A reprimand may also be issued for unlawful conduct that does not constitute an offence. Less serious errors result in the issue of a position, which is also the most common consequence of the errors noted in the review of penal judgments.

In addition to the above consequences, errors may in some cases give rise to a request for reversal to the Supreme Court. A motion of reversal is usually made in favour of the defendant when the defendant is deemed to have suffered inconvenience or damage because of the error.

In 2008, a decision was issued on a total of 98 cases arising from the review of penal judgments. A reprimand was issued in four cases, while 27 cases were resolved through the issue of a position or other opinion. In the remaining cases investigated, the documents obtained on the matter or the account of the

presiding judge showed either that no error had taken place, the error had been rectified on the judge's or court's initiative or the error was to be considered so minor as to not give rise to action.

Action taken due to errors observed

Charge				
2004	2005	2006	2007	2008
-	1	-	-	-
Reprimand				
2004	2005	2006	2007	2008
4	6	7	3	4
Position or instruction				
2004	2005	2006	2007	2008
33	49	54	34	27

PROSECUTORS

Delay in the consideration of charges

A complainant criticised the long period of consideration of charges in a criminal case where the report on the offence was made to the police in May 2000. Almost immediately following the report, the complainant was subjected to the first investigation measures. The pre-trial investigation took approximately a year and the consideration of charges nearly four years. Both the district court and the court of appeal handled the case for a period of slightly over one year. The Supreme Court decided in December 2007 to reject the leave to appeal.

The substitute to the Deputy Chancellor of Justice stated in his ruling that timeliness of the consideration of charges is generally deemed important, taking into account the right to have one's case heard without undue delay and within a reasonable timeframe guaranteed in Section 21 of the Constitution and Article 6 of the European Convention on Human Rights. As a rule, he found the period of the consideration of charges of nearly four years to be problematically long. In addition, nothing in the case suggested a legally difficult consideration of charges or an exceptionally extensive case, neither did the complainant's own conduct raise any cause to believe that it would have been the reason for the delay.

The substitute to the Deputy Chancellor of Justice agreed with the view expressed by the substitute to the Deputy Prosecutor General in his statement that the period of the consideration of charges

of nearly four years could not be deemed reasonable. The substitute to the Deputy Chancellor of Justice held that the conduct of the prosecutor had not been judicially acceptable, because the consideration of charges was not finalised until approximately four years after the charges were first considered.

For the case in question, the total processing time (from the first investigation to the decision by the Supreme Court on the leave to appeal) was over seven years and seven months. The substitute to the Deputy Chancellor of Justice found that the processing of the case had taken so long that the period had to be considered beyond the reasonable time provided under Article 6 of the European Convention on Human Rights. Therefore, the total processing time was considered beyond the time provided under the requirements pertaining to fair trial.

The substitute to the Deputy Chancellor of Justice brought his view on the incorrect procedure to the attention of the prosecutor. He also informed the Office of the Prosecutor General and the Ministry of Justice of his ruling. See also page 45 (OKV/1033/1/2007).

Inspections carried out in the purview

The Office of the Prosecutor General,
The Court of Appeal of Helsinki,
The Prosecution Department of Päijät-Häme,
The District Court of Joensuu,
The Ministry of Justice,
The Court of Appeal of Turku,
The Prosecution Department of Eastern Finland,
The District Court of Savonlinna,
The Insurance Court.

PURVIEW OF THE MINISTRY OF THE INTERIOR

The majority of complaints concerning the purview of the Ministry of the Interior pertained to police activity. This is understandable considering the nature and extent of police activities. Complaints about other agencies under the ministry's purview are submitted only occasionally. Most of these relate to emergency response centres and the immigration administration's conduct in processing naturalisation and other applications.

During the year under review, the Office of the Chancellor of Justice received 286 complaints about police activity, an increase of more than 50% on the previous year (187 in 2007) and resolved 237 complaints (209 in 2007), which was slightly less than the number of complaints received.

The majority of the complaints received and resolved pertained to the performance of the police as a pre-trial investigation authority. Most commonly the complainant was an injured party in a criminal matter who was not satisfied with the decision made by the head of the investigation not to perform a pre-trial investigation or their decision to discontinue an investigation launched earlier without referring the matter to the prosecutor for the consideration of charges. Many injured parties also criticised delays in pre-trial investigations and the lack of thoroughness they perceived in the performance of pre-trial investigations.

In a few cases resolved during the year under review, the criticism about delays was found to be warranted, such as in the case concerning an investigation into an occupational safety offence, where the Chancellor of Justice issued a reprimand to the investigator and two detective inspectors acting as heads of the investigation in the case. According to the assessment of the Chancellor of Justice, the pre-trial investigation had not been carried out without undue delay, resulting in the expiry of the statute of limitations during the investigation. As in previous years, the attention of the head of investigation was called to the appropriate reasoning for the decision made on the pre-trial investigation in several cases.

In June, the Chancellor of Justice made an on-site inspection visit to the National Traffic Police. The Deputy Chancellor of Justice inspected the police departments in the jurisdictional districts of Joensuu, Lahti and Savonlinna and the Police Department of the State Provincial Office of Eastern Finland. During his visit to the Police Department of the Ministry of Internal Affairs, the Deputy Chancellor of Justice discussed with the National Police Commissioner about issues such as the internal supervision of legality and the development of the administration structure in the police.

Rulings

THE POLICE

Police procedure in arranging interpreting

A police patrol had used random outsiders as interpreters in the hearing of a person suspected of criminal offence during the abridged pre-trial investigation.

Under Section 37(1) of the Criminal Investigations Act, the investigating authorities must arrange the interpretation or, at the expense of the state, find an interpreter when the authority does not have use the language of the suspect as provided under the Language Act.

The Deputy Chancellor of Justice found that the conduct of the police patrol did not meet the conditions expected of appropriate interpretation arrangements under the aforementioned section.

The Deputy Chancellor of Justice held it a questionable practice that a person suspected of a criminal offence is interviewed through persons whose language and interpreting skills or impartiality have not been confirmed. Firstly, persons who are otherwise able to interpret the language used in everyday situations might not know legal terminology. Secondly, in such procedures suspicions of criminal offences may be disclosed to outsiders, which may cause damage to the suspect, particularly where the suspicions are later shown to be unfounded. Thirdly, unknown to the police, a randomly selected interpreter may have a position on the issue or a relationship with the parties which will affect the correctness of the interpretation.

The findings of the extensive report commissioned by the Police Department of the Ministry of the Interior indicate that in the main the police authorities follow the guidelines issued by the Ministry of the Interior on translation and interpreting, namely, they either use contracted interpreters or, to some extent, their own personnel with knowledge of languages. Therefore, this complaint seemed to refer to an individual case.

The Deputy Chancellor of Justice drew the attention of the Police Department of the Ministry of the Interior and the local police unit in question to the observance of Section 37(1) of the Criminal Investigations Act during pre-trial investigation. He also requested the police unit to inform him by the given date about the action it had taken in order to prevent similar incidents from happening in the future.

The police unit informed the Deputy Chancellor of Justice by the given date that it had communicated the resolution given by the Deputy Chancellor of Justice to its personnel. A training presentation had been drawn up about the arrangements for interpreting and discussed at a conference of the police district command. Supervisors were required to inform their subordinates about the content of the presentation. See also page 46 (OKV/668/1/2006).

Reasoning of pre-trial investigation decisions

The complainant had notified the police on three separate occasions about a matter concerning crimes against property. A pre-investigation decision had been made on the basis of each notice. The reasonings

for the decisions were deficient for several reasons. For example, they did not directly indicate whether the decision was issued about not commencing or discontinuing pre-trial investigations. According to the acquired reports, the complainant had been offered a verbal explanation about the reasonings.

The right to receive a reasoned decision is included in the guarantees of fair trial and good governance. The parties need to know why a pre-trial investigation will not be carried out or why it has been discontinued. A reasoned decision also enables external controllability of the solutions. They are also significant for the self-control of the person making the decision, as they will have to consider the legal sustainability of their decision while writing down the reasons for it.

The Deputy Chancellor of Justice stated that the pre-trial investigation decision must indicate unambiguously whether the investigation is not commenced or whether it is discontinued, and that the decision must include the legal grounds in addition to the factual grounds. The reasonings must be indicated in the written decision.

The Deputy Chancellor of Justice informed the policemen in question about his views on the reasoned decisions on pre-trial investigations. See also page 46 (OKV/610/1/2008).

RESCUE SERVICES

Neglect of chimney sweeping in the rescue service

According to the Rescue Act, the rescue service is responsible for arranging chimney sweeping services for its area. The complaint concerned a regional rescue service which purchased its chimney sweeping services from another service provider.

The purchase of chimney sweeping services from an external service provider indicates that the rescue service has transferred its statutory responsibilities to a service provider under a contract. The rescue service may not transfer the service provision and the responsibility for monitoring chimney sweeping to other bodies, and continues to remain responsible for these duties as laid down in the Rescue Act.

The complaint refers to a case where temporary solutions had been applied for a period of several years to carry out chimney sweeping, and the service contract for the city's chimney sweeping district had expired. At the time referred to in the complaint, the rescue service had defects pertaining to the provision of chimney sweeping services under the Rescue Act which appeared substantively significant for the property owners and holders.

The substitute to the Deputy Chancellor of Justice called the attention of the rescue service to the observance of the obligation to arrange chimney sweeping under the Rescue Act, particularly concerning building safety and the provision of services for the property owners and holders, who required statutory chimney safety services and were partly responsible for arranging chimney sweeping (OKV/506/1/2006).

IMMIGRATION ADMINISTRATION

Application for an EC residence permit

Transposition into the Finnish legislation of the council directive concerning the status of third-country nationals who are long-term residents had been delayed. The complainant wished to initiate the application process for an EC residence permit in May 2006 at their local police station, but their application was refused. The police station asked the Ministry of the Interior for guidance and was informed that the permit could not yet be applied for because, at the time, the Immigration Act did not contain any provisions concerning the matter. The complainant then submitted their application, with a covering note explaining that the local police had refused to receive their application, to the Register Office of the Ministry of the Interior. The application was transferred to the Directorate of Immigration (currently the Finnish Immigration Service), which returned it to the complainant with a notice informing the complainant that if, despite having a permanent residence permit, they wished to apply for a residence permit, the application had to be submitted to the local police.

The Deputy Chancellor of Justice stated that a situation where the applicant is demanding their case be heard and the application is not accepted, instead being returned without a verbal or written decision, cannot be considered a lawful official procedure which meets the requirements for good governance. It would have been possible to accept the application and make a decision to dismiss the case without prejudice. The authority is not required to assess whether or not the initiation of the application is appropriate. The obligations pertaining to the handling of the application, provision of a reasoned decision and provision of directions for appeal are designed to ensure the applicant's right to have their case heard by an independent court is observed. The legal obligation of the authority is to advise the applicant and, where necessary, explain the processing of the application.

Even though the police station had returned the application to the complainant without handling it, the Deputy Chancellor of Justice did not find the conduct of the police station reprehensible, as the case had room for interpretation and the situation was legally ambiguous. The acquired report indicated that the police had attempted to provide good customer service and, in particular, had followed the guidance issued by the Ministry of the Interior.

According to the resolution, the conduct of the Directorate of Immigration in returning the application documents to the complainant could not be considered to meet the requirements of good governance, when the covering note to the application had specifically mentioned that the local police had refused to accept the application. There were grounds to transfer the application to the police *ex officio*. The views presented in the resolution concerning the obligation to transfer the case and the significance of making an appealable administrative decision were submitted to the Immigration Service for information and to be observed.

The guidelines issued by the Ministry of the Interior to its administrative branch were insufficient following the delay in the enforcement of the directive. During the investigation into the complaint, a report submitted by the Directorate of Immigration was found missing from the statement by the Ministry of the Interior and could not be located even when it was specifically requested. Consequently, the attention of the ministry was called to the careful handling and archiving of any official documents deliv-

ered to the ministry. Furthermore, the attention of the ministry was called to diligence in responding to requests made by the Chancellor of Justice, because in responding to the request for a report, the ministry ignored a statement it had previously acquired from the European Law Unit of the Law Drafting Department of the Ministry of Justice concerning, among other issues, the direct legal effects of the directive in question. See also page 46 (OKV/451/1/2006).

Inspections carried out in the purview

The Police Department of the Ministry of the Interior,
The Police of the Lahti jurisdictional district,
The National Traffic Police,
The Police Department of the State Provincial Office of Eastern Finland,
The Police of the Savonlinna jurisdictional district.

PURVIEW OF THE MINISTRY OF DEFENCE

Rulings

MINISTRY

Assessment of the conduct relating to the competitive tendering process arranged by the Ministry of Defence

The complaint concerns the competitive tendering process initiated by the Ministry of Defence on 29 June 2006 and the following possible purchase for the purpose of outsourcing the specialist and maintenance service for the Ministry of Defence optronics systems and optical equipment. The tenderer had to agree not to draw up a separate service provision agreement for all constituent parts of the invitation to tender (Project Liisa), but to combine the service with an existing material service and maintenance arrangement with the army (Project Kuja) or, alternatively, join the project as a subcontractor. The projects were very similar and partly overlapped each other.

The Minister of Defence had merged the projects on 30 June 2006. In the future, any further reviews of the operational models and the related solutions in the Liisa Project were to be made as part of the Kuja Project. Before the merger, the Liisa Project was to be harmonised with the Kuja Project.

The complaint provides further grounds for the criticism concerning the decision issued by the Minister of Defence on 15 February 2007 to approve a tender issued by a competing company as the basis for the further negotiations and that the contract negotiations for the project were to be held with the competitor as part of the contract negotiations for Kuja. The complainant demands that the conduct of the minister/ministry be considered unlawful and on that basis the necessary sanctions be issued.

In his resolution, the Chancellor of Justice commented on the various points of the case as follows.

Assessment and comparison of tenders and the competitive dialogue

With regard to these aspects of the case, the resolution refers to the acquired report, according to which neither of the tenders met the requirements set in the invitation. Consequently, the question of which of the companies better fulfilled the requirements at the end of the competitive tendering process had no material significance. By the time the competitive dialogue was initiated under Section 3(1) of the Exemption Decree, both tenderers had provided additional information and specifications. It was deemed

surprising in the resolution that the parties disagreed about what was considered a negotiation. From the perspective of the complainant, it was essential that during the inspection they were offered an opportunity to clarify their tender, even though a specific invitation to negotiations was not presented. As the company was set up for the Kuja Project, it was considered possible in the resolution that the competitor could have exploited the commercial information related to the project and hence achieved a better position in making and supplementing the tender. However, the legal significance of this fact remained unclear.

Furthermore, the significance of the most financially advantageous tender as a basis for decision-making in the comparison of the tenders was pointed out in the resolution. Consequently, particular attention had to be paid during the tendering process to pricing and the total price. The Chancellor of Justice stated that he did not have any grounds to assess whether or not the tender of the competitive company was underpriced. Making an underpriced tender was possible, and was often based on a factor which could make it understandable from the perspective of the tenderer, such as a strategic partnership speculated by the competitor in the Kuja Project. If the target of the competitive tendering process was combined with the service provision agreement for the Kuja Project so that the hourly rates on which the total price was based would rise contrary to the invitation to tender, the situation could also be reviewed critically from the perspective that such a measure would, as it were, invalidate the competitive tendering process. If the aforementioned service provision agreement was signed with the competitor, this factor could be assessed.

Responding to the enquiry

The matter concerned the right of the party which participated in the competitive tendering to receive information about the tender submitted by the other party, such as unit prices and contract negotiations. The right of the tenderer to receive information is laid down in Section 11(2)(6) of the Act on the Openness of Government Activities, according to which the tenderer does not have the right of access to the business or professional secret of another tenderer, with the exception of the tender price.

The resolution refers to the response submitted by the ministry concerning the hourly rates for the project referred to in the enquiry (KUT009), which constituted rates quoted for the special jobs specially ordered for the Kuja Project rather than the hourly rates included in the total number of hours of the Kuja Project. Certain total prices were also quoted. It was not unclear that the enquiry had referred to the hourly rates for the Liisa Project as part of the Kuja Project. The response did not include these hourly rates. The Chancellor of Justice found that if the ministry did not disclose the rates because it did not know them or it had considered that the rates could not be disclosed, this should have been indicated in the response. The response had been drawn up without any careful consideration of the content of the enquiry or the purpose of the response and, consequently, failed to provide the enquirer with the information they required. In addition, the Chancellor of Justice found the period of two months it had taken to respond to the enquiry as a fairly long time, considering the nature of the enquiry and the workload required by the response.

Conclusions and measures

The Chancellor of Justice held that the report submitted about the matter did not give any cause to doubt that the competitive tendering process had not been organised in order to promote competition, even though the starting points and objectives of the recipients of the invitation to tender were different with regard to the outsourcing of the material services. Grounds to exclude the competitor from the tendering process and continue the negotiations only with the complainant, as indicated in the complaint, were not found. Based on the available report, it was not evident from the case that the tendering process had been in conflict with the provision laid down in Section 2(1) of the Exclusion Decree concerning impartial treatment of suppliers in procurement. Therefore, the Chancellor of Justice did not have any reason to instigate any further investigation into the decision issued by the Ministry of Defence on 15 February 2007.

However, the Chancellor of Justice pointed out that a comprehensive assessment of the case depends on how the outsourcing will be handled in the future. With regard to the legal and appropriate handling of the state finances, the assessment would require the kind of specialist competence that the National Audit Office can offer.

With regard to the response to the enquiry, the Chancellor of Justice called the complainant's attention to the opportunity to contact the Ministry of Defence for information and a written decision. The legality of a possible negative decision can be investigated by the Supreme Administrative Court following an appeal for the decision through the ordinary procedures.

The Chancellor of Justice informed the Ministry of Defence of his opinions (OKV/406/1/2007).

PURVIEW OF THE MINISTRY OF FINANCE

Rulings

MINISTRY

Dispute over the municipal division reform

Account of a response issued by Jaakko Jonkka,
Chancellor of Justice, on 17 June 2008 (OKV/7/21/2008)

According to the joint application submitted by City of Hämeenlinna and the municipalities of Hauho, Kalvola, Lammi, Renko and Tuulos and prepared by the Ministry of Finance, the division of municipalities would be changed so that the above municipalities would be abolished and a new City of Hämeenlinna established as of 1 January 2009. Simultaneously, the division of municipalities was proposed to be changed in order to create a land connection between the municipality of Kalvola and Hämeenlinna by joining a portion of the municipality of Hattula with Hämeenlinna. The proposed area is 27.60 square kilometres in size and has 32 residents.

The municipality of Hattula proposes a different reform of the division of municipalities. In the letter received by the Ministry of Finance on 2 May 2008, Hattula proposes the division be changed so that an area of 4.25 square kilometres be moved from Hattula to the municipality of Renko as of 1 January 2009, forming a continuous border for the new City of Hämeenlinna, which combines the six municipalities.

In a letter of 12 May 2008 addressed to the Office of the Chancellor of Justice, the municipal executive board of Hattula refers to the comment made in the newspapers by the Municipality Department of the Ministry of Finance, stating that additional proposals concerning mergers of parts of municipalities cannot be admitted due to lack of time. The municipal executive board of Hattula requested that the Office of the Chancellor of Justice investigate whether lack of time constitutes a legal and justified reason to ignore the proposal submitted by Hattula and whether the Government can carry out expedience consideration concerning the reform proposal or whether the Government only has the right to approve or reject the proposal submitted by the municipalities in the Hämeenlinna region.

The Ministry of Finance had submitted a report and the municipal executive board of Hattula a response concerning the matter.

Two documents were reviewed: the presentation agenda, prepared by the Ministry of Finance for the government plenary session of 19 June 2008, which includes the proposal to reform the division of municipalities in accordance with the proposal submitted by the municipalities in the Hämeenlinna region, and the presentation agenda for the plenary session of 3 July 2008, which amends the decision made on 19 June 2008.

Resolution

Processing of the proposals for municipal division reform

With regard to the processing and schedule of the proposals for municipal division reform, the Chancellor of Justice generally referred to the statements issued by the Ministry of Justice and stated that he did not have any reason to question the ministry's view, according to which the municipality of Hattula had submitted its proposal too late to allow appropriate preparation and processing prior to the government plenary session of 30 June 2008, which was the condition for the entry into force of the municipal merger on 1 January 2009.

Aspects to consider in applying the regulations

The resolution touched upon the key provisions concerning the municipal division reform, which can be deemed to include Sections 1, 2, 5, 7 and 11 of the Municipal Division Act and, as a supplementary provision, Section 6 of the Administrative Procedure Act.

With regard to Sections 1 and 2 of the Municipal Division Act, the resolution referred to the government proposal 135/1997 vp which is the basis for the Municipal Division Act. It was pointed out in the resolution that territorial integrity is seen to imply that a municipality should consist of one area which is as undivided as possible. Territorial integrity was considered an unquestionable condition for the reform of the municipal division, which is why the merging municipalities were required to have a shared border.

The resolution also included a review of the general preconditions for municipal division under Section 3 of the Municipal Division Act and the special conditions for reducing or enlarging the area of the municipality under Section 5. Following the objection to the proposed reform expressed by the municipality of Hattula, according to Section 5(2) of the Municipal Division Act, the reform could proceed only if especially cogent criteria were met, as laid down in Section 3 of the Municipal Division Act. It seems that approving changes to municipal division is subject to discretion even when the legal preconditions for the reform exist. However, the provisions do not present specific rules about the scope of discretion when approving the change. The preconditions for changing municipal divisions have been described somewhat broadly under Section 3 of the Municipal Division Act and it was considered possible (by the Ministry of the Interior, which was responsible for municipal divisions until 31 December 2007 and thereafter the Ministry of Finance) to meet the conditions, also subject to

the especially cogent criteria under Section 5(2), as the whole, namely from the perspective of a wider area than a single municipality.

The reasonings for the government proposal (HE 135/1997 vp) concerning Section 11 of the Municipal Division Act were limited and, as indicated in the section header, applied to the transfer of powers between the government plenary session and the ministry. As the municipal division proposal requires comments and statements, as laid down in Section 7 of the Municipal Division Act, it was considered (by the Ministry of Finance) that under Sections 6 and 7 of the Municipal Division Act, the government plenary session cannot change the proposal included in the presentation without starting the process from the beginning.

Under Section 6 of the Administrative Procedure Act concerning legal principles of administration, the acts of the authority shall be impartial and proportionate to their objective. It was stated in the resolution that the principle of proportionality must be taken into account in decision-making along with the legal conditions of the Municipal Division Act so that only a minimum area, required by the objectives of the municipal division, of the municipality of Hattula will be merged with the City of Hämeenlinna in the enforced merger.

Assessment

Following Hattula's withdrawal from the project, the municipalities of the Hämeenlinna regions had to consider how they could achieve an integral territory as part of the municipal merger. Acquiring the necessary land connection to join the parts of the new municipality was a special feature of this enforced amalgamation. The Chancellor of Justice found that it was significant for the principle of proportionality whether the municipality of Hattula would be able to achieve the objectives set for the reform under the statutory conditions with the help of a smaller transfer of area, as it had proposed.

For the aforementioned reasons, Hattula's proposal was not considered at the government plenary session; instead, the proposal submitted by the municipalities of the Hämeenlinna region was put forward. Taking into consideration the content of the report prepared by the ministry and the memorandum included in the presentation agenda, the Chancellor of Justice had no comments on the view that the discretion of the government plenary session was tied to the content of the presentation and the area to be transferred as described therein, while it considered the observance of the principle of proportionality in the municipal division.

Conclusions and measures

Deciding on the municipal division reform, the government plenary session uses its statutory discretionary powers. In the opinion of the Chancellor of Justice, the presentation included in the presentation agenda concerning the municipal division reform fell within the scope of the discretionary powers. According to the Chancellor of Justice, nothing was found in the matter which caused him to have legal grounds to make a statement against the reform proposal.

The government plenary session decided on the municipal division reform on 19 June 2008 on the basis of the proposal by the Ministry of Finance. The decision was amended on 3 July 2008 so that the

City of Hämeenlinna will not be abolished. Hauho and the other municipalities will be merged with the City of Hämeenlinna, while certain areas of the municipality of Hattula will be transferred to Hämeenlinna.

PROVINCIAL ADMINISTRATION

Providing a reasoned resolution for a complaint on administration

The complainant had received a response to their complaint addressed to the Department of Social Affairs and Health of the State Provincial Office. The resolution was fairly short, stating that the matter could not be explained to the complainant due to confidentiality provisions.

The content of the complaint had not been investigated because the complainant did not have the right of access to the information. In this resolution, the substitute to the Deputy Chancellor of Justice found that a decision not to investigate a complaint is also a decision taken by the authority under the Administrative Procedure Act and therefore requires sufficient grounds to be presented. The key issues for the decision not to investigate the complaint included, as a minimum, the reason why the complainant did not have the right of access to the information about another person's health. The duty of the State Provincial Office was, while referring to the Act on the Openness of Government Activities and the special legislation concerning the confidentiality of patient and health care data, to clarify its response with regard to the grounds on which the complainant did not have the right of access to the information and, consequently, why the State Provincial Office could not provide a resolution which referred to the content of the complaint.

The substitute to the Deputy Chancellor of Justice called the attention of the Social Affairs and Health Counsellor and the Provincial Medical Officer to providing reasoned decisions, as laid down in the Administrative Procedure Act (OKV/40/1/2007).

LOCAL REGISTER OFFICES

Communicating about a nomination to office

According to the complainant, the decision not to nominate them to office had been influenced by inappropriate considerations, such as the age of the complainant. In addition, the complainant had received information about the nomination only after having requested it.

The Deputy Chancellor of Justice stated that the principles of good governance must be followed when considering the nomination to office, recording the data and communicating about the nomination. As it must be possible to assess the legality of the nomination decision afterwards, during the preparations for the nomination the positive and negative aspects of the candidates must be recorded clearly, including if and how they have influenced the consideration. The authority must, on its own initiative and without delay, provide information to the candidates (OKV/325/1/2006).

CUSTOMS ADMINISTRATION

Conduct of customs officials in handling complaints

The complainant criticised the conduct of customs officials in the handling of the complaint about a vehicle tax decision.

The Deputy Chancellor of justice found that even though the processing time of the complaint submitted to the complainant's customs district did not significantly differ from the average processing period at the time, and there was no reason to suspect that the complaint had not been processed according to the generally applied principles, the long processing times discovered in the matter did not comply with the provision concerning the handling of cases without delay under Section 21(1) of the Constitution of Finland. The Deputy Chancellor of Justice called the attention of the National Board of Customs to his opinion on the importance of ensuring processing without undue delay and informed the board of his request issued to the Ministry of Finance for a statement on the measures the ministry has taken from 2004 onwards to ensure appropriate implementation of vehicle taxation which meet the provisions under the Constitution. See also page 48 (OKV/593/1/2005).

The complainant criticised the conduct of the customs officials in the handling of the complaint concerning vehicle taxation and, in particular, the related prohibition of transfer.

The Deputy Chancellor of Justice stated in his resolution that the complaint about the prohibition of transfer (at least in part) had been pending at the customs district for an unreasonably long time. As described in the decision, the matter included several aspects, which had to be assessed separately. Taking into consideration all the factors affecting the processing time, the customs officials were not found responsible for any inappropriate delays and there was no reason to issue a reprimand. However, the assessment of the conduct of Customs did not change the aforementioned conclusion: the total processing time of the prohibition of transfer in the customs district was regarded as unreasonably long for the complainant under the provisions of Section 21(1) of the Constitution. The Deputy Chancellor of Justice called the attention of the National Board of Customs to his opinion on the importance of ensuring processing without undue delay, as provided under the Constitution. See also page 48 (OKV/1152/1/2005).

Inspection in the purview

Kymenlaakso local register office.

PURVIEW OF THE MINISTRY OF EDUCATION

Rulings

EDUCATION ADMINISTRATION

Question about the interpretation of the Act on the Openness of Government Activities at a university

The reports on the laboratory assignments checked by the university assistants were returned for amending through the pigeonholes located in the department corridor. The documents were not considered as confidential under the Act on the Openness of Government Activities.

The substitute to the Deputy Chancellor of Justice informed the university of his opinion for further reference that, taking into consideration the objectives of the privacy protection under Section 24(1)(30) of the Act on the Openness of Government Activities, the assignments should be treated as test results, as provided in the aforementioned provision, and therefore as confidential documents. Returning the assignments so that they could be viewed by third parties was in conflict with Section 22 of the Act on the Openness of Government Activities (OKV/433/1/2006).

Inspection in the purview

Academy of Finland.

PURVIEW OF THE MINISTRY OF AGRICULTURE AND FORESTRY

The administrative sector of the Ministry of Agriculture and Forestry comprises agriculture and horticulture, rural development, forestry, veterinary services, control of foodstuffs of animal origin, fisheries, game and reindeer husbandry, use of water resources and land surveying.

In the purview of the Ministry of Agriculture and Forestry, most of the complaints decided in 2008 pertained to the conduct of the ministry, land survey offices and Metsähallitus (the forestry agency). The resolved complaints were mainly concerned with the conduct of authorities and officials in personal matters which the complainants had experienced. There was considerable variety in the issues subject to complaints. In addition to individual matters, some of the resolved complaints concerned matters such as the conduct of a ministry in preparing a proposal for a decree. The resolutions giving rise to measures concerned with matters such as access to documents under the Act on the Openness of Government Activities.

The Chancellor of Justice issued three statements at the request of the Ministry of Agriculture and Forestry in 2008.

Rulings

AGRICULTURE AND FORESTRY

Decision on access to a document

The complainant had requested that Metsähallitus, (Editor's Note: a state-owned enterprise running business activities while also fulfilling administrative duties) deliver copies of three individual documents related to a selection decision in a competitive tendering process as well as appeal directions. When renewing their request, the complainant requested that the matter be submitted to an authority for a decision and asked Metsähallitus to inform them of the new processing time and confirm that the message had been received.

Metsähallitus had failed to deliver the documents to the complainants and reply to the email message in which the complainant had submitted a new request. In addition, Metsähallitus had not issued an administrative decision under Section 14 of the Act on the Openness of Government Activities which could have been appealed at the Court of Appeal. Metsähallitus failed to make the decision even when

the matter was already being handled by the Office of the Chancellor of Justice. On the basis of the report submitted by Metsähallitus, it was aware of the correct procedure for handling requests of access to documents but informed the Office of the Chancellor of Justice that it would wait for the resolution of the Chancellor of Justice concerning the documents to which the complainant had the right of access without violating business and professional confidentiality.

The substitute to the Deputy Chancellor of Justice stated in his decision that, as the highest authority supervising legality, it is not the Chancellor of Justice's duty to make decisions about the disclosure of documents on behalf of another authority in a matter which falls within the scope of the other authority by law. The duty of the Metsähallitus official or employee who had been so designated by Metsähallitus or to whom the task otherwise belonged by virtue of their office or duties, as stipulated in Section 14(2) of the Act on the Openness of Government Activities, was to investigate the matter and grant the requested documents or, in case of refusal, provide an appealable decision under Section 14(2) of the Act on the Openness of Government Activities. As the matter had not been resolved, this duty remained pending. Since the complainant had requested three different documents, the duty of Metsähallitus was to decide on the access to each document and, in case of refusal for any of the documents, issue a reasoned decision on the refusal under the Administrative Procedure Act.

Furthermore, the substitute to the Deputy Chancellor of Justice stated that the matters concerning disclosure and granting of documents along with other matters stipulated in Section 14 of the Act on the Openness of Government Activities must be handled without delay. The legislator has prescribed a special provision to prevent delays in the processing time for disclosure and access to documents under the Act on the Openness of Government Activities. The provision imposes a more stringent duty on the authorities with regard to the processing of matters without delay than that which is otherwise expected in administrative matters. The special duty to deal with matters without delay is based on the notion that the person requesting access to a document or information by virtue of the Act on the Openness of Government Activities may need the information in order to secure and monitor their own rights and interests. Consequently, requests for statutory access to information or documents must be taken seriously and considered with the appropriate care, and officials must act in accordance with the obligatory legal provisions.

The attention of Metsähallitus was called to the provisions concerning the openness of government activities, the obligation to issue advice and electronic transactions with customers (OKV/465/1/2008).

FISHERIES, GAME AND REINDEER HUSBANDRY ETC.

Authority of the water bailiffs and a decision on the pre-trial investigation

The complainants had camped overnight in a tent by a lake. In the morning, a water bailiff had ordered the complainants to cease camping in the area. When requesting the complainants to leave the area by the lake, insofar as the water bailiff could be considered to act in the capacity of a water bailiff and a person handling a public administration duty, the Deputy Chancellor of Justice stated that the water bailiff had exceeded their authority and duties as laid down in the Fishing Act.

The Deputy Chancellor of Justice found the complaint as an indication of an urgent need to reform the legislation concerning fishing supervision. The ministry had submitted a report to the Chancellor of Justice stating that it had initiated measures to improve the control by authorities of the activities falling with the scope of fishing supervision.

A Detective Chief Superintendent had investigated the matter based on the investigation request submitted by the complainants on 9 November 2002 as a case of usurpation of official authority, where the complainants had been the injured party. The decision issued on 29 November 2002 stated that no offence had been committed in this case. In the reasonings of their decision, the Detective Chief Superintendent had stated, for example, that the water bailiff had a legal right to request the complainants to take their tent down under the municipal byelaws, and the act was not based on "self-redress". With regard to the complainants, it was stated in the reasonings that, with reference to the municipal byelaws in place at the time, the complainants had committed only a minor offence under the byelaws and it had not given cause for measures.

First of all, the decision issued by the Detective Chief Superintendent did not indicate the legal basis for the decision, which seems to have been Section 2 or Section 43(2) of the Criminal Investigations Act (449/1987). Neither did the decision clearly indicate the outcome, namely that the pre-trial investigation will not be commenced or it will be discontinued. The Deputy Chancellor of Justice stated that there are no special provisions for providing a reasoned decision in pre-trial investigations, but under Section 21(2) of the Constitution everyone has a right to receive a reasoned decision, which should also clearly indicate the outcome and legal grounds of the decision.

An investigation was initiated into the conduct of the water bailiff. Nevertheless, the decision issued by the Detective Chief Superintendent give the impression that it was in fact the actions of the complainants being investigated alongside or instead of the water bailiff, even though they had made the request to the police and were the injured party, and that the complainants had committed an offence under the byelaws.

Furthermore, the Deputy Chancellor of Justice stated that, taking into consideration the authority and duties of water bailiffs under the Fishing Act, the decision made by the Detective Chief Superintendent was erroneous also insofar as it considered the water bailiff to have a legal right to request the complainants to take down their tent under the municipal byelaws.

The Deputy Chancellor of Justice called the water bailiff's attention to the authority and limits thereof, as laid down in the Fishing Act. The Deputy Chancellor of Justice also requested that the Ministry of Agriculture and Forestry inform him by the given date about the measures it had taken in the matter referred to in the complaint. The Ministry of Agriculture and Forestry informed the Deputy Chancellor of Justice by the given date that it had launched a reform of the Fishing Act on 27 November 2008 as part of the Government Programme. The objective of the supervisory division of the project's steering group is to prepare the reform of the provisions on fishing supervision and sentences under the Fishing Act so that they will comply with the Constitution.

The Deputy Chancellor of Justice called the attention of the Detective Chief Superintendent to the legality and appropriateness of pre-trial investigation decisions and reasonings thereof (OKV/158/1/2006).

PURVIEW OF THE MINISTRY OF TRANSPORT AND COMMUNICATIONS

Rulings

MINISTRY

Processing of an application at the ministry

The complainant applied to the Ministry of Transport and Communications for the rights to practise as a road transport operator. According to the complainant, they did not receive a response to the application.

The Chancellor of Justice stated in his resolution that, as the ministry was not the competent authority in this matter, it should have initiated the measures laid down in Section 21 of the Administrative Procedure Act (434/2003) to transfer the application to the authority it considered competent to handle the matter or, if this was not possible, provide the complainant with advice and guidance about further procedures under Section 8 of the Administrative Procedures Act.

According to the acquired report, the ministry had for reasons that remained unclear followed the latter procedure. It is possible that the procedure was influenced by the fact that the application was considered inadequate insomuch that in any case it required supplementary information and did not have to be submitted by a certain date. It seemed that verbal directions, which could possibly be misunderstood, were only given when the complainant contacted the ministry by telephone to enquire about the matter. Measures were taken on 27 February 2007 to provide a written response to the enquiry after the ministry had been informed of the complaint.

Furthermore, the report indicated that outgoing letters are not recorded at the ministry. It was not indicated whether the application had been recorded as received in the first place. The response drawn up by the ministry did not have a reference number, only a reference to the date of the application. As the application, which was appropriate *per se*, concerned a benefit granted by law and therefore the rights of the individual, it would have been warranted to record it so that the person handling the case and the processing stages could be tracked. The complainant denies having received the response letter, but due to the recording practice followed by the ministry it has not been possible to reliably confirm whether or not the letter was sent.

The Chancellor of Justice stated in his resolution that receiving the rights to practise as a road transport operator relates to the fundamental rights under Sections 18 and 21 of the Constitution. The first of these fundamental rights relates to the right to work and the freedom to engage in commercial activ-

ity and the latter to the right to have one's case dealt with appropriately and without undue delay. The guarantees for the freedom to engage in commercial activity and good governance are laid down by acts, which at the time when the application was submitted included the Act on Road Haulage and its later replacement as well as the Administrative Procedure Act. Based on what was shown in the case, the Chancellor of Justice found that the ministry had failed to handle the case appropriately for all the constituent elements.

With regard to the document management system used in the ministry, the Chancellor of Justice found it necessary that the ministry improve its recording system or procedure to include outgoing letters (OKV/203/1/2007).

THE FINNISH MARITIME ADMINISTRATION

Processing of a notification of an accident concerning a leisure boat

According to a notification submitted to the Finnish Maritime Administration about a leisure boat accident, the seller of the boat had been the manufacturer. Later it appeared that the owner had purchased the boat from a private person.

The Chancellor of Justice stated that, even though following the notification the Finnish Maritime Administration should have confirmed the seller, the factual mistake in the processing had not affected the legal protection of the complainant and therefore did not give rise to any further investigation by the Chancellor of Justice. The Chancellor of Justice assessed the conduct of the Finnish Maritime Administration as based on the information it had at the time and informed the Finnish Maritime Administration about his views on the correct procedure in processing a notification about an accident (OKV/705/1/2005).

THE FINNISH RAIL ADMINISTRATION

Recording a consideration of a nomination for office

The complainant found that they had been discriminated against in the nomination for offices as the more prominent candidate. The comparison of candidates drawn up in the nomination memorandum was cursory and one-sided, for example concerning the description of cooperative skills as defined in the so-called resource assessment.

The Deputy Chancellor of Justice informed the nominating authority of his view for further reference, stating that even though the concise style of describing the grounds given for all candidates did not seem to favour a certain candidate as such, the fact that very few of the facts taken into consideration in the nomination were presented materially hindered the assessment of the candidates of equal merit afterwards. Expressions used in the comparison of merits must be chosen so that the actual assessment of the candidates' merits by the authority does not leave room for interpretation (OKV/1161/1/2006).

POSTAL ADMINISTRATION

Inviolability of the secrecy of correspondence

The letter of complaint criticised the conduct of the Post Office when mail delivery was suspended.

The mailboxes in the area had been reorganised. As the mailbox belonging to the complainant had not been moved to the new location by the given date, mail delivery was suspended. Mail addressed to the complainant had been stored at two different sites, and part of the mail was never delivered to them. The complainant received their mail only having contacted the Post Office management.

Storing consignments at several locations may endanger the secrecy of correspondence. If the Post Office suspends the mail delivery to the customer, it must ensure that all the mail items collected on behalf of the customer are delivered (OKV/796/1/07).

THE FINNISH BROADCASTING COMPANY

Conduct of Yleisradio Ltd in broadcasting an animated film

The complainant criticised Yleisradio Ltd (YLE, the Finnish Broadcasting Company) for broadcasting an animated film, "Uralin perhonen", on the TV 1 channel. The complainant found that the film insulted and dishonoured the reputation and honour of former President of Finland, Carl Gustav Emil Mannerheim. The complainant requested the Chancellor of Justice to investigate the lawfulness of YLE in broadcasting the film.

The substitute to the Deputy Chancellor of Justice stated in his resolution that Section 7 of the Act on Yleisradio Oy provides a list of duties stipulated in the act under the public service obligation of YLE which must be taken into consideration in broadcasting. According to the substitute to the Deputy Chancellor of Justice, under the aforementioned section the assessment concerns the question whether a broadcasting company operating under a government licence and broadcasting legislation acted according to, and within the limits of, the aforementioned provision with regard to the variety and content of programming. In his resolution, the substitute to the Deputy Chancellor of Justice found that the content of individual programmes or series of the broadcasting company may not correspond to the beliefs, opinions or preferences of a group of listeners or viewers about what constitutes good programming. Nevertheless, programmes of this kind can be made and broadcast under Section 7 of the Act on Yleisradio Oy because it is in the nature of electronic media to allow the service users to choose what kind of programmes they wish to receive. As there was no reason to suspect any unlawful conduct or neglect of duty, the complaint did not give rise to measures by the substitute to the Deputy Chancellor of Justice (OKV/377/1/2008).

THE FINNISH COMMUNICATIONS REGULATORY AUTHORITY

Processing of a demand for rectification as customer feedback

Having received an invoice for the frequency payment of a VHF radiophone, the complainant had sent to the Finnish Communications Regulatory Authority an email message the following day, informing the authority that they considered the interpretation of how the payment was determined by the authority as erroneous and in conflict with a decree of the Ministry of Transport and Communications. Some six months later, the complainant enquired about the processing of the matter by email and repeated their view that the payment had been incorrectly determined. Over eight months after the first message was sent by the complainant, the Communications Regulatory Authority sent them a letter which took the form of a response to the enquiry and explained how the radio licences were granted and the payments determined. The explanation provided by the Communications Regulatory Authority did not indicate why the response had been delayed.

The substitute to the Deputy Chancellor of Justice held that the Communications Regulatory Authority should have understood from the complainant's message that they considered the grounds for the invoice to be incorrect and had contacted the authority in order to demand a rectification of the payment. The authority should have handled the message as a demand for rectification and provided the complainant with an appealable decision. As the rectification matter had not yet been resolved in the light of the acquired report and appealing the case through statutory appeal procedures was still possible, the complaint did not give rise to any measures other than the substitute to the Deputy Chancellor of Justice informing the Finnish Communications Regulatory Authority of his resolution and his views about the nature of the complainant's message (OKV/854/1/2007).

PURVIEW OF THE MINISTRY OF EMPLOYMENT AND THE ECONOMY

Rulings

THE FINNISH COMPETITION AUTHORITY

Document processing method

The authority had informed the complainant that the documents the complainant had delivered to the authority had been misplaced while being in care of the authority. The complainant had requested the Chancellor of Justice to investigate whether the document processing methods used by the authority were appropriate.

The Deputy Chancellor of Justice informed the parties of his view that documents delivered to the authority must be processed in accordance with good governance and information management methods to prevent any document losses. However, the matter did not give rise to any further measures by the Deputy Chancellor of Justice because, among other things, the documents had in reality not been lost. The authority had initiated an investigation into the matter. No other problems with document handling had been evident in the authority and the misplacement of documents had not caused the complainant a loss of right (OKV/91/1/2007).

T&E CENTRES

Establishing a fixed-term office

Authorised by the Ministry of Trade and Industry, a fixed-term office of a development manager had been established at a T&E Centre instead of recruiting a fixed-term head of department to handle the duties of the dismissed head of department. The procedure of the T&E Centre according to which the fixed-term office of the development manager was not advertised again after the advertisement published on 29 November 1998 was not in breach of the law or any other regulation. The authority nominating the fixed-term head of department would have been the ministry. The authority nominating the fixed-term development manager was the director of the T&E Centre. In the opinion of the Deputy Chancellor of Justice, from an outside perspective the procedure seemed to indicate that the guarantees for legal protection with regard to the nominating procedure had been weakened for the

nominating authority. In addition, the decision to nominate A on 11 January 2006 for a fixed-term office of development manager for the period 1 January 2007–31 December 2009 in a situation where the Supreme Administrative Court was expected to resolve the matter of the dismissed head of department during 2006 lent itself to criticism from the perspective of transparent administration. The Deputy Chancellor of Justice informed the T&E Centre and the Ministry of Employment and the Economy of his views (OKV/412/1/2006).

THE NATIONAL BOARD OF PATENTS AND REGISTRATION

Requirements for good governance in responding to enquiries and in inter-authority communications

According to the complaint, a company had contacted the National Board of Patents and Registration by email to enquire whether the annual accounts delivered by the company had arrived but had not received a response.

In addition, it was discovered that, having received the annual accounts, the National Board of Patents and Registration had discontinued its supervisory measures in the matter but had not informed the bailiff about this. Following this dereliction of duty, the bailiff informed the managing director of the company about the decision by the National Board of Patents and Registration to impose a conditional fine for delivering the documents, even though the company had already submitted the annual account to the board.

The Deputy Chancellor of Justice informed the parties of his views about good governance, which required the authorities to respond to customer enquiries and maintain inter-authority communications in order to attend to the official duties appropriately under Sections 7, 8 and 10 of the Administrative Procedure Act. With regard to cooperation between authorities, the Deputy Chancellor of Justice pointed out that the situation was in conflict with good governance, particularly when the lack of inter-authority communications caused damage, inconvenience or uncertainty to the customer. However, as the lack of response to the customer's enquiries was shown to have been caused by misunderstandings and because the authority had taken measures to prevent similar situations in the future, the matter did not give rise to any further measures by the Deputy Chancellor of Justice (OKV/25/1/2007).

EMPLOYMENT SERVICES

Giving advice as part of good governance

The complainant had contacted the employment office to renew her husband's jobseeker application. The customer service employee had first asked the complainant to deliver a letter of attorney to the office. The letter of attorney was delivered, but it was then discovered that renewing the jobseeker appli-

cation was not possible through a letter of attorney. The complainant felt she had delivered the letter of attorney to no effect since it was of no use.

The employment office required the complainant's husband to renew his jobseeker application in person. The complainant was required to deliver a letter of attorney to allow the customer service employee to discuss the husband's business with the complainant and disclose register data about him. According to the Deputy Chancellor of Justice, the employment office had not acted erroneously in requesting this.

According to the provisions of the Administrative Procedure Act, the service principle and the obligation to provide advice must be followed in administration. Mistakes can be avoided and rectified by providing advice to customers. The Deputy Chancellor of Justice stated that, in the matter described here and in similar matters, it would be appropriate and in accordance with good governance to immediately inform the employment office customers at a general level that even though the letter of attorney is required to disclose data, the power of attorney is usually not sufficient for conducting any transactions (OKV/535/1/2007).

PURVIEW OF THE MINISTRY OF SOCIAL AFFAIRS AND HEALTH

The section on the purview of the Ministry of Social Affairs and Health contains an account of opinions issued to the ministry and matters investigated on the chancellor's own initiative where these are directly related to the conduct of the ministry, an authority within its administrative branch or otherwise within the powers of the ministry. The section also covers resolutions issued on social insurance. Resolutions pertaining to social and health care services are covered under the sections on municipal administration and social services and health care administration. During the year under review, the Chancellor of Justice issued the Ministry of Social Affairs and Health his opinion on implementing the Act on Specialised Medical Care in the Province of Åland.

The Chancellor of Justice issued the Ministry of Social Affairs and Health a statement concerning the membership of the ministry's officials in the Social Security Appeal Board. The ministry had requested that the Chancellor of Justice comment on whether the officials of the Ministry of Social Affairs and Health should cease to be nominated to the Social Security Appeal Board.

Following the on-site inspection of the Social Security Appeal Board, the Deputy Chancellor of Justice initiated an investigation into the performance of the Board, with special focus on the processing times, and into the opportunities to develop the Board's performance so as to ensure the legal protection of complainants. The report on the on-site inspection by the Deputy Chancellor of Justice and the decision on a self-initiated investigation can be found on page 69.

Several complainants criticised the conduct of the Social Security Appeal Board, in particular the long processing times. The Deputy Chancellor of Justice found in two of the resolutions that the processing of complaints in the Social Security Appeal Board had been delayed. The resolution concerning the Social Security Appeal Board also drew attention to the fact that the delivery time of documents required good governance.

The other resolutions concerning social insurance criticised the delay in processing the applications for labour market support and the general housing allowance in the Social Insurance Institution of Finland and the delay in processing a claim based on motor insurance by an insurance company. Attention was also called to accurate use of language by a customer advisor of the Social Insurance Institution of Finland. The other resolutions in the purview of the ministry concerned the reasoning of a resolution in a complaint about administration at the Department of Social Affairs and Health of a State Provincial Office and a register entry a State Provincial Office had made about confidentiality.

The majority of complaints lodged regarding the purview of the Ministry of Social Affairs and Health are related to benefits granted under social insurance, including disability pension, sickness allowance and rehabilitation as well as benefits under the Employment Accidents Insurance Act and

National Pensions Act. Complaints are often about the content of a decision about a benefit, with the complainant finding that they were not granted a benefit that they are entitled to. The Chancellor of Justice cannot usually interfere with decisions made by authorities within their jurisdiction and discretion. Instead, the complainant is in such cases advised to employ the channels of appeal available. In many cases the complainant has also already appealed against a benefit decision. The Chancellor of Justice has established a policy whereby he will not investigate a matter on which the appeal process has been launched but not completed.

Rulings

SOCIAL SERVICES

Delivery time of a document required by good governance

The counsel of the complainant had received the extract of the minutes related to the resolved complaint over five months after they had requested to have it delivered. The reason for this delay could not be fully explained.

The Deputy Chancellor of Justice informed the authority of his opinion that the delivery time could not be considered as good governance guaranteed by Section 21(2) of the Constitution or as appropriate service provision by authorities as laid down in Section 7 of the Administrative Procedure Act. See also page 48 (OKV/475/1/2008).

SOCIAL INSURANCE

Processing complaints without delay

The processing of a complaint concerning the national pension of the complainant had taken over 19 months at the Social Security Appeal Board. The processing time had clearly exceeded the average processing period. The Deputy Chancellor of Justice found that the processing of the complaint had been delayed.

During his on-site inspection at the Social Security Appeal Board on 13 February 2008, the Deputy Chancellor of Justice found that the processing of complaints by the Board was backlogged. In 2007, the average processing time for complaints was in excess of 13 months and continuing to grow. Based on his visit, the Deputy Chancellor of Justice stated that said processing time was not in any way acceptable with regard to guaranteeing legal protection and the livelihoods of citizens.

The Deputy Chancellor of Justice requested that the Ministry of Social Affairs and Health provide a report on the measures taken in order to ensure the right to have one's case dealt with appropriately

and without delay by the Social Security Appeal Board. The Ministry of Social Affairs and Health submitted the report in April 2008. In order to monitor the situation, the Deputy Chancellor of Justice has requested that a new statement be delivered by the end of April 2009 (OKV/72/1/2007).

Inspections carried out in the purview

The Social Security Appeal Board,
The Finnish Patient Insurance Centre,
The Treatment Injury Board.

PURVIEW OF THE MINISTRY OF THE ENVIRONMENT

Most complaints pertaining to the Ministry of the Environment's purview were to do with the conduct of more than one environmental authority in a single case. Often a complainant would criticise the conduct of both the Ministry of the Environment and a Regional Environment Centre. Some complaints concerned the handling of municipal environmental duties along with the actions of the aforementioned authorities. During the year under review, a few complaints were resolved pertaining to Environmental Permit Authorities, which did not give rise to further action.

Complaints pertaining solely or mainly to the conduct of the ministry concerned issues such as the guidance given by the Ministry of the Environment on compensating for material damage arising from the conservation of the Siberian flying squirrel, the handling of the aid application submitted by an association promoting the conservation of the lesser white-fronted goose, the boundaries of a city park and the approval of a use and maintenance plan. The complaints pertaining to the conduct of the Regional Environment Centres concerned various procedural questions, such as responding to the sales offers for establishing a nature reserve.

Rulings

MINISTRY

Implementing the conservation of the lesser white-fronted goose

In its complaint, an association established to promote the conservation of the lesser white-fronted goose pointed out the difficulties it has encountered when attempting to receive assistance and funding from, or with the help of, the Ministry of the Environment. The association also criticised the attitude of the ministry towards the offer of partnership and the procedure in the handling of a request for a statement.

Having obtained the report considered necessary in the matter, the Chancellor of Justice dealt with the following issues in particular in his response.

With regard to the grant applications in 1999 and 2000, the Chancellor of Justice found that the Ministry of the Environment had handled the applications, even though no further information about the time of the decision was available. Provisions on discretionary government transfers were laid down in the government decision on the general provisions for discretionary government transfers. This was re-

pealed by the Act on Discretionary Government Transfers, which entered into force on 1 September 2001. Section 38 of the act, concerning implementation and transitional provisions, lays down conditions for situations where the older provisions (of the government decision) have to be applied. The government decision and the act are general in nature and will apply unless otherwise provided. They include provisions concerning the content of the resolution pertaining to the grant application. The Act on Discretionary Government Transfers lays down provisions on appeal. Section 28 of the act refers to a possibility that decisions issued in accordance with the government decisions can also be appealed. According to both regulations, the granting of the discretionary transfer required that an appropriation was allocated in the budget for the grant. No subjective right to receive a discretionary grant has been indicated.

The resolution further referred to Section 21 of the Constitution, which entered into force on 1 March 2000, which corresponds to Section 16 of the previous Constitution Act. This section which was added to the previous Constitution Act at the time of the reform of fundamental rights, which entered into force on 1 August 1995. According to these provisions, everyone has the right to have their case dealt with appropriately by a legally competent authority as well as to have a decision pertaining to their rights or obligations reviewed by a court of law or other independent organ for the administration of justice. The right to receive a reasoned decision and the right to appeal, as well other guarantees of fair trial, are secured by an act. The acts referred to in the provisions include the general acts governing administrative procedures, the previous Administrative Procedure Act and the new Administrative Procedure Act of 1 January 2004.

In his resolution, the Chancellor of Justice considered that a written decision should have been issued when deciding on the grant applications, irrespective of which regulation on discretionary government transfers was applied, and the complainant should have been informed of the decision. The fact that no decision, not even a notification, was issued on the resolution, was in breach of the regulations. Taking into consideration that the ministry had informed the Chancellor of Justice about having changed its procedure, the Chancellor of Justice was of the opinion that the matter did not give rise to measures other than informing the ministry of his views.

With regard to the LifeLuonto grant application in 2000, the Chancellor of Justice stated that the application did not stand a practical chance of success because it was not recommended by the Ministry of the Environment. The Chancellor of Justice first considered the meaning of recommendation. The ministry had issued a notice stating that it had not placed the application in order of superiority. Without further investigation, it could easily have been understood that the ministry had recommended all applications, since generally only recommended applications can be placed in order of superiority. Since applications without recommendation did not stand a chance of being approved by the European Commission, they could not really have been placed in order of importance with the recommended applications. The most unambiguous solution would have been to mention that some applications were not recommended and that the recommended applications had not been placed in order of superiority. In the view of the Chancellor of Justice, the notice had been drawn up without any further thought on the significance of recommendation. Therefore, the Chancellor of Justice informed the ministry of his views and called the attention of the ministry to the accuracy required in drawing up notices. With regard to the LifeLuonto grant applications of 2004 and 2005, the Chancellor of Justice referred to the aforementioned statements concerning the applications having not been recommended, the conclusions and the procedures.

With regard to the presentation by three specialists concerning the possible cooperation of the Ministry of the Environment with both the lesser white-fronted goose working group of WWF Finland and the association, the Chancellor of Justice stated that in its response, the ministry had refused to cooperate with the association and continued its partnership with the lesser white-fronted goose working group. The Chancellor of Justice noted that, at least at the time, the specialists in question did not represent the association. The Chancellor of Justice did not oppose the decision to send the response to WWF Finland for information. Since the response to the partnership offer concerned both the association and the lesser white-fronted goose working group, it would have been impartial to also send the response to the association for information. The Chancellor of Justice informed the ministry of his opinion on the matter.

With regard to the procedure of the Ministry of the Environment concerning the application for catching lesser white-fronted geese under Section 48(2) of the Nature Conservation Act, the Chancellor of Justice pointed out that the Uusimaa Environment Centre had requested that the Ministry of the Environment issue an opinion on the matter in August 2006. It was known that the Environment Centre of South-western Finland had granted permission in May 2006 to catch lesser white-fronted geese for comparative research, and the decision had been appealed at the Administrative Court in Turku. According to the Chancellor of Justice, a complaint handled by the court did not prevent the ministry from issuing an opinion. The reason stated by the ministry, namely that it had decided to wait and see how the legality of a decision issued for another application with the same objective would be resolved under the administrative jurisdiction, was acceptable *per se*. However, even a further appeal to the Supreme Administrative Court could not have prevented a statement to be issued. Following a judgement issued by the Administrative Court in March 2007, the statement of June 2007 simply refers to the further appeal to the Supreme Administrative Court and does not contain the requested opinion. Furthermore, the reason given by the ministry for its conduct had not been realised. The Chancellor of Justice was of the opinion that the ministry could have issued an opinion on the matter with the reservation that a further appeal had been lodged. Therefore, different conduct could have been possible when issuing the statement. The Chancellor of Justice informed the ministry of his opinion that the resolution for an application had been unnecessarily delayed in the Regional Environment Centre while the ministry had been handling the request for opinion (OKV/1206/1/2006).

REGIONAL ENVIRONMENT CENTRES

Responding to a sales offer

The substitute to the Deputy Chancellor of Justice found that, taking into consideration Section 8 of the Administrative Procedure Act, it would have been appropriate conduct by the environment centre to respond to the sales offers made by the complainant with regard to establishing a nature reserve. As a minimum, the environment centre should have informed the complainant about the receipt of the offers (OKV/711/1/2006).



6

**SUPERVISION OF LEGALITY IN
MUNICIPAL ADMINISTRATION
AND OTHER SELF-GOVERNMENT**

GENERAL

Complaints pertaining to general administration in the context of the supervision of legality of municipal administration and other self-government which resulted in action being taken were to do with issues such as the conduct of a city council in enclosing the appeal directions to the minutes of the city council, the handling of a complaint about administration at the municipal executive board, the transfer duty under the administration legislation, the notification about the receipt of an electronic document and the conduct of a temporary committee.

The resolutions for complaints pertaining to the education administration called attention to the conduct of a company operating a college, responding to customer contact, problems with basic education at an international school, the lack of appeal directions in a decision issued by an education committee and the conduct of a university of applied sciences in appointing a candidate for a fixed-term office.

Complaints pertaining to social welfare have concerned the social services, benefit and the related procedures. The resolutions have been concerned with responding to an enquiry addressed to the basic security committee, arranging emergency accommodation for a family with children, the conduct of a child welfare institution in limiting communications and in other matters, the legality of the instructions for social assistance with regard to tax rebates and the security of a statutory transport service under the Disability Services Act. The resolutions for health care have related to patient examination and care at the central hospital neurology clinic and the handling of a request to access a document at a health care centre.

The resolutions for complaints concerning municipal environmental management drew attention to the conduct of an environmental committee in supervising the provisions of environmental and soil permit regulations, neglecting the decision-making and hearing of the parties and not responding to a letter, neglecting to handle a demand for rectification and a delay in the processing at the municipal environmental committee.

The following inspections were carried out in the purview of municipal administration: City of Kouvolaa Department of Social Services and Health Care, City of Vantaa Department of Social Services and Health Care, City of Joensuu Department of Social Services and Health Care, City of Kerava Departments of Building Inspection and City Development, and City of Joensuu Technical Department.

On the basis of the inspections made of the social services and health care departments, the Deputy Chancellor of Justice called attention to following the quality standards for school health care in implementing school health care.

Municipal administration

GENERAL ADMINISTRATION

Handling of a complaint about administration at a municipal executive board

The complainant had criticised in their statement, which was considered to fall within the scope of complaints about administration, the conduct of the chairman of the municipal executive board during a telephone conversation between the complainant and the chairman. According to the agenda, the statement had been handled at the meeting of the municipal executive board as a notification. The chairman had been present at the handling and expressed their own views on the content of the telephone conversation. The matter had been presented as "decision notified and agreed" which the municipal executive council had approved. The matter had been discussed off the record and the municipal executive board had advised the chairman to respond to the complainant. The chairman had sent the complainant a signed letter.

According to the disqualification provisions of the Administrative Procedure Act, the person subject to a complaint about administration may not participate in the handling of the complaint or be present at the handling. In the opinion of the Deputy Chancellor of Justice, the chairman had been disqualified under Section 28(1)(7) of the Administrative Procedure Act from being present at the handling of the complaint. The fact that the person subject to the complaint had responded to the complaint themselves was in conflict with good governance. The Deputy Chancellor of Justice called the attention of the chairman and members of the municipal executive board to the observance of the provisions of the Administrative Procedure Act and the principle of good governance in handling complaints about administration (OKV/715/1/2006).

EDUCATION ADMINISTRATION

Conduct of a company operating a college

The complainant had applied for a pilot training organised by a vocational special education institution but was not selected to participate in the entrance exam. According to the verbal information received by the complainant, the reason for this was a poor employment forecast on account of the applicant's age (50).

The Chancellor of Justice informed the limited company organising the training of the following: 1) Where the reason for disqualification from training is the applicant's age, as it was in this case, this criterion should be indicated in the application. 2) After the complainant had enquired about the qualification criteria, they should have been informed about the opportunity to receive an appealable decision. The Chancellor of Justice also noted that the company organising the training was respon-

sible for ensuring that the State Provincial Office would receive the information about the training, which it required for the supervision of legality and which was to be forwarded to the Chancellor of Justice (OKV/1133/1/2005).

SOCIAL SERVICES AND HEALTH CARE ADMINISTRATION

Arranging emergency accommodation for a family with children

The complainant and their three underage children and one child aged over 18 had lost their accommodation. The complainant and the children were living in temporary accommodation in an outbuilding with only cold running water. The social security department had attempted to arrange accommodation for the family without success. The municipality had support housing for emergency accommodation but this was not available at the time. The municipality also had rented accommodation in a municipal housing corporation but the complainant was not permitted to rent council accommodation because they had previously not met their rental payments in full.

The resolution issued by the Deputy Chancellor of Justice referred to the provisions of the Child Welfare Act and the Social Welfare Act concerning housing arrangements in certain situations. According to the resolution, the situation of the complainant and their children was such that, based on the aforementioned provisions, the municipality had to arrange accommodation for them without delay. The basic security committee must ensure that these binding obligations laid down in the Child Welfare Act and the Social Welfare Act are followed. In cases such as this, the decision not to arrange accommodation cannot be based on insolvency, such as unpaid rent, or lack of means. Furthermore, it was stated in the resolution that the municipality had to assess whether the arrangements in place for emergency accommodation were sufficient under the Act on the Development of Housing Conditions (OKV/143/1/2007).

ENVIRONMENTAL ADMINISTRATION

Neglect of decision-making and dismissal of the hearing of the parties

The complainants had submitted an application to the city environmental committee to request that the authorities take measures to change the natural water flow on their neighbouring property to prevent damage to their own property. They later renewed their application and addressed it to the environmental and building committee. They had also submitted a demand for rectification to the environmental and building committee concerning the administrative procedures of the inspection engineer. A city official visited the neighbouring property to review it but failed to inform the complainants about this. The applications and the demand for rectification were not handled by the city officials and the complainants did not receive a decision on the matter.

In his resolution, the Deputy Chancellor of Justice considered that the city officials should have issued a separate decision on account of the applications submitted by the complainants enclosing appeal

directions or a notification about an unappealable measure, as laid down in the Administrative Procedure Act. During the review of the property, the complainants should have been considered as parties to the case and the inspection engineer should have timed the inspection so that the complainants had been given an opportunity to participate in the review.

The Deputy Chancellor of Justice informed the city's building inspection officials and the inspection engineer of his opinion, according to which their conduct in dismissing the decision-making, neglecting to issue directions of appeal and hearing the parties did not meet the requirements for official duties under the relevant legislative provisions (OKV/374/1/2006).

Inspections

City of Vantaa Department of Social Services and Health Care,
 City of Kerava departments of Building Inspection and City Development,
 City of Joensuu Department of Social Services and Health Care,
 City of Joensuu Technical Department,
 City of Kouvolaa Department of Social Services and Health Care.

Church administration

Conduct of the authorities in a matter concerning the use of the church building

The complainant had asked permission to arrange their mother's funeral service in the church building shared by two parishes. The mother had not been a member of either of the parishes. The complainant's verbal request was refused, with reference to the needs of the parishioners. The complainant contacted the church by email to receive the policy definition on which the decision was based and appeal directions. The vicars of both parishes responded to the request by explaining the current practice. The complainant had to arrange their mother's funeral service elsewhere. The Finnish- and Swedish-speaking diocesan chapters, which investigated the matter following a complaint, did not see any cause for reprimand in the conduct of the church officials.

The Deputy Chancellor of Justice stated that the vicar and the parish council jointly decide on the use of the church under the Church Rules of Procedure and neither of the parish councils had made policy definitions on the use of the church.

The Deputy Chancellor of Justice reprimanded three parish office holders for erroneous conduct: 1) Two office holders had neglected their duty to provide advice under the Administrative Procedure Act and had acted in breach of the principles of proportionality and service when they had not informed the complainant about the appropriate procedure. 2) By neglecting to forward the complainant's email message to either of the parish councils for making a decision about the use of the church and by responding to the message without referring in any way to said decision-making process, both vicars prevented

the decision-making process from taking place in an administrative matter initiated by the complainant. In both cases the officials failed to observe the complainant's fundamental right to good governance under Section 21 of the Constitution.

The Deputy Chancellor of Justice issued a serious reprimand to both diocesan chapters for erroneous conduct. By completely ignoring the aforementioned mistakes made by the parish office holders in their complaint resolution, the diocesan chapters neglected their supervisory duty under the Church Rules of Procedure. In handling complaints about administration, they also neglected the duty to observe the provision of the Administrative Procedure Act, according to which the principles of good governance must be followed and the rights to the persons involved must be ensured. See also page 51 (OKV/69/1/2006).

Autonomous government of Åland

Communicating confidential information and personal data on the internet

In the context of publishing a list of decisions concerning pensions, information which was confidential in accordance with the Provincial Act on the Publicity of Official Documents was communicated on the website of the provincial government. In the opinion of the Deputy Chancellor of Justice, as a minimum, the information concerning disability pension could be considered to relate to health care and contain information about the private circumstances of the person which could be harmful to the person, cause suffering or which the person or their relatives could find disagreeable. Furthermore, communicating the names of the persons in the context of the pension decisions on the internet was in breach of good registration procedure as laid down in the Provincial Act on the Publicity of Official Documents and violated the privacy of the persons in question (OKV/462/1/2006).



7

**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

Public legal aid is primarily intended for persons of limited financial means, for whom the aid is free or partially free.

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. Those public legal aid counsels who belongs to the Finnish Bar Association are subject to supervision by the Finnish Bar Association and the Chancellor of Justice. As central government civil servants public legal aid counsels come as well within the overall supervision of legality by the Chancellor of Justice under the leading.

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. 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.

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.

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

7 SUPERVISION OF THE BAR

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.



8

**STATISTICS ON THE ACTIVITIES
OF THE OFFICE OF THE
CHANCELLOR OF JUSTICE**

CASE-LOAD IN 2008**Cases pending at 1 January 2008**

filed in 2005	24
filed in 2006	210
filed in 2007	603
Total.....	837

Complaints filed in 2008	1737
Other supervision matters filed in 2008 ¹	1624
Administrative matters filed in 2008	41
Total.....	2402

Matters resolved in full in 2008	2164
Transferred to the next year	
matters instigated in 2005	2
matters instigated in 2006	24
matters instigated in 2007	234
matters instigated in 2008	816
Total.....	1076

SUPERVISION OF THE SESSIONS OF THE GOVERNMENT**Sessions**

1) Governmental plenary session	67
2) Presidential session	41

Matters dealt with

1) Governmental plenary session	1605
2) Presidential session	765

Minutes reviewed

1) Governmental plenary session	73
2) Presidential session	46

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

COMPLAINTS

Complaints filed in 2008 1737

The complaints pertained to the following authorities or subject matters

1) Government or Ministry	193
2) court of general jurisdiction, criminal case	82
3) court of general jurisdiction, other type of case	171
4) administrative court	51
5) special court	31
6) prosecution authority	127
7) police	286
8) enforcement authority	48
9) prison authority	11
10) other judicial authority	24
11) foreign service authority	1
12) provincial and other internal affairs authority	66
13) defence forces	2
14) tax authority	62
15) other authority in State finances	18
16) education authority	29
17) agriculture and forestry authority	23
18) transport and communication authority	19
19) trade and industry authority	18
20) social welfare	101
21) social insurance	61
22) occupational safety and other cases of Ministry of Social Affairs and Health administrative sector	23
23) health care	88
24) labour authority	32
25) environmental authority	31
26) municipal authority	150
27) church authority	4
28) other authority, other person performing public duty	103
29) Member of the Bar, public legal aid attorney	121
30) civil law matter	41
31) miscellaneous	95
 Total number of subjects of complaints ² authorities or matters	 2112

² Some complaints pertain to more than one authority or matter

Complaints resolved in 2008 1496

The admissible complaints pertained to the following authorities or subject matters

1) Government or Ministry	166
2) court of general jurisdiction, criminal case	85
3) court of general jurisdiction, other type of case	152
4) administrative court	43
5) special court	21
6) prosecution authority	107
7) police	237
8) enforcement authority	48
9) prison authority	12
10) other judicial authority	14
11) foreign service	2
12) provincial or other internal affairs authority	46
13) defence forces	3
14) tax authority	43
15) other authority in State finances	27
16) education authority	26
17) agriculture and forestry authority	24
18) transport and communication authority	19
19) trade and industry authority	14
20) social welfare	78
21) social insurance	43
22) occupational safety and other cases of Ministry of Social Affairs and Health administrative sector	11
23) health care	79
24) labour authority	30
25) environmental authority	28
26) municipal authority	122
27) church authority	3
28) other authority or person performing public duty	93
29) Member of the Bar and public legal aid attorney	98
30) civil law case	36
31) miscellaneous	80
 Total ³	 1790

³ Some resolutions pertain to more than one authority or matter

Measures based on complaints

1) charges brought	1
2) reprimand	6
3) proposal	1
4) position or instruction	79
5) other comment	15
6) other measure	16
7) rectification or adjustment while complaint was pending	11
Total	129

Decisions on complaints where no fault in official conduct was found

.....	689
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Other results for complaints⁴

1) beyond the competence of the Chancellor of Justice	154
2) pending before competent authority or	230
appeals not exhausted	158
3) transferred to the Parliamentary Ombudsman	68
4) transferred to the Prosecutor-General	17
5) transferred to the Finnish Bar Association	10
6) transferred to the competent authority	4
7) incomprehensible	115
8) lapsed for withdrawal of complaint or other reason	181
9) exceeded five-year time limit	36
Total	973

REQUESTS FOR COMMENTS FROM THE AUTHORITIES

1) President of the Republic, Government and Ministries	57
2) other authorities	1
Total	58

Measures

1) written statement	34
2) other comment	4
3) other measure	3
4) no measures needed due to authority's or own initiative	7
Total	48

Inadmissible

1) pending before competent authority or appeals not exhausted ...	3
Total	3

⁴ In most of these cases, the complainant has been notified in writing

SUPERVISION OF THE COURTS

Penal judgments received for review	6875
1) filed on the basis of review of penal judgment	129
2) Court of Appeal notices to the Chancellor of Justice	6
3) criminal reports forwarded by the police	12
4) notified by the Office of the Prosecutor-General	1
5) sent by local prosecution offices	5
6) Ministry of the interior's police department	0
Total	153

Measures

1) reprimand	5
2) written statement	2
3) position or instruction	28
4) no measures needed due to authority's or own initiative	93
Total	128

Inadmissible

1) pending before competent authority or appeals not exhausted	2
Total	130

SUPERVISION OF THE BAR

1) supervision and fee disputes	387
2) other supervision of the Bar	19
Total	406

Admissible

1) written statement	14
2) other measure	2
3) no measures needed due to authority's or own initiative	417
Total	433

OWN INITIATIVES AND ON-SITE INSPECTIONS

1) own initiatives	23
2) on-site inspections	26
Total	50

Measures

1) position or instruction	2
2) other opinion	2
3) other measure	3
4) no measures needed due to authority's or own initiative	3
5) inspection or tour of authority	22
Total	32

LEGISLATIONS AND REGULATIONS CONCERNING THE CHANCELLOR
OF JUSTICE AND THE OFFICE OF THE CHANCELLOR OF JUSTICE

APPENDIX 1

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.

APPENDIX 2

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 performance 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].

APPENDIX 3

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].

APPENDIX 4

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.

APPENDIX 5

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.

APPENDIX 6

Rules of Procedure of the Office of the Chancellor of Justice (17. December 2007)

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 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, expeditiously 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.

APPENDIX 6

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

Notaries

Notaries, of whom two shall primarily act as secretaries to the Chancellor of Justice and the Deputy Chancellor of Justice, shall assist the presenting officials in their Department in matters prepared by them and perform duties assigned by the Head of Department. Separate instructions shall be issued about which presenting official each notary shall primarily assist.

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

Other officials shall perform the duties assigned to them in their job descriptions or separate orders.

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

The Chancellor of Justice and the Deputy Chancellor of Justice shall, unless otherwise decided by them on an individual case, decide matters within their competence upon presentation of a draft decision.

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

The presenting official shall obtain information and accounts on matters under investigation unless it ensues from the nature of the matter that the official who is to decide the matter should decide on this.

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

Letters by presenting officials shall be signed by that official only. Where a letter by a presenting official constitutes an instrument produced on a decision by the Chancellor of Justice or the Deputy Chancellor of Justice, this status must appear from the letter.

Section 23

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

Decisions on matters pertaining to the Office of the Chancellor of Justice shall be made by the Chancellor of Justice unless otherwise provided by the Decree on the Office of the Chancellor of Justice (253/2000) or a provision below herein.

Matters pertaining to access to documents shall be decided by the official competent to decide on the matter. In other cases and in matters pertaining to archived documents, the decision shall be made by the Secretary General.

With the exemptions referred to below, the Secretary General shall decide matters pertaining to the use of appropriations available for the activities of the Office of the Chancellor of Justice, travel claim forms and reimbursement of expenses, personnel training and the registration and archiving of documents.

Heads of Department shall, regarding the appropriations allocated for their Department in the Office's internal allocation of appropriations confirmed by the Chancellor of Justice, decide upon matters pertaining to their use, travel claim forms and reimbursement of expenses, and personnel training for their respective Departments.

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

Furthermore, the provisions of the Archival Rules of the Office of the Chancellor of Justice and the Financial Regulations of the Prime Minister's Office pertaining to the Office of the Chancellor of Justice shall be complied with. Furthermore, the operational and financial plan, the performance plan, the health and safety and equality programme, the personnel training plan and the communications plan of the Office of the Chancellor of Justice and any other guidelines adopted by the Chancellor of Justice shall be taken into account in the activities.

Section 30

Entry into force

These Rules of Procedure enter into force on 1 January 2008.
These Rules of Procedure repeal the earlier Rules of Procedure.

APPENDIX 7

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.

APPENDIX 8

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.

STAFF OF THE OFFICE OF THE CHANCELLOR OF JUSTICE

AT 31 DECEMBER 2008

Department for Government Affairs

Head of Department, Referendary Counsellor	<i>Hiekkataipale, Risto</i> , LL.M. trained on the bench
Referendary Counsellor	<i>Snellman, Jorma</i> , LL.M. trained on the bench
Consulting Counsellor	<i>Leskinen, Marja</i> , LL.M. trained on the bench
Legal Adviser	<i>Groop-Bondestam, Janina</i> , LL.M. trained on the bench (on leave) <i>Pietarinen, Päivi</i> , LL.M. trained on the bench
Notaries	<i>Ahotupa, Eeva</i> , LL.B. <i>Mattila, Henri</i> , M.Sc. (Admin.) (on leave) <i>Salminen, Annikka</i> , Bachelor of Administrative Sciences

Department for Legal Supervision

Head of Department, Referendary Counsellor	<i>Martikainen, Petri</i> , LL.Lic., LL.M. trained on the bench
Referendary Counsellors	<i>Löfman, Markus</i> , LL.Lic., LL.M. trained on the bench <i>Mustonen, Marjo</i> , LL.M. trained on the bench <i>Vasenius, Heikki</i> , LL.M. trained on the bench
Senior Legal Advisers	<i>Joutsiniemi, Marja-Leena</i> , LL.M. trained on the bench <i>Kauppi, Outi</i> , LL.M. trained on the bench <i>Kääriäinen-Malkoç, Kaija</i> , LL.M. trained on the bench (on leave) <i>Lehvä, Outi</i> , LL.M. trained on the bench <i>Liesivuori, Pekka</i> , LL.M. trained on the bench <i>Rouhiainen, Petri</i> , LL.M. trained on the bench <i>Smeds, Tom</i> , LL.M. trained on the bench <i>Tolmunen, Irma</i> , LL.M. trained on the bench

Legal Advisers	<i>Mänttari, Anu</i> , LL.M. trained on the bench <i>Pulkkinen, Minna</i> , LL.M. trained on the bench
Part-time Referendaries	<i>Judström, Marja-Liisa</i> , LL.M. trained on the bench <i>Klemettinen, Hannele</i> , LL.M. trained on the bench
Notaries	<i>Hallman, Henna-Riikka</i> , LL.M. trained on the bench <i>Tuomikko, Helena</i> , LL.B.

Administrative Unit

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Information officer	<i>Kukkanen, Krista</i> , M.A.
Information specialist	<i>Tuomi-Kyrö, Eeva-Liisa</i> , B.A.
Systems analyst	<i>Kulppi, Marko</i> , computer science
Clerk	<i>Snabb, Tuula</i>
Clerical secretaries	<i>Hanweg, Riitta</i> <i>Pihlajamäki, Ira</i> <i>Savela, Sari</i> <i>Seppäläinen, Arja</i>
Chief porter	<i>Utriainen, Saku</i>
Porter	<i>Elf, Tomi</i>
Caretaker	<i>Venäläinen, Perttu</i>



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