# REPORT OF THE FINNISH CHANCELLOR OF JUSTICE 2009

SUMMARY

Helsinki 2010

This report is an abridged version of the report of the Chancellor of Justice of the Government of Finland for 2009. It includes the majority of the main text, and for example, some of its ruling explanations as well as statistical information and regulations concerning the Chancellor of Justice and the Office of the Chancellor of Justice.

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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 2009.

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 111 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 statements from the Chancellor of Justice and Deputy Chancellor of Justice. They are followed by an overview of the activities of the Office of the Chancellor of Justice and the report then 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 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 of supervision in municipal administration and other autonomous branches of 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 concludes 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.

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Helsinki, on the 31st of March 2010

**Mr Jaakko Jonkka**
Chancellor of Justice

**Mr Nils Wirtanen**
Secretary General

# Contents

# 1

# Statements

Jaakko Jonkka

# Our 200th year

## Crown jurist or defender of the constitutional state?

During the reporting year 2009, we celebrated the 200th anniversary of the institution of the Chancellor of Justice. The office of the Chancellor of Justice was first established under the term of 'procurator' in 1809, when the central government of the new Russian Grand Duchy of Finland was being organised. However, the history of the Chancellor of Justice goes back much further than that; it is deeply rooted in Nordic soil. It has been found that the office had its first shoots as early as in the 17th century Sweden. During the following century, the office of the procurator developed into the office of the supreme supervisor of legality and the public prosecutor. Following this Swedish model, the office of the procurator was also established in the Grand Duchy of Finland. When the country gained its independence, in 1917, the procurator's office became the office of the Chancellor of Justice.

Formally, the office of the Chancellor of Justice has remained very much the same since it was established. The most significant structural change occurred a little over a decade ago, when the Chancellor of Justice was relieved of the duties of the supreme public prosecutor. The remit of the office has changed together with society and the legal culture. Supervision of legality used to be understood as something retrospective and punitive, whereas today it is seen as a prospective activity, entailing the guidance of official activities and the development of best public administration practices. Today, both guidance and enforcement have a role to play, and instead of the Penal Code, the fundamental and human rights legislation has become an important tool.

The legal use of public power is an essential feature of a constitutional state. Just as important is that people should have trust in the legality of the use of public power. A credible system of supervision thus forms part of the structure upon which trust is built. Through its actions and presence, supervision of legality underpins trust in the judicial system and strengthens the constitutional state. At the heart of this is the notion that supervision of legality has a social right to exist.

The remit and jurisdiction of the Chancellor of Justice are broad. They include the supervision of government, authorities, officials and all of those in a public role. Sometimes it has been suggested that the remit is perhaps too broad, and that the role of the Chancellor of Justice is somewhat controversial. The Chancellor of Justice may have been seen as a crown jurist rather than the defender of individuals' rights. However, if we think of the duty to supervise the central government and the general supervision of legality as two sides of a coin, we must conclude that a key strength of the Office is its broad insight into society. These duties support one another. The Office of the Chancellor of Justice receives almost two thousand complaints and unofficial enquiries every year, and the inspection visits it performs also provide the office with ample information about social problems, functionality of laws, and how individual people find themselves treated by the official machinery. Information gained in this way brings a grassroots perspective to the duty to supervise central government.

Equally, the questions that arise from the supervision of central government give the Office a backdrop against which to perform its general supervision of legality, such as the need to identify and focus attention on those areas that require improvement.

Regardless of the wide range of duties, the law only prescribes one role to the Chancellor of Justice. That is the role of the defender of the constitutional state. This role is the guiding light in the general supervision both of officials and of the central government - including when the Chancellor of Justice on request, under Section 108(2) of the Constitution, provides "information and statements on legal issues".

## Developments in the supervision of legality

Finland has an extensive system of judicial relief and a functioning system of due process. Nevertheless, some shortcomings and areas requiring improvement also appear to be present. Supervision of legality has a role as a complementary form of control. Rulings on individual cases reached through supervision help guide official practices towards better observation of fundamental and human rights. In many cases it is just as important, and perhaps even more important, to try to see behind the legal text than to stick to the letter of the law. Where necessary, supervision of legality focuses on the need for legislative reform and prompts authorities to correct structural distortions in their activities.

Supervision of legality fulfils a complementary role, which entails that supervision of legality must act as the advocate for those who cannot speak of their despair – people who cannot or do not know how to pursue their cause by lodging a complaint. To ensure that these people do not get forgotten, the practical everyday work requires certain sensitivity to recognise their needs, as well as a fair amount of courage: it is worth remembering that those who shout the loudest and demand the most attention may perhaps not be the neediest. This is why even at the peak time for complaints, the supervision of legality should be able to allocate resources and time for active research and initiation of investigations.

It is equally important to be able to tackle more profound shortcomings at an organisational level and other systemic problems. This need and the rising number of complaints have prompted us to consider how we might best allocate our resources and redirect our focus. This question is a highly topical one to both of the highest supervisors of legality. During the reporting year of 2009, the Ministry of Justice appointed a committee to investigate, amongst other things, whether "the discretionary power exercised by the highest supervisors of legality over investigation of complaints could be extended, and whether the general limitation period for complaints could be cut, so that regulation would make better provision than at present for the supervisors of legality to effectively and flexibly supervise the observance of fundamental and human rights."

The committee's framing of the question is essential to the strengthening of supervision of legality. We should note however, that if "the extension of discretionary power exercised by the highest supervisors of legality over investigation of complaints" should lead to shifting the focus from individual cases to the more general, we are entering a highly sensitive area. Supervision of legality fulfils its constitutional duty largely because people trust that their complaints are being handled appropriately. When it comes to the highest supervision of legality and its duty to supervise the observance of fundamental and human rights, we should also note that the true meaning of these rights is put to the test in concrete, every-

day situations, and in the ways in which people are treated. Fine-tuning of good administrative practices often arises from rulings on ”minor” complaints. It is not possible to evaluate the supervision of fundamental and human rights separately from the handling of individual cases. Should this be done, the supervision of fundamental and human rights might start to appear somewhat remote.

The Ministry of Justice committee's framing of the question gives rise to further consideration of the purpose and meaning of supervision of legality. What is its place in society? Supervision of legality cannot, unlike courts of justice, provide the protection of law. On the other hand, it is probably not wise for it to adopt the focus and procedures of a research institute either. Traditionally, supervision of legality has had its focus on concrete cases rather than abstract issues. The right way may be to develop supervision of legality's own strengths. These are, in particular, the flexibility of its activities, the individual handling of cases and the vast array of actions at its disposal.

## Networks and networking

The reporting year of 2009 was dominated especially in the media by the discussion of grey areas in the electoral funding system, some of which led to pre-trial investigations. During the past couple of years, the Office of the Chancellor of Justice has also received numerous complaints regarding electoral funding, and the office has provided several rulings on them. As the nature of supervision of legality is that it complements other forms of control, we have followed the issue very carefully and where necessary, have co-operated with different authorities investigating the issue. The principle here has been that each case is to be investigated by the body that has the best tools and resources available within its remit.

The political controversy has taught us that electoral funding also needs hard and fast rules, and that the rules must be monitored in a consistent way. For anyone in a public role, or anyone who is a candidate to be elected for such a role, there is a potential risk in accepting any financial benefit. It is therefore essential that the ground rules are clear. Even if accepting electoral funding is not illegal, depending on the case it may disqualify the person who accepts it from making regulatory decisions, and even the issue of criminal responsibility may be involved. The provisions of the Administrative Procedure Act or Penal Code no longer seem to lend themselves well enough to the legal organisation and evaluation of electoral funding and political lobbying. To weed out unwanted procedures and strengthen legal protection, it would be desirable to consider tightening regulation. In the end, we are not talking about a problem, which can be solved by legal means alone. Any dents in credibility that the political system may have suffered are only capable of being healed through the actions of the system itself. Transparency is the key. The issue merits a fundamental debate on underlying principles and values.

On the whole, and seen in the round, perhaps the most important lesson we have learned from the controversy is that Finland may not be quite as immune from corruption and inappropriate influence as we would like to think. Certainly, we tend not to pay officials to speed up our applications. The methods used may be much more subtle and their goals more far-reaching, which is precisely why they are so difficult to notice. It will become easier to spot inappropriate influence however, when we realise what kinds of networks and structures might be involved in political decision-making. We should pay more attention to these issues than we currently do. We do not need to hunt for fat cats, but we do need to open our eyes to reality.

Mikko Puumalainen

# Prohibition of discrimination within supervision of legality[1]

## On the prohibition of discrimination

Equality – which also covers the prohibition of discrimination - is a norm of central importance found in the Constitution of Finland, international human rights treaties that are binding on Finland, as well as European Union Conventions. The general provision of equality and prohibition of discrimination it contains are to be found in Section 2(6) of the Constitution of Finland (731/1999).

The examples provided in the text of the Constitution are not exhaustive. In addition, the prohibition of discrimination is by nature a generic and broad law, which applies to a wide range of people. This means that if a person is discriminated against in any way in a comparable situation without a justifiable reason, it may amount to discrimination, and any person may refer to Section 2(6) of the Constitution containing the provision on prohibition of discrimination. The prohibition of discrimination as provided in the Constitution has a general scope of application, and it may be understood as a prohibition to be applied directly, or as instruction to legislators. Direct application of the prohibition means that a private person may refer to it in an individual case, such as a complaint made by that person. The prohibition of discrimination may also be seen as an instruction to legislators, because it prohibits Parliament from passing any laws that may discriminate against people without a justifiable reason.

In addition to the Constitution, the prohibition of discrimination is also present in many other Finnish laws, such as the Penal Code, the Act on Civil Servants (Section 11, 25/2004) and the Employment Contracts Act. Furthermore, like the Act on Equality between Men and Women, the Non-Discrimination Act is a generic law, which contains a prohibition of discrimination, and it was passed to implement two European Union directives on equality[2]. From this historical context it follows that even though the provision of equality in our Constitution is one of its principal provisions, our secondary equality laws are based on the implementation of European Union directives.

The purpose of the Non-Discrimination Act is to foster and safeguard equality and enhance the protection provided by law to those who have been discriminated against in cases of discrimination that fall under the scope of the Act (Section 1, 21/2004).

The generic nature of the Non-Discrimination Act is clearly apparent, as the Act stipulates the generally applicable definitions of discrimination, prohibition of counter-measures and burden of proof,

[1] On the prohibition of discrimination, see Mikko Puumalainen: Syrjintäkielto: sisämarkkinoiden reunoilta perusoikeuksien ytimeen, teoksessa Yksilön oikeusasema Euroopan unionissa, juhlakirja Allan Rosas – Festskrift Allan Rosas, (*tr. **Mikko Puumalainen**: 'The prohibition of discrimination: From the edges of the internal market into the heart of basic rights', in an Allan Rosas tribute paper 'Legal position of indivuduals in the European Union'*) p. 41-58, Vammala 2008; and an EOA viewpoint on the issue: Jukka Lindstedt, Syrjintä etnisen alkuperän perusteella (*tr. Jukka Lindstedt in the Parliamentary Ombudsman's 90th anniversary tribute paper: 'Discrimination based on ethnic origin'*), s. 129-157, Eduskunnan oikeusasiamies 90-v. juhlakirja, Vammala 2010.

[2] Council Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC on establishing a general framework for equal treatment in employment and occupations.

which are to be applied in the handling of a discrimination case. Although the law may be generally and broadly applied to public and private life, legally it only covers the areas of life stipulated in the Act. More areas of life have been stipulated concerning discrimination based on ethnic origin than any other type of discrimination.

The areas of full application of the Act include business activities and trade, employment and working conditions and training, as well as membership of trade organisations and the use of benefits granted by such organisations. In addition, the Act applies to discrimination based on ethnic origin in the following areas of life: social welfare and health care services; social security benefits or other forms of support or allowances granted on social grounds, rebates or benefits, military service, women's voluntary military service or non-military service; living and housing, or services or property or goods from the private sector on offer or available to the general public, except as between private individuals.

The European Union directives strengthened the prohibition of discrimination in Finland. According to the directives, discrimination based on personal characteristics in a comparable situation is not permitted even for an otherwise justifiable reason. However, the Penal Code and the Constitution generally do allow for this kind of possibility. The directives limit and define in significant detail the situations in which discrimination would be possible. There are no generally "permitted" exceptions. Other more recent points in the law have been the burden of proof and the addition that harassment and instruction to discriminate are also defined as prohibited discrimination.

## Prohibition of discrimination, supervision of central government's legality and the Chancellor of Justice

The Chancellor of Justice regularly receives claims concerning breaches of equality laws and the prohibition of discrimination in public administration. In my recent work in the area of supervision of legality I have dealt with the resolution of several cases regarding equality in which both the Non-Discrimination Act and the Constitution have had to be applied. In delivering these rulings, I applied the prohibition of discrimination present in both laws and did my best to interpret them as a one unified piece of legislation.

In delivering these rulings I deliberated, for example, on what should be regarded as a prohibited grounds for discrimination. As noted before, the law is somewhat open in this regard, and precedent varies.

In two recent cases, one to do with pitch allocations for stallholders in a municipal market, and the other with participation in an employment initiative, I concluded that it was prohibited to use the place of residence as grounds for discrimination. Two other cases, one to do with the Occupational Safety and Health Administration's inspection report and the other with Tehy (the Union of Health and Social Care Professionals) collective bargaining agreement, I concluded that it was prohibited to use trade union activities and opinions as grounds for discrimination. To be able to evaluate the acceptability of unfavourable treatment I had to re-evaluate the relationship between the Constitution and the Non-Discrimination Act. As mentioned above, the Constitution generally allows justifiable,

unfavourable treatment on permitted grounds in a comparable situation, whereas the Non-Discrimination Act would, where applicable, regard it as discrimination and thus prohibit it. In the first two cases mentioned above, I also took into account the local municipal self-governing rights. In the case of the Tehy collective bargaining agreement, it was necessary to establish boundaries between negotiation protocols, the right to strike, and instruction and order within the definition of discrimination.

In all cases it is important to bear in mind the role of the Chancellor of Justice as the supervisor of legality, and the complaints process as an additional means of due process: rulings on complaints cannot bring the immediate protection of law: rather, they are meant to evaluate how, in legal terms, the authorities have performed their duties. It is the job of courts of law to provide the protection of law and due process in individual cases, however this does not absolve the authorities from their duty to observe the prohibition of discrimination stipulated in the Constitution and the Non-Discrimination Act.

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

A situation whereby a resident and a non-resident market seller were practising their trade at the marketplace on allocated pitches rented from the municipality and paying a different rate according to an approved marketplace rate card, I determined to be against the Constitution and the Non-Discrimination Act, namely against the equal treatment principle and the prohibition of discrimination. The possibility to trade on the municipal marketplace was a comparable situation, in which the non-resident seller was treated in a more unfavourable way based on their place of residence (OKV/339/1/2006).

## A municipality's decisions on employment initiative payments

I concluded that the prohibition of discrimination had been breached when a municipality favoured young people living within its municipal area in its allocation of employment benefits. The municipality had paid employment support to employers who hired local young people for temporary roles. The support had been paid on the condition that the town appeared as the registered place of residence in the applicants' forms. According to the Non-Discrimination Act, however, no person is to be discriminated against because of personal characteristics and this law also applies to recruitment conditions. Personal characteristics that have nothing to do with performing the work, such as a place of residence, must be prohibited as selection criteria (OKV/150/1/2008).

## Municipal collective bargaining agreements for civil servants and other workers (the so-called "Tehy agreement")

Tehy (the Union of Health and Social Care Professionals) and the Commission for Local Authority Employers accepted the proposal by the conciliation board appointed by the Ministry of Labour concerning Tehy members' employment conditions and the legal position of Tehy (the "Tehy agreement"). The agreement meets the criteria for both the collective bargaining agreements for civil servants as described in the Act on Municipal Collective Bargaining Agreements for Civil Servants, and for employment contracts as described in the Collective Agreements Act.

In my ruling, I assessed that part of the agreement that could be used as binding only on Tehy members, and I also assessed the way the Ombudsman for Equality, who was also a member of the conciliation board, as well as the Commission for Local Authority Employers had performed their duty. As such, it is well within the law to set limits on how binding an agreement may be. This agreement, however, limited its applicability to Tehy members only. This meant that if the agreement was binding on an employer, it was possible for that employer to agree on different terms of service/employment with employees doing the same job depending on whether the person doing the job was a Tehy member or not.

In other words, the agreement would allow a civil servant or an employee who was not a Tehy member to be treated, to have been treated or to be treated in future in a less favourable way than a Tehy member, regardless of whether there was a genuine reason concerning the quality of service and work performed. According to Section 6 of the Non-Discrimination Act the agreement as such was in breach of the prohibition of discrimination even if it had not been applied to any individual cases or decisions about pay. The text of the law refers to this future aspect (OKV/1333/1/2007, OKV/181/1/2008).

## Grounds for discrimination in the Non-Discrimination Act

An inspection report by the Occupational Safety and Health Administration had concluded that occupational activities and complaints about deficiencies (injustices) in the workplace could not, according to the Non-Discrimination Act, be classified as grounds for discrimination and thus the prohibition of discrimination as described in the Act had not been breached. In my ruling, first of all, I was clear that making complaints about deficiencies in the workplace by way of expressing one's own opinions, as "A" had done according to the documents, would amount to grounds for discrimination as described in Section 6(1) of the Non-Discrimination Act. Secondly, the Act describes "personal characteristics" as an unjustified basis of discrimination, which covers occupational activities as well as non-membership of trade organisations. In my ruling I referred to the fact that according to the legislative preparatory materials for the Non-Discrimination Act, Section 6, the list of prohibited grounds for discrimination should be the same as in the Constitution, Section 6 (2) and Non-discrimination Directive and Non-Discrimination at Work Directive (Government bill 44/2003 vp p. 41). The grounds for discrimination in Section 6(2) of The Constitution do not mention occupational activities; however, it does mention other personal characteristics. The legislative preparatory materials for the Constitution (Government bill 309/1993 vp, p. 44) state that such a characteristic could be, for example, trade union membership. The Constitution, Section 13 (2), states that each individual has the freedom to join trade unions and this includes the right to be or not to be a member of a trade union. Thus, the inspection report's interpretation of discrimination grounds as described in the Non-Discrimination Act, Section 6 (1), was incorrect (OKV/1233/1/2007).

## The clarity of non-discrimination legislation

Prohibition of discrimination is one of the central norms in a legal system based on fundamental and human rights. The European Union has had a significant role in strengthening protection against discrimination, and its impact has considerably changed the legal conditions around discrimination and equality in Finland. However, EU regulations have also brought with them some obscurities and inconsistencies[3]. Our anti-discrimination regulations do not presently fit seamlessly into our national legal framework and legal system, as they are based on the implementation of EU law and their EU genesis still remains too apparent in the law.

It would of course be possible to go beyond what is strictly required in implementing the requirements of EU secondary legislation in national law. For example, the varying level of protection for different grounds of discrimination, or limiting the prohibition of discrimination to some areas of life, which are present in the Union's secondary legislation, could be brought together in one general prohibition of discrimination in national legislation. However, Finland has not used the general judicial power of its national legislation, or safeguarded the consistency of different laws. It seems that Finland has been content to implement the absolutely necessary EU legal requirements. All national rulings stipulated in the Non-Discrimination Act have mostly followed from the Act on Equality between Men and Women currently in force.

Due to inconsistencies in the equality laws, we now have judicial and formal inequality. This is because now, depending on the grounds for discrimination and area of life, the prohibition of discrimination may be more severe and the protection of law stronger. On the other hand, where certain grounds for discrimination and some areas of life are concerned, discrimination may attract greater condemnation or the need for the protection of law may be greater, and thus the extra protection is justifiable.

At present, Finnish equality laws do not fully meet the Constitution's requirement to foster and safeguard genuine equality in society, or requirement in Section 22 of the Constitution to foster and safeguard fundamental rights.

A paradox remains, thus, because through the implementation of European Union regulations for the protection of equality, we now find ourselves in a situation where ever greater inequality exists. Naturally this means relative inequality, not absolute inequality. What we need is a national general law on equality, which would evaluate the need for the protection of equality in different areas of life in Finland in an integrated and consistent manner, and consider the protection of law already available, without lessening the level of protection already achieved.

[3] On passing the Non-Discrimination Act, the Finnish Parliament attached to its response a statement regarding this matter (EV 95/2003 vp – HE 44/2003 vp). The Parliament urged "the Government to prepare a proposal for non-discrimination legislation, whose starting point is the Finnish system of constitutional rights and making all grounds of discrimination subject to similar remedies and sanctions." The Ministry of Justice appointed a committee (the Equality committee) to prepare the reform of the equality and non-discrimination legislation. The committee presented their report on 21 December 2009 (*Proposal for a new Non-Discrimination Act and related legislation. Report of the Equality Committee. OMKM 2009:4*).

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# Overview

# Duties

Provisions concerning 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, the power of decision by the Chancellor of Justice, as well as fundamental 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 are appended to this report (appendices 1–6).

## Supervision of the Government

Under the Constitution, the Chancellor of Justice is tasked with supervising the legality 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 exercise of his supervisory duties are laid down in the Constitution and the Act on the Chancellor of Justice of the Government. In practice, the focus of supervision of the Government is on advance supervision. This is achieved by the Chancellor of Justice reviewing the presentation agendas, including 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 3 of this report.

## Issuing opinions

Issuing opinions is closely related to the supervision of the Government discussed above. According to the Constitution, the Chancellor of Justice must, upon request, provide the President of the Republic, the Government and ministries with information and opinions on legal issues. Opinions are mainly requested directly by 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 aims 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 fundamental rights reform (PeVM 25/1994 vp), the Constitutional Law Committee of 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.

## Prosecutorial duties

The Chancellor of Justice serves as a special prosecutor in matters within the purview of his supervision of legality, particularly judicial offences in office. A decision to bring charges against a judge for unlawful conduct in office form a subsection of these offences, as they are separately cited in the Constitution. 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 supreme judicial authority in Finland is the Prosecutor-General, the duties of whom include the general leadership and development of the prosecutor service, as well as the supervision of prosecutors. Complaints regarding the Prosecutor-General's duties are transferred to the Chancellor of Justice. During the reporting year, the total of 15 complaints were transferred.

## 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 consider 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 1 762 such complaints were filed in 2009.

The Chancellor of Justice must investigate a complaint if there is reasonable cause 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 considered relevant to 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. Under the above provision, 50 complaints were abandoned in 2009.

As in previous years, the Office of the Chancellor of Justice received numerous telephone enquiries from private individuals regarding a wide range of topics during 2009. Individuals have made queries regarding their own affairs, and as citizens on topical public issues. The office is able to advise on matters regarding the Chancellor of Justice's powers, how to lodge a complaint with the Chancellor of Justice and how complaints are handled. If an enquiry falls outside the scope of the Chancellor of Justice's remit, then the office should advise whom the individual should contact instead. Enquiries outside the Chancellor of Justice's powers have most commonly been matters of private law.

## 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 77.

## 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. The said Act has been mentioned in the Act on the Chancellor of Justice of the Government. 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 on page 113 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 on the Division of Duties).

The act enumerates the matters, which the Chancellor of Justice must transfer to the Parliamentary Ombudsman for consideration unless he deems their resolution by 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 expected to facilitate dealing with the matter or when transfer is justified for other particular reasons.

During the year under review, a total of 60 complaints were transferred to the Chancellor and 31 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 2008 in parentheses).

During the year under review, the Office of the Chancellor of Justice received 1 762 (1 737) complaints and resolved 1 748 (1 496) complaints. In all, 14 (23) matters were taken under investigation on the Chancellor's own initiative and 94 (129) matters became pending as a result of the review of penal judgements.

The number of decisions involving measures in respect of complaints was 176 (129), equivalent to 16% (16%) of all admissible complaints (1 104). The median resolution time of all complaints was approximately 6,8 (4) weeks and the average resolution time was approximately 27,8 (27) weeks.

A total of 30 matters taken under investigation as a result of supervision of the courts led to action being taken. A total of 6 389 penal judgments were submitted for review.

In all, 52 (34) written opinions were issued to the President of the Republic, the Government and the ministries.

At the end of the year under review, 1 125 (1 076) cases remained pending.

Statistical data on activities is presented in Section 9.

# Cooperation and visits

## International cooperation

Deputy Chancellor of Justice Mikko Puumalainen attended meetings of the Management Board of the European Union Agency for Fundamental Rights in Vienna on 5-6 March, 28 May, 16 November and 14-15 December 2009.

Deputy Chancellor of Justice Mikko Puumalainen attended a meeting of the European Network of Ombudsmen Liaison Officers in Cyprus on 6-7 April 2009.

Deputy Chancellor of Justice presented the activities of the Office of the Chancellor of Justice to a delegation of Canadian students on 3 June 2009.

Senior Legal Adviser Pekka Liesivuori presented the activities of the Office of the Chancellor of Justice to a delegation of staff from the Uzbek Office of the Parliamentary Ombudsman on 23 October 2009.

Deputy Chancellor of Justice and the Senior Legal Adviser Pekka Liesivuori met the European Ombudsman Nikiforos Diamandouros on 27 October 2009.

Senior Legal Adviser Pekka Liesivuori presented the activities of the Office of the Chancellor of Justice to a delegation of the Finnish NGO Foundation for Human Rights KIOS on 9 November 2009.

Romanian judge Gabriella Bagasiu was introduced to the activities of the Office of the Chancellorof Justice by the Senior Legal Adviser Pekka Liesivuori on 17 November 2009.

The Deputy Chancellor of Justice Mikko Puumalainen attended a conference “Making Rights a Reality for All - Fundamental Rights Conference 2009” organised by the European Union Agency for Fundamental Rights and the holder of the EU presidency, Sweden, in Stockholm on 10-11 December 2009. During the conference, Mr Puumalainen chaired the “Access to Justice” workshop.

# Other activities

## 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 within 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 a national level. The Department for Legal Supervision is responsible for the investigation of complaints, the supervision of courts of law and other legality supervision not falling within the ambit of the Department for Government Affairs. The Department for Legal Supervision also deals with 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 specified 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.

Further details on the division of duties between the Chancellor of Justice and Deputy Chancellor of Justice, duties of officials and their locums, resolution of matters and the board of the office may be found in the Rules of Procedure of the Office of the Chancellor of Justice.

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, seven senior legal advisers, five junior legal advisers, a human resources officer, an information officer, an information specialist, three notaries, an IT developer, a clerk, four clerical secretaries, a chief porter, a porter and a caretaker. The Office of the Chancellor of Justice also employed two student law trainees, one from the University of Helsinki and the other from the University of Turku.

At year-end the office had a total of 37 employees. In addition to the Chancellor of Justice and the Deputy Chancellor of Justice, 20 officials occupied public service employment relationship posts requiring a higher legal degree.

The staff were placed in different departments according to the following organisational structure: there were four lawyer referendary counsellors and two notaries in the Department for Government Affairs; 15 lawyer referendary counsellors and one notary in the Department for Legal Supervision; and in the Administrative Unit there were, in addition to Secretary General of the Office, a human resources officer, an information officer, an information specialist and nine other officers.

A list of the staff at the Office of the Chancellor of Justice is appended to this report.

# 3

# The Chancellor of Justice and the Government

# General

The Constitution divides supervision of the legality of Government decisions as performed by the Chancellor of Justice into two categories judicially and in terms of the method and timing of execution. The focus of the supervision of the Government by the Chancellor of Justice and the work of the Department for Government Affairs in assisting the chancellor is on advance inspection and supervision of matters being prepared by ministries and of those that, once preparatory work has been completed, are submitted to Government plenary sessions or the President of the Republic for a decision. The aim is to take measures in advance 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 bills 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 how advance supervision is to be carried out, nor are there detailed provisions 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, how supervision is carried out in practice is dependent on the matter in question and the factors before the ministry in question. To the outside world, the most visible aspect of Government supervision is the weekly advance review of the agendas for presentation of bills and proposals to be submitted to plenary sessions and presidential sessions. This is covered in greater detail later in this report. Fewer in number, but more challenging in terms of the time 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. In 2009 there were no matters pertaining to the lawfulness of decisions by plenary sessions of the Government or by the President of the Republic as 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 grounds of Section 108 of the Constitution (Government bill 1/1998 vp) that the importance of supervision of the legality of the official acts of the Government and the President of the Republic is emphasised by overall responsibility being entrusted to the Chancellor of Justice. 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 Repub-

lic takes decisions in the Presidential session of 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 final decision or for forwarding as proposals to the President of the Republic.

In accordance with the detailed grounds of Section 108 of the Constitution, 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 of the Chancellor of Justice's activities. It constitutes one of the core duties (together with complaints) imposed on the Chancellor of Justice by the Constitution. Legal opinions and statements and discussions with ministry representatives responsible for the preparation of matters is to examine, in advance, the relevant legal issues and the legality of the actions taken by the ministry in order to ensure that there will not be any legal obstacles preventing a decision and that the proposal for a decision, or the grounds on which it is made, will not need to be supplemented or corrected immediately prior to decision-making.

There is no prescribed procedure for the submission of requests for a review by the Office of the Chancellor of Justice. Every effort is made to provide a response to inquiries regarding matters to be presented to the Government promptly enough to prevent any delay in the processing of the matter. To this end, matters are often discussed and responses provided by telephone to the Ministry concerned. Telephone discussions also offer an opportunity to mutual consideration of matters between the Chancellor and ministerial rapporteurs. E-mail is increasingly used, providing a rapid means of communication and allowing the Chancellor of Justice and officials access to all the relevant documents as 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 information is provided by an official of the Department for Government Affairs. Other requests for an opinion are referred to the Chancellor of Justice. Examples of email discussions and related answers regarding governmental affairs are listed below.

In response to requests for opinions on more significant legal issues, the Department for Government Affairs draws up memorandum which, following the Chancellor of Justice's approval, is delivered to those requesting the opinion. Examples of such memoranda are included at the end of this section. The responses provided to requests for opinions regarding Government affairs and the most significant observations from inspections concern the same issues as in previous reports. During the reporting year, there were several major administrative reforms being carried out within central Government. These have again been characterised by a lack of time towards the final stages of the reform, which has had implications for the administrative and legal execution of the reforms. Often the situation we face at the final stage of an administrative and organisational reform is such that the Office of the Chancellor of Justice is only able to ensure that the minimum legal requirements of such reform projects have been technically fulfilled. It has been impossible, however, to observe all of the principles of best legislative preparation. Questions on the implementation of reform have been left open almost until the decision-making stage, and it is common to find that draft Government decrees, which are of central importance to the practical implementation of reform, are not ready at the Government bill stage, even though this is required by well-established rules on the preparation of decrees. If schedules for the preparation stage allowed for proper practices to be followed, the Office

of the Chancellor of Justice could, in conjunction with the Law Drafting Department of the Ministry of Justice, ensure that the statutory powers included in the relevant Government bill were extensive enough and precisely defined, and on the other hand, it would ensure that all future decrees the Government might pass regarding the reform would also be in all respects based on, and within, the authority of law.

In 2009, in addition to legal issues related to matters submitted to Government plenary sessions and presidential sessions, requests by Ministries for an opinion or statement also pertained to individual issues subject to ministerial decision or decree. Complaints made regarding governmental affairs are quite often anticipatory in nature, for example legislative initiatives being prepared by a ministry or to be submitted to the Government, such as the legislative proposal for the funding of the Finnish Broadcasting Corporation (YLE) and complaints concerning the "YLE payment" that followed. In addition to complaints lodged by citizens, such written communications have also been received from central organisations involved in the sector in question (such as the Confederation of Finnish Industries' enquiry as to whether it would be possible to amend a Ministry of Justice decree regarding the list of payable services offered by the Office of the Data Protection Ombudsman under the Act on the Protection of Privacy in Electronic Communications).

In 2009, Government plenary sessions handled a total of 1 680 matters (1 605 in 2008), and the President of the Republic made 920 (765) decisions at presidential sessions. The number of Government plenary sessions totalled 67 (67) and presidential sessions 36 (46). During the reporting year, the Government submitted to Parliament 282 presentation agendas and 93 (86) memoranda on 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.

The Head of the Department of Government Affairs at the Office of the Chancellor of Justice, Mr Risto Hiekkataipale, continued in his role as the appointed substitute to the Deputy Chancellor of Justice. The annual number of days spent in his substitute role came to a little over one hundred. Any impact on the functioning and work of the Department of Government Affairs that the role of the substitute may have were discussed in the 2008 report.

# 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 2009, there were no occasions on which the President did not accept the solution proposed by the Government, and therefore no decisions were taken pursuant to the decision-making procedure under Section 58(2) of the Constitution.

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

In 2009, the President of the Republic resolved all matters proposed by the Government immediately, without any request for an opinion provided for under Section 108(2) of the Constitution.

In the ordinary course of reviewing presentation agendas, the due exercise of powers is always considered. The relevant legal basis for the use of powers by the highest organs of Government is also checked. No particular problems of interpretation 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 already been noted in the Government's presentation agenda.

# Review of presentation agendas

For the purpose of the examination of Government affairs, the Chancellor of Justice and the Department for Governmental Affairs at 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 (PTJ), which is 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 members of the Government, which is usually on the Tuesday preceding the plenary session. This means the Chancellor of Justice examines agendas already distributed to the Government, allowing very little time for the review of the presentation agendas for Government plenary sessions and presidential sessions. In particular, Government bills regarding finance and expenditure laws, which are submitted in the autumn, and proposals related to the national implementation of European Union law are legislative issues with specific time limits. In previous reports attention has been drawn to the lack of time available for drafting and the shortage of staff to handle preparatory work in ministries with sufficient expertise and experience, and to the fact that Government bills do not always meet the technical or substantive requirements for high quality drafting. This was also the case in 2009.

If the submission of a proposal cannot be postponed, the Office of the Chancellor of Justice checks that the proposal meets the basic requirements for a Government bill and can therefore be brought before Parliament within the prescribed time period. The Chancellor of Justice has no legal means to require the complete withdrawal of a proposal with technical deficiencies or prepared on insufficient grounds. Similarly, the final review of the requirement for legislation falls within the remit of Parliament, which decides on the final content of the Act.

Presentation agendas for Government plenary sessions must be distributed via the PTJ system by 11am on Tuesdays. Any errors or defects in presentation agendas should be corrected as and when they are discovered during the review. A regular Government presentation agenda review meeting between the Chancellor of Justice and the Head of the Department of Government Affairs at the Office of the Chancellor of Justice or another official is held every Wednesday at 1pm, at which all of the items on the presentation agenda for the following day's session are reviewed. Even at this stage legal issues or defects in the agendas may come up that require action from a ministerial rapporteur. Once again during this reporting year the rapporteur removed certain items from the weekly session because of the severity of the errors or defects identified.

## Issues reviewed

The number of new statutes, amendments and Government bills regarding new legislation on which Government plenary sessions and the President of the Republic were required to make decisions 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 subjects of supervision by the Chancellor of Justice during the year under review. Government affairs cover such a wide variety of subjects that specialised professional expertise and the ability to work quickly are required from those reviewing agendas. Given the number of legal staff at the Department for Government Affairs at the Office of the Chancellor of Justice (the Head of Department plus three other lawyers), all those working on supervision of the Government are required to be able to perform all the duties related to agenda reviews and other supervision of the Government. The requirement is particularly the case during times when the Head of the Department of Government Affairs is acting as substitute for the Deputy Chancellor of Justice. The Department for Legal Supervision at the Office of the Chancellor of Justice has appointed a senior legal adviser, which has given the office a significantly broader and deeper expertise in Government affairs, and also offers a significant resource for supervision of the Government.
As was the case in the previous year, particular attention was paid to the order of enactment of Government bills presented to Parliament. 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 review of the content of bills and their individual provisions to ensure that they, and the grounds on which they are based, 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 bills. In this respect, the most challenging case during 2009 was the proposal for the reform of the Firearms Act, presented to Parliament in June. The proposal contained several provisions on or related to different fundamental rights. As early as at the preparatory stage of the Government bill it was noted that several of the provisions would be constitutionally rather problematic. The issue called for legal and social consideration and selection of methods. The background to the proposed legal reform was the requirement to bring legislation into line with revised international norms, but also two tragic shooting incidents that had taken place in Finland at the time. This context had an impact on the content and schedule of the preparatory work.

Opinions of the Constitutional Law Committee have also been employed in the review of the order of enactment of Government bills. Government bills 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 grounds 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 reviewing 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 grounds regarding an issue, the issue must be assessed more thoroughly in the grounds for the bill. If the issue is new and to an extent open, the grounds for the bill must include a mention that the opinion of

the Constitutional Law Committee will be obtained. A general observation is that the consideration of fundamental rights has become a regular part of grounds for Government bills, 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 previously, the observations made mainly concerned deficiencies and inaccuracies regarding the date on which an Act entered into force which, had they not been corrected, might have resulted in difficulties in the implementation and application of the act. Once again during this reporting year, inaccuracies at the ratification stage occurred that needed to be immediately rectified by way of a new Government bill. In some cases the inaccuracies occurred during parliamentary readings of a wide-ranging legislative reform, which Parliament was able to rectify before ratification. One reason for these inaccuracies, comparatively minor in themselves, but had they been passed into law would have had major implications, is the increasingly common practice of using a one official to present Parliament's response and a different official to prepare the Government bill. This practice is particularly noticeable towards the end of the year

The number of inaccuracies, observations on the types of inaccuracies, the competence and performance of staff in handling these issues and staff structure, which may also contribute to these inaccuracies, as described on page 29 in the 2008 Report of the Chancellor of Justice, apply also to 2009. The responsibility partly lies in the types of work carried out by different Ministries, which require sufficient expertise for each particular task and an efficient system of cover for absent staff.

The legal norm examination regarding the content of Government decrees is more thorough than that applied to Government bills, because correcting any errors after a Government decision would require an amendment to the decree in question. Under Section 80 of the Constitution, specific authorisation is required for the issue 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. During 2009, the clearest manifestation of these types of problems occurred in the case of certain general administrative reforms. First of all, the Government bill for such a reform may have been prepared under unreasonable time pressure, without any knowledge of the issues pertaining to the actual implementation of the reform, some which may require a Government decree, and notably without any knowledge of possible resolutions to these issues. When a broad statutory reform has been due to come into force at the beginning of the following year, we have had to consider draft decree presentations outstanding at the end of the preceding year, and pass statutes and legislative solutions which would have been better dealt with concurrently with the bill. Those cases that have not been well prepared have usually concerned the structure of an administrative entity or decrees on the organisation of some other administration, but when they have concerned provisions in Government decrees, for example, regarding the organisation of regional authorities' services, they may have an immediate effect on the availability of services to the public and businesses.

The year under review also saw proposals for amendments to Acts presented by Ministries to make more specific some earlier Acts, some enacted years ago, which included incomplete or insufficiently specific guidelines to issue decrees; as well as some proposals for amendments to take provisions issued at decree level at 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 qualifications and expertise required for the position, the Office ensures that the proposed appointment is based on an objective and appropriate assessment of expertise and a comparison on 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 drawn up to allow it to be verified, on the basis of the memorandum and curriculum vitae details, that the most suitable and best qualified applicant 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 post covers a broad remit. 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.

Regarding candidates for office under Section 26 of the Act on Civil Servants, the Office of the Chancellor of Justice checks that they have submitted a statement of liabilities as prescribed in Section 8a, and that the Ministry preparing the presentation for the appointment has evaluated the contents of the statement with regards to the duties of the office. Usually the candidates themselves notify the relevant Ministry if they hold positions they should need to give up if they were to be appointed to the office. Potential conflicts of interest have usually been settled prior to the presentation, so that these questions require no further consideration when decisions on appointments to public office are being made.

As far as ministerial changes are concerned, a commendable procedure has been adopted, whereby the possibility of a candidate holding any outside position concurrently with ministerial office is considered in advance. Should any such position become apparent, the candidate has the option of resigning from it or withdrawing their candidacy for ministerial office. Such advance assessment should remove any potential for disqualification. In rare cases, a Minister has retained a position held prior to their ministerial appointment, only to discover that such position disqualifies them from making a particular decision.

Compliance with the 40% quota requirement laid down in the Act on Equality between Women and Men, Section 4(2), in central Government committees, advisory boards and other corresponding bodies was monitored as prescribed, as was the equality objective under the Act on Equality between Men and Women, Section 4(3), in other bodies that have a legislative power of decision but are not

subject to the quota requirement. The fact that when appointments for multi-member committees are made, only very rarely is there a need to refer to the special reasons described in the Act on Equality between Women and Men, Section 4, would indicate that the legal 40% quota requirement is generally being met. Application of the quota requirement as prescribed in the Act on Equality between Women and Men has been somewhat problematic in certain situations, such as appointing officials to broadly-based bodies that prepare aid programmes between the EU and other countries, when the Finnish Government only has the power to appoint its own representatives. Problems have also been encountered in applying the rule to a body as a whole when the Government plenary session only has the power to appoint some of its members.

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 servant's liability for acts in office are realised. With regard to membership 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 the 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. 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 for 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 competences between the EU and the individual member states, legal basis must be made apparent in the memorandum. Any ambiguity concerning the basis of authority to act and the position of the Government concerning competence must also be stated.

Attention has been also drawn to the clarity of the memoranda accompanying such proposals and the inclusion 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.

Where there are 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 occasional delays observed in delivering communications to Parliament, the Chancellor of Justice made a ruling in 2009 based on written requests for a report and an opinion issued from certain Ministries. The intention was to receive more information on the reasons and possible structural issues that cause delays. The ruling is on page 59.

## Some rulings related to supervision

The following ruling is included as an example 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.

### Assessments on disqualification and liability

According to the Decree on the Ministry on Social Affairs and Health (90/2008) Section 1, and (10/2009) Section 11, the Ministry is responsible for regulating the insurance industry. The Finnish Centre for Pensions does not constitute a department or agency of the Ministry on Social Affairs and Health, as described in Section 2 of the decree. Instead, under the Act on the Finnish Centre for Pensions, it is a statutory cooperation body for implementing and developing the earnings-related pension provision. The Finnish Centre for Pensions also handles some statutory public administration tasks, as laid down in Section 124 of the Finnish Constitution. Under Section 4 of the Rules of Procedure of the Ministry on Social Affairs and Health, the Ministry's insurance department handles matters concerning the Finnish Centre for Pensions.

The parliamentary Constitutional Law Committee issued a statement (PeVL 30/2005 vp – Government bill 45/2005 vp) to the Social Affairs and Health Committee, stating that the Committee should like to see the Government take steps to investigate how the funding structure of the Finnish Centre for Pensions might be altered, or whether it would be possible to transfer some of the statutory public functions undertaken by the Centre to public authorities, or whether the Finnish Centre for Pensions might become part of the state authority structure. The Constitutional Law Committee has renewed its statement (PeVL 7/2007 vp – Government bill 53/2007 vp) on the need to re-evaluate the status of the Finnish Centre for Pensions.

A Secretary of State is the most senior aide to a Minister and appointed for the duration of the Minister's term of office. In accordance with instructions issued by the Minister, the Secretary of State should assist in the preparation of any matters pertaining to that particular ministerial sector and Minister's portfolio. The Minister bears all political responsibility for the work done by the Secretary of State.

The board chairman of the Finnish Centre for Pensions, just like any chairman of a similarly important body, has the principal task of promoting and monitoring the interests and rights of the

organisation. The board chairman of the Finnish Centre for Pensions is responsible for promoting the statutory tasks assigned to the Finnish Centre for Pensions by law and for supervising their implementation efficiently and as prescribed by law. If the Finnish Centre for Pensions were to be restructured, its financing structure were to be altered, its public administration tasks were to be transferred from it, or its entire existence and position were to be re-examined, the main role of the board chairman of the Finnish Centre for Pensions would be to foster and promote the views of the Finnish Centre for Pensions and reflect the views and decisions of the majority in institutions under the Finnish Centre for Pensions.

If a Secretary of State, as the most senior aide to a minister, also holds a post as the chairman of an organisation that has statutory obligations within the purview of the Ministry, this would constitute a dual role and disqualify the Secretary of State from handling a significant part of the matters in the purview of the Minister of Health and Social Services. On the other hand, the Secretary of State's role as the most senior aide to the Minister would also impact his position as the board chairman of the Finnish Centre for Pensions. Should this be deemed to give rise to a potential conflict of interest under Section 8 of the Civil Servants Act, there would be no doubt that the Secretary of State should have to resign from the position. One of the principles of the regulations on liabilities and disqualifications of senior officials is that a reason for disqualification of an official may come up in rare, unexpected cases and these cases may not come up repeatedly. Should there be any other kind of grounds for disqualification due to a job or position of trust outside the office, the official should not accept it. Considering the particular statutory provision in Section 28 (1)(5) of the Administrative Procedure Act concerning grounds for disqualification, a Secretary of State who is also the board chairman of the Finnish Centre for Pensions would be wholly disqualified from handling matters regarding the Finnish Centre for Pensions. As the Secretary of State's role as the most senior aide to the minister, these matters would not be individual administrative matters, but larger issues such as major development proposals, and so on.

Considering the legislation on public officials' liabilities and grounds for disqualification, the Chancellor of Justice ruled that the Secretary of State to the Minister of Health and Social Affairs is prevented from holding the position of board chairman of the Finnish Centre for Pensions.

# 4

# SUPERVISION OF FUNDAMENTAL AND HUMAN RIGHTS

# General

Fundamental rights mean the rights guaranteed for individuals under the Finnish Constitution. Fundamental rights mean those basic, key rights that in principle belong to everyone in equal measure. Due to the level of hierarchy of statutes, particular permanence and judicial nature are typical of fundamental rights.

Human rights mean liberties guaranteed by international human rights conventions. The conventions bind all national parties to guarantee certain liberties to all people within their jurisdiction. Human rights instruments set the targeted minimum level of protection, and individual nations are allowed to enact wider protection in the field of fundamental and human rights.

Since 2000, the European Union has strengthened the dimension of fundamental and human rights across the Union. This was reflected in the ratification of the Charter of Fundamental Rights of the European Union in 2000, and the establishment of the European Union Agency for Fundamental Rights in 2007. This trend continued during the reporting year, as the Treaty of Lisbon on amending current EU and EC treaties entered into force on 1 December 2009. By adopting the Lisbon Treaty, the Union also adopted the European Convention on Human Rights, enacted a general provision on the status of fundamental rights as general principle in the Union's legal framework, and gave the Charter of Fundamental Rights a legal position comparable to the Union conventions. The entry into force of the Treaty of Lisbon made the Charter of Fundamental Rights of the European Union legally binding.

Under the Constitution of Finland, public authorities have the obligation of safeguarding fundamental and human rights. Fundamental and human rights are binding on public authorities in all of their actions, legislation, administration and application of the law. In many cases, the application and safeguarding of fundamental and human rights requires positive action from the authorities, and it is not sufficient for the authorities merely to refrain from weakening fundamental and human rights.

The Finnish Constitution and international conventions have built-in supervisory frameworks. The supervisory frameworks of international human rights conventions supplement the supervision of national fundamental and human rights. The Chancellor of Justice has a special role in the constitutional system of supervision of fundamental and human rights. Under the Constitution, the Chancellor of Justice is obliged to supervise the application of fundamental and human rights alongside the execution of his other duties. Supervision of the application of fundamental and human rights is carried out in all areas of responsibility of the Chancellor of Justice, and it holds a position of special importance among his supervision duties. Issues concerning fundamental and human rights are present in the supervision of legality of the Government as well as in the supervision of legality of public authorities.

# 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. The Chancellor of Justice's duty of legal supervision of the Government is discussed above in chapter 3. Broadly speaking, Government affairs can be divided into those pertaining to the exercise 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 administration's own conduct regarding the exercise of administrative power. Legal supervision differs according to the nature of the issue. This also applies to the supervision of fundamental and human rights in Government decision-making.

The issue of fundamental rights and human rights mostly arises when 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 drafting and how these are manifested in the bills.

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 the consideration of fundamental rights, and the assessment of the alternatives available and the impact of the proposed legislation on fundamental rights requirements.

The Order of Enactment Section of the grounds of the draft Government bill 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 grounds of the Government bill 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 bill as well as the general credibility of its reasoning. Proposed solutions selected for inclusion in a Government bill 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.

A far-reaching reform of legislation concerning the administrative sector and a large part of the public may involve both a number of individual concerns and some broader views and questions pertaining to fundamental rights. For instance, the implementation of a comprehensive item of legislative reform potentially affecting the fundamental rights of several sectors of society may involve economic or

financial interests. From this perspective, supervision of the examination and documentation of the economic impact of the proposal falls within the supervision of legality by the Chancellor of Justice. 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.

Supervision of Government does not involve any questions regarding the Order of Enactment for bill proposals or decision-making on fundamental right considerations, as those are the responsibility of Parliament. Should it be revealed during supervision that particular provisions of a Government bill do not fulfil the requirements for the application of fundamental rights, or that the grounds for a statute proposal relating to fundamental rights are defective, the relevant Ministries will be asked to rectify or amend these bills and the grounds for the Government bill.

As far as legislative matters arising from the review of presentation agendas and the supervision of fundamental rights during the reporting year are concerned, we should mention the Government bill on the reform of firearms legislation, which was processed in the Government plenary session in June 2009 (Government bill 106/2009 vp). The bill included several significant statutes regarding the application of fundamental rights. For example, a statute regarding the right of police to monitor the possession of a firearm was discussed. From the point of view of a person in possession of a firearms permit, this raises the question of the safeguarded fundamental right to domestic peace. The intended meaning of the statute was to prevent any dangerous situations arising from possession of a firearm. What needed to be assessed and considered was the fundamental legal right to domestic peace in relation to everyone's fundamental right to life and personal safety. Regarding fundamental rights, it was also necessary to assess a statute on the right of professional healthcare staff to report a person who is deemed unfit for a possession of a firearm. On one hand, it was necessary to assess the fundamental right of a person in possession of a firearms permit to safeguard their personal security, and on the other hand, every person's right to life, personal freedom, immunity and safety. The content and preparation schedule for the proposal, which was prepared at the relevant Ministry, were influenced by national events during the course of the proposal. Due to time pressures the time allowed for the Office of the Chancellor of Justice was also limited.

Concerning the review of agendas for Government and presidential decree proposals, the requirements laid down in Section 80 of the Finnish Constitution regarding the precise scope of the power to issue decrees and the principle that rights and obligations of private individuals cannot be governed by decrees, are particularly important. During the reporting year, the Office of the Chancellor of Justice assessed a Government decree for a temporary amendment to the Communicable Diseases Decree (707/2009) and related questions on prioritisation of vaccinations and the appropriate level of statute. In September 2009, the Government plenary session passed a Government decree on a temporary amendment to the Communicable Diseases Decree by adding a new Section to it. The Section stipulated, inter alia, which body was responsible for organising voluntary vaccination against influenza A virus subtype H1N1 (swine flu), and the order in which the vaccination would be offered to

different population groups. According to the presentation brief, the different population groups had been defined on medical grounds. In discussions on the matter, the Chancellor of Justice deemed that in line with the non-discrimination principle as prescribed in Section 6 of the Constitution, medical grounds were the most justifiable grounds for dictating the order in which vaccinations were to be offered to the public. With regard to the question of whether the decree should be issued by the Government or the relevant Ministry, the Chancellor of Justice considered neither option would require intervention by him, as supervisor of legality.

The Government plenary session makes some administrative decisions, for example on such permit-holder issues as are deemed to have social significance. Regarding fundamental rights, this involves in particular the application of the equality principle as prescribed in Section 6 of the Constitution and the application of legal protection and guarantee of good governance as prescribed in Section 21 of the Constitution. In this respect the right to be heard and the right to receive a reasoned decision are particularly relevant. In 2009, the Government plenary session decided to grant an approval for the utilisation of the Finnish economic area. In November 2009, the Government approved a Nord Stream AG project to build a subsea natural gas pipeline in the Finnish economic area. During the final stages of the preparation process, the fundamental rights of fair trial and good governance came up in discussions with the rapporteur especially regarding questions of position of interested parties, right to be heard and implementation of the decision. Since then, in February 2010, the Regional State Administrative Agency of Southern Finland granted permission for the building and operation of a natural gas pipeline in accordance with the Water Act (264/1961).

In the review of presentation agendas, the following issues, inter alia, were raised in 2009 concerning the supervision of fundamental and human rights in statutory and administrative matters: the selection of the correct level of statute, the existence and scope of application of provisions on the delegation of powers to issue decrees, the precise extent of laws, the legal ban on appeal and related issues concerning the appeal system, the retroactivity of legal provisions, the principle of legality in penal statutes, the practical implementation of the right to be heard, and other guarantees of good governance, as well as questions on equality and the protection of property rights.

The supervision of fundamental and human rights issues in Government affairs includes the review of presentation agendas as well as the issue of statements. The most significant statements are described in Section 5 and in other Sections regarding the relevant Ministries.

# Fundamental and human rights in the supervision of other authorities

Issues related to the implementation of fundamental and human rights are raised in the supervision of the activities of public authorities and servants and others performing a public duty through complaints, inspections and self-initiated investigations.

Even if a complaint does not directly refer to fundamental rights provisions or provisions in human rights conventions, they should nevertheless be taken into account in the handling of a case without the need to specifically refer to these laws. Several fundamental rights provisions, and corresponding provisions agreed under human rights conventions, require that further provisions on the fundamental right in question be laid down in an Act, whereby the specific content and extent of the fundamental right is determined on the basis of special legislation, and decisions for most individual complaints are based on applicable special legislation without any need to resort to the underlying fundamental rights provisions. In general, rulings only make reference to the applicable constitutional fundamental or human rights provisions when their direct application has first been considered.

Following the order of Sections in Chapter 2 of the Constitution of Finland, some rulings from 2009 are discussed below, all of which deal with fundamental rights issues. These cases demonstrate that several fundamental laws have been discussed during the year. The rulings have mostly dealt with equality in accordance with Section 6 of the Constitution, and protection of law in accordance Section 21. The right to fair trial and good governance were dealt with in the rulings in different forms. The rulings have dealt in particular with the right to have one's case dealt with without undue delay and the right to a reasoned decision, as well as the duty of public officials regarding the processing of requests for documents and information, and replying to them in accordance with good governance.

Complaints received dealt principally with the conduct of officials in individual cases, so the information on the behaviour of officials received by the Chancellor of Justice through them is rather random. This is why it is vitally important that in its supervision of fundamental and human rights, the Office of the Chancellor of Justice is able to conduct on-site inspections as well as initiate matters for investigation. If a complaint regarding the conduct of an individual official implies that the inappropriate conduct stems from wider practice, beyond the case or official in question, or the complaint implies that there may be broader structural problems attached to the conduct of officials, the Office of the Chancellor of Justice is able to take up the matter and initiate investigations, and is able to take broader beyond the original complaint. In this way, it is possible for the Office of Justice to take up broader, thematic questions regarding the application of fundamental and human rights. These kind of supervisory measures enable investigation of and intervention on, for example, deficiencies in legislation or guidance given to officials, or the erroneous application of such guidance. The supervisory role also enables the Office of the Chancellor of Justice to monitor how the public authority as a

whole is fulfilling its constitutional obligation to promote active measures to foster and safeguard fundamental and human rights.

In particular, when the Office of the Chancellor of Justice is working on a case which requires wide-ranging investigations and possibly also planning for and implementation of remedial measures with an authority, it may monitor the authority's handling of the issue as regards fundamental and human rights over the longer term.

An example of a wide-ranging problem affecting an authority's performance is the backlog experienced at the Social Security Appeal Board (sosiaaliturvan muutoksenhakulautakunta) and its handling of complaints. It is the first appeal body to review complaints regarding decisions made by the Social Insurance Institution of Finland (Kela), other than for student grants and unemployment benefit. The Board is obliged to ensure the proper application of law without undue delay, and following from that, the right to basic subsistence security. A person lodging a complaint concerning the disallowal of entitlement to basic social security may be left without social security during the processing of their complaint, and they often have no course of action other than to apply for subsistence support. The problem lies in whether the Board fulfils its constitutional (Section 21) obligation to deal with cases without undue delay. Under Section 19 of the Finnish Constitution, everyone has the right to basic subsistence. Because the Board handles cases regarding basic subsistence security, timely processing of cases is of paramount importance to the complainants. The case also highlighted the question of how the authorities' constitutional obligation (Section 22) to guarantee the observance of fundamental and human rights by using proactive measures, such as legal means or by retargeting financial resources, applies to the work of the Board and its regulatory authority.

The Deputy Chancellor of Justice's inspection visit to the Board in February 2008 revealed that there was a backlog in the handling of complaints. The problems and deficiencies in the working methods of the Board were perceived likely to threaten the proper functioning of the Board and thus also the legal rights of complainants. As a result, the Deputy Chancellor of Justice started a review at his own initiative into the Board's functioning and particularly the handling times for complaints. The investigation also looked into possible ways of improving the operation of the Board. The Deputy Chancellor of Justice's ruling (OKV/6/50/2008) concluded, inter alia, that the measures already taken by the Ministry of Social Affairs and Health were a step in the right direction, but that it was too early to assess their impact on shortening handling times. The Deputy Chancellor of Justice also requested a second report from the Ministry and said that he would perform a second inspection visit to the Board during 2009. The rulings were discussed in more depth in the 2008 report.

In 2007, the average handling time of a complaint was over 13 months. By 2009, this had increased to over 17 months. The Ministry issued a report on 24 April 2009 explaining the measures they were taking to shorten handling times. During 2008 and 2009, the Board received additional funds to hire more staff, and certain statutes governing the Board's work were changed to make handling of cases less bureaucratic. In addition, internal improvements were made at the Board. During 2009, the Office of the Chancellor of Justice received several complaints regarding the Board's long handling times. The Deputy Chancellor of Justice made ten rulings on such cases in 2009. The rulings stated that the handling times of the cases had been unreasonably long, and the matter was brought to the Board and Ministry's attention. On 12 November 2009, the Deputy Chancellor of Justice made

a second inspection visit to the Board, during which methods for working through the backlog were discussed. Although the average handling time of complaints had increased from 2007, it was noted during the inspection visit that there were fewer cases pending than at the beginning of 2009, indicating that at least the same number of complaints had been resolved as had been received.

As per information received during 2009, as discussed above, despite the measures taken to cut handling times, the situation remains of considerable concern. Handling times are still unreasonably long and, based on the numbers of cases received and resolved, they are not likely to reduce in the near future. As a result, the Deputy Chancellor of Justice has begun a review, at his own initiative, into the adequacy of measures taken by the Ministry (OKV/14/50/2009). The case is ongoing.

# Rulings

## Equality

### Consideration of opinions in making administrative decisions

In considering an application, a Ministry official had issued letters of hearing request, and as grounds for a possible negative decision, referred to a publication and a statement submitted by the Board of an Association [of which the applicant was a member] to the Law Committee of Parliament on a proposed Bill. The official considered these to disclose the applicant's personal beliefs.

The Chancellor of Justice stated that if personal beliefs are being considered as grounds for administrative decisions, the possible limitations contained in fundamental and human rights legislation must be considered at the outset. The Chancellor of Justice also considered that, if statements given to parliamentary committees contained personal beliefs on a particular subject, those should not be used against the individual when later applying for a permit or benefit. In his ruling, the Chancellor of Justice referred to the prohibition of discrimination on grounds of personal belief, and the obligation of the state to guarantee freedom of speech and freedom of association without any such discrimination (OKV/750/1/2007).

### Equal treatment and good governance

Please see page 97 (OKV/131/1/2007).

### Grounds for discrimination under the Non-discrimination Act

Please see page 102 (OKV/1233/1/2007).

## Right to privacy

### Presence during house search

Please see page 84 (OKV/593/1/2007).

## Freedom of speech

### Limiting the freedom of speech under guidelines issued by the from the Finnish National Board of Education

Please see page 91 (OKV/1181/1/2007).

## Fair trial and guarantees of good governance

### Delay in legal proceedings

Please see page 75 (OKV/15/31/2008).

A district judge had had five cases pending for an unreasonably long time regarding the merits of particular cases. According to the Chancellor of Justice, these long handling times threatened the fundamental right to have one's case dealt with without undue delay. A pre-trial investigation of the district court judge's actions and possible causes for the delays found no legally acceptable reason for the long handling times. The Chancellor of Justice requested the Prosecutor-General to bring charges against the district court judge for negligent discharge of official duty (OKV/880/1/2006 and OKV/1320/1/2007).

### Delay in serving summons

The time limit for prosecution in a criminal case regarding serious fraud had lapsed before a writ-server had served the summons on the defendant. The writ-server had taken no steps to notify the district court that the summons had not been served by the date for service. Had the writ-server informed the court of the situation, the Chancellor of Justice considered that the court would have had time to take the necessary steps (e.g. in conjunction with the police) to contact the accused before the time limit for prosecution in a criminal case had lapsed.

The writ-server's negligent conduct had threatened the fundamental right of having one's case dealt with properly in a court with competent jurisdiction. Pre-trial investigations into the writ-server's conduct found no legally acceptable reason why the writ-server had not respected the date of service set by the district court. The Chancellor of Justice requested the Prosecutor-General to bring charges against the writ-server for negligent violation of official duty (OKV/13/21/2008).

### Observance of an absolute procedural requirement

A district judge presided over both the remand and main hearings in a criminal case. An advocate, who had assisted the defendant accused in the remand hearing, assisted the prosecution in the main case. The district court judge had not intervened concerning the advocate's conduct.

The special requirements for the qualification (and disqualification) of advocates and trial counsels in specified situations are laid down in Chapter 15, Section 3 (3) of the Code of Judicial Procedure. According to this Section, a person who has previously served as an advocate or counsel for one party may not serve as an attorney or counsel for the other party. Thus in the case in question, the advocate should have been prevented from serving as the prosecution's advocate in the main hearing.

The particular qualification requirements for trial counsels are absolute: courts of law are instructed to ensure that the qualification requirements of those who apply to be counsel for the parties are met. If some of the qualification requirements are not met, the court of law must prevent the counsel from serving in the case. For the parties, especially the accused, the procedural requirements and their observance are very closely linked to the right of the accused to have their case dealt with in a fair trial, as prescribed in human rights conventions and the Finnish Constitution.

The Chancellor of Justice ruled that the district court judge should have been aware of the disqualifying circumstances and prevented the advocate from serving as the prosecution's trial counsel in the main hearing. The Chancellor of Justice informed the district court judge that his conduct had been incorrect (OKV/1225/1/2007).

## Long processing time in a civil case

A civil case had originally been lodged at a district court in 1998. Proceedings had been completed in 2007 by the district court's interim decision, which had then become legally valid.

The civil case in question that the district court judge had dealt with did not seem to be exceptionally wide-ranging or challenging in legal terms. The longest delay in the course of the case, four and a half years, had occurred due to a suit before another court of law, a decision on which the district court had had to wait. After this, it took nearly three and a half years in the district court before a decision was reached. The Chancellor of Justice considered that, even after the case had returned to the district court, there had been long periods of time when no progress had been made. That said, the parties themselves were responsible for some of the delay.

The Chancellor of Justice considered that the district court judge had not handled the civil case in a timely manner as required. The Chancellor of Justice reminded the district court judge of the importance of handling civil cases in a timely manner (OKV/1282/1/2007).

## Publicity for an oral hearing in a criminal case

In his ruling on a court of law's decision on whether an oral hearing in a criminal case should be taken in public, the Chancellor of Justice highlighted that under Section 21(2) of the Finnish Constitution, publicity is a guarantee of a fair trial and is protected by law. In addition, international conventions binding on Finland contain requirements on the publicity of trials.

A complaint criticised the conduct of a district court for deciding prior to the hearing that the hearing was to be conducted in camera.

The Chancellor of Justice considered that legislation in force at the time of the hearing should have been applied in such a way that the hearing was to be in public in the absence of specific legisla-

tion to the contrary. The Chancellor of Justice also referred to an interpretation of the European Convention on Human Rights, whereby any legislation dispensing with the principle of publicity in court proceedings should be interpreted narrowly.

The Chancellor of Justice ruled that legally it would have been more appropriate for the decision on whether the oral hearing should be heard behind closed doors to have been taken once the hearing had commenced. This would have also ensured the justifiable procedure whereby the district court orally asks for the parties' opinions on the publicity of the hearing during the hearing, and the Court has the chance to hear their opinions. This procedure should have been followed to ensure public trust in the proper conduct of court proceedings (OKV/11/1/2007).

## Right to remain silent in criminal proceedings

Please see page 78 (OKV/130/1/2007).

## On how to serve a written caution

The Deputy Chancellor of Justice reminded line manager that the good governance must be followed in serving an official with a written caution. An official must be heard prior to the issue of a written caution. The written caution should state that it does not constitute a written warning, as prescribed in Section 24 of the Civil Servants Act (OKV/679/1/2007).

## Making a decision under the Animal Welfare Act

The Deputy Chancellor of Justice cautioned a police sergeant and municipal veterinarian for their actions in an animal welfare case in which the animals' owners had been denied their right to good governance as prescribed under Section 21 of the Constitution: their right to have their case handled in an appropriate court of justice, the right to a reasoned decision and a right of appeal.

The police sergeant and municipal veterinarian had under section 44 of the Animal Welfare Act put down the complainants' animals. The decision to take measures pursuant to Section 44 of the Animal Welfare Act had not been appropriately documented in writing (OKV/1068/1/2006).

## Contents and grounds in a pre-trial investigation decision

The Chancellor of Justice informed a crime chief inspector, who had been in charge of investigations, that a pre-trial investigation decision must contain relevant details, i.e. how the matter has been resolved, as well as the section of law it is based on (OKV/345/1/2008).

## Providing a copy of a notice of investigation

A crime chief inspector had refused to give an accused a copy of the notice of investigation, and had told the accused to lodge a complaint with the Parliamentary Ombudsman if necessary. The Chancellor of

Justice considered that the chief inspector had a legal right to refuse to provide the complainant with a copy of the notice of investigation, but he added that the chief inspector's conduct in refusing to provide the document did not meet the requirements for due publicity of actions by the authorities as prescribed in the Publicity Act. The Chancellor of Justice referred to the relevant sections of the law and stated that lodging a complaint with the Parliamentary Ombudsman is not an actual method of appeal as prescribed in the Publicity Act, but a secondary course of action in this particular case. The Ombudsman has no right, for example, to quash a decision made by an official and to make a new decision. The complainant should have been advised of the procedure provided in Section 14(3) of the Publicity Act to take the case to be considered and decided by a relevant authority. A decision given by an authority may be appealed against under Section 33(1) of the Publicity Act by lodging an appeal with the Administrative Court. According to Section 21 of the Constitution, everyone has the right to have their case dealt with by an appropriate, competent court of law, to receive a reasoned decision and to appeal against it. According to Section 21 of the Constitution, the authorities are obliged to guarantee the application of basic rights.

The Deputy Chancellor of Justice reminded the chief inspector of the need for careful compliance with Section 14(3) of the Act on the Openness of Government Activities in handling requests for access to documents (OKV/461/1/2008).

## On good governance

Please see page 109 (OKV/733/1/2007).

## Responding to a letter

For future reference, the Chancellor of Justice reminded the Maritime Services of their obligation under Section 21 of the Constitution to respond to an enquiry, and of their obligation under Section 8 of the Administrative Procedure Act to provide customers with necessary advise (OKV/692/1/2007).

## Notification of the conclusion of a hearing

Please see page 99 (OKV/564/1/2007).

## Handling of an administrative complaint

During the handling of a complaint received by the Chancellor of Justice, the Auditing Board of the Central Chamber of Commerce referred to the Auditing Act and stated that the Board may use discretionary powers in deciding whether to follow rules on administrative complaints in the handling of all types of complaint.

The substitute for the Deputy Chancellor of Justice cautioned that the Auditing Board had an incorrect interpretation of the law. The Auditing Act, or any other Act for that matter, does not free the Auditing Board from observing Section 21 of the Constitution, under which the Auditing Board is obliged to reach a conclusion in a matter which falls under the supervision of auditors and on which it has re-

ceived an administrative complaint; and the Auditing Board must also observe Section 4(3) of the Administrative Procedure Act under which it is obliged to apply the Administrative Procedure Act in reaching a conclusion on a complaint and notifying it.

The opinion also pointed out that the Auditing Board's rules of procedure were misleading, and that the Board had neglected to reach a conclusion on a complaint that it had received (OKV/999/1/2007).

## Right to receive a reasoned decision

A case regarding a disability benefit involved the right to receive a reasoned decision as prescribed in Section 21 of the Constitution. The Deputy Chancellor of Justice reminded the Social Insurance Institution of Finland and the Social Security Appeal Board to pay attention to better reasoning in their decisions (OKV/890/1/2007).

## A school principal's conduct regarding a decision on alternative schooling arrangements

A Director of a children's home had made an application on behalf of a child in custody for the child to be schooled at the children's home, and the Principal of the secondary school attended by the child had made a decision on the application. The Principal had not sent the decision to the child's parents nor to the Social Welfare Board, which had made the decision on custody.

The Chancellor of Justice stated in his ruling that when assessing the Principal's conduct, it should be taken into account that according to Section 21(2) of the Constitution, the right to appeal is a part of good governance. According to Section 21(1) of the Constitution, an official decision on an individual's rights and obligations must include the right to appeal either to a court of law or to some other independent legal body. In this case the right to appeal against the decision on special schooling arrangements had been refused.

The Chancellor of Justice cautioned the Principal for conduct that was against the principles of good governance and against the Basic Education Act, and made his ruling known to the municipal education authorities (OKV/1031/1/2006).

## Principles of good governance in an official response

For future reference, the Deputy Chancellor of Justice drew a school principal's attention to the principles of good governance to avoid misleading advice being given in an official response, as prescribed in Section 21 of the Constitution. The principal had sent a response to a request to receive copies of documents, stating that the documents could be viewed at the municipal education office; but the request had been about the receipt of the documents, not about the ability to view them (OKV/946/1/2007).

## Church council's obligation to follow good governance

Please see page 110 (OKV/1175/1/2007).

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# More extensive statements of opinion in the field of legality supervision

# Regional administration reform

The Chancellor of Justice Mr Jaakko Jonkka's request for a report on 13 October 2009, and a ruling on 30 October 2009 concerning linguistic rights in the reform of state regional administration (documents number OKV/1370/1/2009, OKV/1349/1/2009 and OKV/1354/1/2009)

The Constitutional Law Committee issued a statement on 25 September 2009 (PeVL 21/2009 vp) on the Government bill on legislation for regional administrative reform (Government bill 59/2009 vp). The statement deemed it imperative that the Government appoint a panel of experts without delay to assess the potential consequences of the new regional boundaries proposed in the proposed legislation for different population groups and their ability to receive services on the same basis as before and as stipulated in the Constitution. The Constitutional Law Committee statement included the following:

"The Constitutional Law Committee emphasises that the linguistic basic rights must be taken into consideration in the preparation of new regional boundaries and any proposed changes to them. At the time of a proposed national reform to regional administration, it is essential that a thorough assessment be made on how the proposed new boundaries should provide for the constitutionally guaranteed capability of the Finnish and Swedish speaking communities to receive services in their own language. The Committee has no knowledge of the existence of such an assessment. It would have been appropriate to assess the linguistic consequences prior to bringing the Government bill before Parliament, or at the very latest, during parliamentary readings. In any case, the Committee regards it as obvious that the regional boundaries in the decree to be passed by Government must be based on a sufficiently wide-ranging assessment of its linguistic consequences. The Committee deems it imperative that the Government appoints a panel of experts without delay to assess the potential consequences of the new regional boundaries as per the proposed legislation for different population groups and their capability to receive services on the same basis as before. The Committee further underlines that in this regard, the Government's decision-making is regarded as a consideration of matters of law based on obligations under Sections 122 and 17 of the Constitution. In an administrative sense, thus, out of the possible regional boundaries the one that best fulfils the linguistic basic provisions must be chosen."

On 6 October 2009, the Ministry of Finance appointed a committee to assess the resources and other means to be allocated for the provision of bilingual services in the region of central Ostrobothnia in the new regional area as proposed by the Ministerial Administrative and Regional Development

Committee, and to direct preparations for the provision of bilingual services. The committee was appointed for the period ending on 6 November 2009.

A question was raised as to whether the decision to appoint a committee was in compliance with the Constitutional Law Committee's statement. The Chancellor of Justice decided to investigate the matter. The Chancellor of Justice requested a report and statement from the Minister of Public Administration and Local Government, Ms Mari Kiviniemi, on the Constitutional Law Committee statement, and particularly, on how the Constitutional Law Committee statement applied to preparatory work, and how the Constitutional Law Committee statement had been taken into account in the decision to appoint a Ministry of Finance committee, its composition and tasks in assessing the consequences for linguistic rights.

In their submissions to the Chancellor of Justice, the Swedish Assembly of Finland and the Board for Language Affairs drew attention to the decision to appoint the committee and its mandate. Members of Parliament Mr Jacob Söderman and Mr Veijo Puhjo sent a submission to the Prime Minister, and the City of Kokkola sent a submission to the Government, both of which were forwarded to the Chancellor of Justice for information. The Chancellor of Justice also asked for an opinion on these statements from the Minister of Public Administration and Local Government, Ms Mari Kiviniemi. The Minister's report was received on 23 October 2009 and a response from the Swedish Assembly of Finland on 29 October 2009.

## Resolution

### Comment on the appointment of the committee

Submissions received by the Chancellor of Justice had expressed concern as to whether the appointment of the committee was in accordance with Section 67 of the Constitution, as the committee was appointed without any decision by the Government plenary session.

According to Section 67 of the Constitution, any Government affairs should be decided in the Government plenary session or by the relevant Ministry. According to Section 67(2) all Government plenary session affairs are to be prepared by a relevant Ministry.

Thus the Ministry of Finance did not exceed its powers when the decision to appoint a committee to prepare a bill was made by the Ministry.

### Implementing linguistic rights

According to Section 122 of the Constitution, administrative geographical areas should be so constituted that the Finnish-speaking and Swedish-speaking populations have an opportunity to receive services in their own language and on equal terms. According to Section 17(2) of the Constitution, the public authorities should provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis. It is the prerequisite of the latter provision, according to a Government bill on amending fundamental rights legislation (Government bill 309/1993 vp, p. 65), that the languages should be treated equally not only formally, but also

in practice – safeguarding the equality of Finnish and Swedish-speaking communities in the provision of public services. The Constitutional Law Committee brief on the above Government bill (PeVM 25/1994 vp, p. 4) states that the Courts should interpret the law in such a way that best supports the implementation of fundamental rights and ensures conformity with the Constitution.

The preamble to the above Government bill states that it is of utmost importance that in the organisation of public administration, fundamental linguistic rights should be taken into account, and the abilities of Finnish and Swedish speaking communities to receive services in their own language should be safeguarded. The bill further highlights the requirement for linguistic equality and presumes that these abilities should be safeguarded on same grounds (Government bill 1/1998 vp, p. 177). At a Parliamentary reading the Constitutional Law Committee considered that in applying Section 122 of the Constitution, linguistic considerations are of prime importance insofar as they may be considered as special grounds, so permitting a departure from geographical areas that might otherwise have prevailed (PeVM 10/1998 vp. p. 35). Professor Kaarlo Tuori issued a statement to the Constitutional Law Committee on 19 May 2009, stating that the provision on linguistic equality in Section 122 of the Constitution must be interpreted in the light of Section 17(2) of the Constitution, which gives it an absolute legal validity. According to Professor Tuori, this interpretation is also borne out in the legislative drafts of the Constitution.

The Constitutional Law Committee statement on regional administrative reform (PeVL 21/2009 vp) considers that "the regional boundaries in the Government decree must be based on a sufficiently reliable assessment of the linguistic consequences". The Committee underlines that in this regard, governmental decision-making is regarded as consideration involving matters of law and based on obligations under Sections 122 and 17 of the Constitution. The statement argues that "if, administratively, it is possible to draw up a variety of differently configured geographical areas, the obligation to guarantee fundamental rights requires that the one that offers the best provision for linguistic equality, must be chosen." This statement includes the principle that fundamental rights should be actively reinforced in interpreting the law, as earlier formulated by the Constitutional Law Committee. A statement to the Constitutional Law Committee on 19 May 2009 by Professor Olli Mäenpää, and a statement to the Swedish Assembly of Finland on 14 February 2009 by professor Markku Suksi, are consistent with the Constitutional Law Committee's line.

The starting point for the Ministry of Finance committee, which was appointed on 6 October 2009, and its preparatory work is, according to the Ministry, that "if linguistic rights are ensured as prescribed in the Language Act in a variety of configurations of regional areas, it is possible to choose between them on other grounds". The statement argues, "Where a fundamental right is required to be included in evaluating possible configurations for regional areas, the evaluation of alternatives and different interests should be carried out in a comprehensive and integrated way".

As the matter was still at the drafting stage, the Chancellor of Justice decided that it was not yet possible to assess the final, practical realisation of linguistic rights. According to the Chancellor of Justice, however, the starting point for the preparation of regional administrative reform seemed to be in conflict with the Constitutional Law Committee's line. The Chancellor of Justice stated that as the legislators had in Section 122 of the Constitution specified the importance of linguistic rights in regional areas, the Constitutional Law Committee had strong constitutional grounds for its decision to emphasise the importance of linguistic rights. According to the Chancellor of Justice, a question arose as to

whether there was a danger that the starting point for the legal drafting as explained in the report that had been received might lead to a final decision which would be in conflict with the Constitutional Law Committee's line. The grounds in the report did not seem to take into account to a sufficient degree the arguments and emphases in the Constitutional Law Committee's statement.

The Chancellor of Justice pointed out that the Constitutional Law Committee's line must also be considered when passing decree level regulations. The Constitutional Law Committee stated (PeVL 21/2009 vp) "it is clear that constitutional stipulations may directly limit the content of lower level decrees that have been passed by using authoritative powers, for example, when there are fundamental rights considerations involved in interpreting the powers of a public authority". The Ministry of Finance's legal drafting discussed here was aimed at the passing of a Government decree on regional boundaries. A legally untenable situation would result if the decree were to deviate from the line of interpretation of the Constitutional Law Committee.

For the reasons discussed above, the Chancellor of Justice deemed it crucial that as the Ministry was submitting the proposal to a Government plenary session for decision, it had an appropriately reasoned assessment of how linguistic rights would be catered for in accordance with the Constitutional Law Committee's line. To avoid any delays, the Chancellor of Justice asked the Ministry to send its assessment in good time before the presentation at a Government plenary session.

## Preparation of Government decrees prior to a Government plenary session

Before a Government plenary session, the Minister of Public Administration and Local Government, Ms Kiviniemi, and the Minister of Economic Affairs, Mr Pekkarinen, sent their assessments on the realisation of linguistic rights to the Chancellor of Justice. The regional boundaries laid down in Government decrees, which would shape the realisation of linguistic rights, were discussed among the relevant ministries and ministerial officials before the Government decrees were presented in plenary session. The Chancellor of Justice submitted to Ministers Kiviniemi and Pekkarinen a brief which referred to the report by the Ministry of Finance committee, according to which the Regional State Administrative Agency of Northern Finland would not be able to provide fully bilingual services, and the Centres for Economic Development, Transport and the Environment ("ELY") of Central and Northern Ostrobothnia would not be able to provide fully bilingual services without special measures.

According to a brief that included data needed to compare the different alternatives, dated 12 December 2009 at the Ministry of Finance, the ELY Centres of Ostrobothnia and Southern Ostrobothnia and the Northern and Inland Regional State Administrative Agencies of Finland would be able to provide all their services in two languages.

The Chancellor of Justice's brief covered the following issues:

Preparatory work to date does not seem to sufficiently support the view that the proposal originally intended for enactment as a decree would be in accordance with the Constitutional Law Committee's view of the best solution for guaranteeing linguistic rights.

It would prove very problematic if in an issue involving fundamental rights, a proposal at this level of decree should be passed without its implications and legal sustainability having been thoroughly examined.

Professor Mäenpää noted in his statement of 5 November 2009 to the committee that from the point of view of the Constitution, it cannot be the case that an Act or a decree could postpone the observance of fundamental rights in certain areas or with certain matters, and that it is not acceptable to set a transition period for the implementation of fundamental rights by a decree level statute. According to Professor Mäenpää, the proposed Government decree on regional boundaries should be able to safeguard the realisation of linguistic rights from its coming into force, as suggested by the Constitutional Law Committee's criteria.

As the view of the rapporteurs, based on the preparatory work so far, is that the proposed regional boundaries do not safeguard linguistic rights, a year's postponement would not of itself change the legal position.

Decrees that may have an impact on the realisation of fundamental rights cannot be predicated on the basis of making post-implementation changes to bring them into line with the Constitution.

# Submission of Government notices to the Parliament (Section 96(2) of the Constitution of Finland)

Ruling by the Chancellor of Justice Mr Jaakko Jonkka on 3 June 2009 (document numbers OKV/12/50/2008, OKV/15/50/2008, OKV/19/50/2008 and OKV/20/50/2008)

In observations based on the review of Government plenary session agendas in 2008, it was noted that certain Government notices under Section 96(2) to the Parliament had been delayed. As a result, in summer 2008 the Office of the Chancellor of Justice began monitoring notice schedules to find out what was causing the delays, and if necessary, requiring Ministries to submit written explanations. In addition, ministries were asked for clarification on how they had arranged the handling and monitoring of the "U-notices" to ensure parliamentary influence.

## Reports

A statement by the Ministry of Transport and Communications on 14 October 2008 (a Commission proposal for a directive of the European Parliament and the Council on facilitating the cross-border law enforcement in the field of road safety).

A statement by the Ministry of Foreign Affairs of Finland on 14 November 2008 (a Commission proposal for a regulation of the European Parliament and the Council on Community Code on Visas).

A statement by the Ministry of Agriculture and Forestry on 26 January 2009 (a Commission proposal for a regulation of the European Parliament and the Council on [animal] by-products).

A statement by the Ministry of Employment and the Economy on 23 January 2009 (a Commission proposal for a Directive of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy related products).

In addition, a report on delays was issued from individual rapporteurs:

Ministry of Finance (a Commission proposal for a Directive of the European Parliament and the Council on electronic money).

Ministry of the Environment (a Commission proposal for a regulation of the European Parliament and the Council on the EU ecolabel system).

Ministry of Social Affairs and Health (a Commission proposal for a Directive of the European Parliament and the Council on the principle of equal treatment between men and women engaged in a self-employed capacity).

Ministry of Employment and the Economy (a Commission proposal for a Directive of the Council (Euratom) on establishing a Community framework for the safety of nuclear installations, i.e. the nuclear safety Directive).

### Report by the Ministry of Transport and Communications

The Ministry received the Directive in question on 20 March 2008 and immediately distributed it to the Ministry's road policy department as well as to an official in the Foreign Affairs Secretariat. A basic draft completed by a rapporteur and dated 20 August 2008 was submitted to the parliamentary Grand Committee as an attachment to an E-notice on 19 September 2008. The U-notice was sent only on 2 October 2008.

The Ministry admitted it failed in its duty to submit matters to Parliament within a reasonable time, although due to a problem in the legal basis of the Directive the handling of the proposal did not progress as expected and thus Parliament had an opportunity to give its opinion on the proposal and influence the position of Finland in the negotiations.

According to the Ministry, the delay was caused by several simultaneous factors. Staff changes occurred in the traffic safety unit of the traffic policy department during spring and summer of 2008, the most significant of which was a change in the head of the unit. These changes were subsequently found to have affected the normal working of the unit as well as communication within the unit. The Ministry's traffic policy department had an internal coordination and monitoring system in use for EU matters, but this did not operate efficiently in this particular case.

### Report by the Ministry of Foreign Affairs of Finland

The Commission presented a proposal on establishing common code on visas on 24 July 2006, and as Finland held the EU presidency at the time, the Government was immediately informed of it. The contents of the proposal were exceptionally wide-ranging and challenging, and its handling was expected to take several years. It is expected to be completed during 2010.

The proposal was presented to a Council committee, and a preliminary reading took place during the Finnish presidency in the autumn of 2006. The first round of preliminary readings of the legislative proposal was completed in the Council at the beginning of 2008.

The Ministry pointed out some exceptional practical circumstances that hindered the prompt progression of the visa norms at national level. The unit responsible for the reform of visa norms was understaffed during the Finnish presidency, and during the following year, long medical absences among staff resulted in the unit again being understaffed. Once the U-notice was completed in June 2008, its submission to Parliament was further delayed by several months due to its translation by the Government Translation Unit, as the Translation Unit had a heavy workload of urgent budget documents.

Communications to Parliament regarding the legislative proposal on a total reform of code on visas was unusually delayed, an exceptional situation. In future, the Ministry would pay more attention to the observance of Section 96(2) of the Constitution in each individual case.

### Report by the Ministry of Agriculture and Forestry

The Commission proposed a regulation on [animal] by-products on 11 June 2008, and the Ministry of Agriculture and Forestry received notice of the proposal on 13 June 2008. The Ministry sent the Parliament a notice on the issue on 4 December 2008. The proposal had a reading in a Council committee on 8 July 2008, after which it had further readings in four committee meetings during the autumn of 2008. The proposal had further readings in the Council committee on 27 and 28 January 2009. Readings of the legislative proposal were scheduled to commence in the Agricultural Committee of the European Parliament between 21 and 22 January 2009.

The proposal consisted of a large document nearly 70 pages long, with a 100-page attachment containing an assessment of its effects by the Commission. Examining the contents of the proposal and the Commission's assessment of effects, arranging for interest groups to be heard, and formulating the Government's position on the matter took some time. Presentation of the proposal at the Council committee meeting took place just before the annual leaves taken during summer.

The Ministry explained the way it organises the preparation of EC matters, and stated that it aimed to inform Parliament in time for it to be able to influence Finland's positions in EU bodies. The majority of the EC legislative proposals which fall within the scope of the Ministry's Department of Food and Health are handled through the codecision procedure with the European Parliament, which is why processing in EU bodies takes a relatively long time.

The Ministry's Department of Food and Health uses a law drafting register all Commission proposals as soon as they are received, which helps monitor the handling of proposals at EU and national levels.

### Report by the Ministry of Employment and the Economy

The Commission presented a legislative proposal on 16 July 2008 and the Government U-notice on the matter was submitted to Parliament on 4 December 2008. The Ministry had received notice of the legislative proposal immediately after the Commission had issued its communication on sustainable consumption and production and sustainable industrial policy on 16 July 2008. The communication included the legislative proposal. The Government sent a report on the matter to Parliament on 9 September 2008, which also included the most important points of the proposed amendment to the Directive on the ecodesign of products.

The EU Energy Council reached a consensus on the amendment proposal on 8 December 2008. Member states' views on the proposal were uniformly positive. The report was due for a hearing in the European Parliament in February 2009 and it was to reach a plenary session in April 2009, after which it was to have further readings in the Council.

The handling of the proposed Directive was the responsibility of the Energy Efficiency and Renewable Energy Unit in the Energy Department of the Ministry of Employment and the Economy. Since the summer of 2008 and throughout most of the autumn, three of the ten expert positions in the Unit were vacant. Staff levels returned to normal only at the beginning of 2009. During the autumn, the Energy Department was responsible for the preparation of the Government's climate and energy strategy, which required input from the entire staff of the Unit, in addition to other issues. Despite the shortage of staff, there had been important and urgent matters to tend to, which in part contributed to

the Parliamentary notice being sent out late. Even when staff levels are normal, there are no reserves or substitutes to cover any unexpected eventualities. Staff continually work overtime.

The Ministry has reviewed its coordination of EU matters as a whole. At present, there is no centralised monitoring of how matters are handled, and monitoring and any measures taken are the responsibility of each department. The Energy Department has organised its own coordination of EU matters, but this does not include any monitoring of schedules and timeliness. Due to a major reorganisation, common work procedures across the Ministry of Employment and the Economy have been under development for the past year.

The Ministry and the parliamentary Grand Committee have together organised training for the secretariat. The training has included briefing officials who carry out preparation of EU matters on the principles of cooperation between Parliament and Government in the national preparation of EU matters. There has been special emphasis on the submission of U-matters to Parliament without delay.

## Ruling

### General

Under Section 96(2) of the Constitution, the Government should, for the determination of the position of the Parliament, communicate a proposal referred to in paragraph (1) to Parliament by a communication of the Government, without delay, after receiving notice of the proposal. The requirement emphasises that Parliament must be ensured an opportunity make its positions known on any proposal and thus influence Finland's negotiating position.

According to the rules on cooperation between Parliament and the Government in the national preparation of EU matters (OM 2008:1), Section 96(2) stipulates that the Government must send out a communication regarding the proposal without delay after receiving notice of the proposal. The Grand Committee has recommended that under normal circumstances, the communication should be submitted to Parliament within a few weeks of the Government having received notice of the proposal. Where particularly extensive and challenging matters are concerned there should be some flexibility, if EU schedules allow for it. The essential thing is to ensure that Parliament has an opportunity, from the working committee level upwards, to influence the views Finland is to express in the EU. That is why it is unacceptable for a communication to be delayed due to the matter being analysed or a position on it being considered by the Government.

### The parliamentary Grand Committee's viewpoints

The Grand Committee approved the following statement at its meeting on 26 August 2008, regarding a proposal on cross-border law enforcement in the field of traffic safety, as prepared by the Ministry of Transport and Communications:

"The Grand Committee would like to bring to the serious consideration of the Government that Section 96 of the Constitution legally obliges the Government to issue without delay, by way of a

U-notice, any notice of proposals on EU matters within the Parliament's purview for it to be able to formulate its position on the matter.

"The Grand Committee would like to point out that the Commission proposal was originally presented on 19 March 2008, after which Finland participated in negotiations at the working group level in the Council. Thus Parliament was only informed after the matters in question had taken place."

The Grand Committee concluded as follows at its meeting on 4 March 2008, regarding the proposal on by-products prepared by the Ministry of Agriculture and Forestry:

"The Grand Committee would like to bring to the serious consideration of the Government that preparation in this matter has not been carried out in accordance with the procedure prescribed in Section 96 of the Constitution.

"The Grand Committee expects that in future the Government will communicate such matters as described in Section 96 of the Constitution to the Parliament without delay, so that in no case will Parliament be informed of matters only after they have taken place."

In addition, on 6 February 2009 the Grand Committee made the following statement regarding the proposal for an European Parliament and the Council Directive amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and related rights (amendment to the 'term of protection' Directive), which had been prepared by the Ministry of Education:

"The preparatory work on the proposed Directive has not followed the appropriate procedures, and the Grand Committee would like to bring to the serious consideration of the Government that Section 96 of the Constitution legally obliges the Government to issue without delay a notice of any proposals on EU matters within Parliament's purview to Parliament. The Grand Committee expects that in future the Government will communicate such matters as described in Section 96 of the Constitution to the Parliament without delay, will Parliament be informed of matters only after they have taken place."

### Assessment

The purpose of requests for written reports issued by the Office of the Chancellor of Justice to Ministries has been to investigate case by case what caused delays in submitting notices and communications to Parliament and whether there were any structural problems behind them. Investigations have not identified any structural problems at statute level. In addition, there are extensive guidelines in place for preparatory work on EU issues between the Government and Parliament.

Concerning the weekly review of Government agendas, as a general rule the timeliness and content of Government notices to be submitted to Parliament are always reviewed, and if necessary, the presenting Ministries are asked for further clarification, most often orally. For example, information on the causes of delay and the current stage of procedure in the EU are among the topics asked by Ministries. Occasionally, attachments to notices have been amended within the time available. However, the Chancellor of Justice has not requested any major changes to briefs, so that information to be submitted to Parliament is not delayed on his account.

From the investigation reports and clarifications we have received, we can discern that delays have been caused by separate incidents and a variety of accumulated factors. Ministries have referred to staff changes, medical absences and understaffing (The Ministry of Transport and Communication, Ministry for Foreign Affairs, Ministry of Employment and the Economy, and Ministry of Social Affairs and Health). The content of legislative proposals and the time required for translation were also cited as causes for delay. In addition, some of the legislative proposals were very wide-ranging and some of them required input from several Ministries when Finland's position was being prepared. In its statement, the Ministry of Agriculture and Forestry also referred to hearings for interest groups required during preparation, as well as to delays caused by periods of annual leave.

Some remarks arise from the reports we have received. The purpose of Section 96 of the Constitution is to ensure that Parliament has an opportunity to influence the preparation of all such EU matters which would fall within its remit had Finland not joined the EU (Government bill 1/1998 vp). This is a statutory obligation, which the Government must observe in its domestic actions as well as in EU bodies. The Grand Committee has emphasised (SuVL 2/2008 vp) the importance of careful observance of Section 96 of the Constitution: in accordance with the legal provisions, representatives of Finland must not express Finland's position on a proposal to be decided in the EU before Parliament has had an opportunity to express its opinion. Before that, Finland in effect should have no position.

Fulfilment of this obligation assumes that as soon as the relevant Ministry has received a legislative proposal, it must examine whether the proposal requires a parliamentary reading. The obligation to bring a matter before Parliament is established when the Government receives notice of a proposal. The Government's position on the matter should be attached to the notice as a memorandum, if there is sufficient time available for the Government to formulate its position without causing a delay in bringing the matter before Parliament. Otherwise the memorandum will state that the Government has not yet formulated its position (OM 2008:1).

It is true that the formulation of the Government's position requires adequate legal and technical expertise. The length and breadth of the legislative proposal will also have an effect on how it is assessed. However, the formulation of the Government's position should not result in communications to Parliament being delayed or Parliament being informed of matters only after they have taken place. It is possible to submit a preliminary formulation of the Government's position and amend it later. It is also possible to state that no position has yet been formulated.

Regarding the other reasons, I should like to note that referring to periods of annual leave is not an acceptable reason for delays in the Ministry. Parliament organises its schedule independently and requires all information required to be presented to it in the Constitution in good time. The same applies to delays caused by staff changes. As far as the translation of legislative proposals is concerned, Ministry of Justice guidelines state that if no Finnish or Swedish translation is available, an English version should be attached to the notice, and the reason for this should be explained on the cover of the Government plenary session agenda. A missing Finnish or Swedish language version must not be a reason for delay in submitting the matter before Parliament.

Some of the reports received by the Office of the Justice also referred to the coordinate different ministries' positions on some legislative proposals. The Ministry of Agriculture and Forestry referred to a requirement to hear interest groups.

The main responsibility to monitor, prepare and formulate Finland's positions lies with the competent authorities. In the case of coordinating different ministries' positions, I refer to the system of coordination of EU matters, which is intended to ensure that Finland has an integrated position in line with Finland's general policies to all pending EU matters at different stages of procedure. The system of coordination covers all ministries, the Cabinet Committee on European Union Affairs, the Committee for EU Affairs and its sub-committees. Efficient use of the system of coordination and work done in sub-committees must be taken into account whenever there is a need for coordination between different ministries.

The requirement to grant hearings to interest groups is an unacceptable reason for a delay in communications with Parliament. I should also like to refer to the Grand Committee statement (SuVL 1/2009) in this particular issue.

Monitoring and coordination of U-notices seems to vary between different Ministries. Therefore I regard the organisation of an efficient monitoring system to be of key importance. In the case of problematic cases, cooperation and good communication with Parliament are essential.

### Conclusions and actions

The Grand Committee has drawn the attention of different Ministries to the provision in Section 96(2) of the Constitution. Minutes of the Committee for EU Affairs meeting on 10 March 2009 record that the chairman had discussed a reminder sent by the Parliament and he had stated that the reminder should be taken into account as appropriate in the preparation of EU policies. In particular, U- and E-notices must be submitted to Parliament without delay.

Minutes of the sub-committee, the Committee for EU Affairs and Legislative Issues, meeting on 16 March 2009 record that sub-committee members had received the Grand Committee's views, and it was stated that all preparatory and scheduling work must be done in cooperation with Parliament. Sub-committee members were asked to remind those preparing briefs of the importance of time scheduling.

With reference to the above, I would like to draw the Government's attention to the prompt, precise and correct observance of the statutory obligation laid down in Section 96(2) of the Constitution, as well as to the efficient monitoring of time scheduling of U-notices by Ministries. To this effect, I will send the Permanent Secretary of each Ministry a copy of my ruling to be distributed to those officials who undertake the preparation of matters discussed in the ruling. I will also send my ruling as information to the parliamentary Grand Committee.

# 6

# SUPERVISION OF LEGALITY IN STATE ADMINISTRATION

# Purview of Parliament

As the highest organ of government, Parliament supervises the legality of its own actions and its compliance with the Constitution and decides on the order of processing bills and other matters. Every year the Office of the Chancellor of Justice receives a small number of complaints regarding the conduct of Members of Parliament. Activities undertaken by MPs are not, however, included in the supervision of legality performed by the Chancellor of Justice, and thus the Chancellor of Justice has no authority to investigate such complaints.

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 mighthave 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 in accordance with instructions 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. Review of the presentation agendas for the presidential sessions, carried out by the Office of the Chancellor of Justice, is described in Section 3 of this report.

# Purview of the Prime Minister's Office

The purview and duties of the Prime Minister's Office are laid down in Section 12 of the Government Rules of Procedure (262/2003) and Section 1 of the Government Decree on the Prime Minister's Office (393/2007). In 2009, no rulings leading to measures pertaining to the Prime Minister's Office were issued.

The Prime Minister's Office appointed a committee in March 2008 to prepare a report on the operation of the Secretaries of State system, the current system of ministerial substitutes, treatment of potential Ministerial conflicts of interest, and the review process of the Government's annual report. The Office of the Chancellor of Justice provided one member for the committee, the referendary counsellor of the Department of Government Affairs, Mr Risto Hiekkataipale. The committee submitted its report to the Prime Minister's Office in January 2009.

Concerning the functionality of the Secretaries of State system, the committee concluded that changes planned to the system did not require any amendment to current statutes. Instead, the committee highlighted some practical issues, discussed in more depth in the report, which according to the committee should be taken into account in organising the work performed by Secretaries of State. Concerning the current system of ministerial substitutes, the committee considered it necessary to review the current system in situations where a minister is unable to undertake their duties for a prolonged period of time, such as during long-term medical leave or maternity, paternity or parental leave. According to the committee, it is essential that the continued operation and party-political balance of the Government are guaranteed without the minister in question having to resign. The committee noted that the Prime Minister's position is exceptional as he or she appoints the government, and thus any substitute arrangements should be made independently of other ministers. Concerning the treatment of potential Ministerial conflicts of interest, the committee stated that ministers' obligation under the Finnish Constitution to issue a statement to Parliament about their outside interests immediately on their being appointed helps to forestall potential conflicts of interest arising in the future. The committee suggests that ministerial regulation could be clarified by amending the Government Act using the special provisions of the Administrative Procedure Act regarding ministerial liabilities and related decision-making. The committee stated that their review of the Government's annual reports had been particularly apposite during the committee's remit, given that Parliament had been discussing the Government's 2007 report. The committee referred to the Constitutional Law Committee report, which had been presented in a parliamentary hearing, and emphasised the importance of continually improving Government reports in cooperation with Parliament.

## Statements and reports

### Opinion on a Minister's conflict of interest

A commentary was issued by the Chancellor of Justice on a potential case of ministerial conflict of interest. A Minister had publicly commented on a particular project and related planning requirements.

The Chancellor of Justice concluded that the rules on outside interests under the Administrative Procedure Act should be applied. In principle, the Minister making a particular decision is responsible for assessing whether any potential conflicts of interest exist. However, in his commentary the Chancellor of Justice outlined some principles stemming from legal precedent and practice.

When assessing potential conflicts of interest, it is important to consider in what capacity and role the individual in question may have made their comments. Commenting on general policies and political questions is a normal part of political discourse. But the stronger and more specific public comments about an individual administrative matter become, the easier it is to start questioning their neutrality. The key point is whether the comments can be seen as part of normal political discourse or whether they go beyond purely legal grounds (OKV/43/20/2009).

# Purview of the Ministry for Foreign Affairs

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. Currently there are two complaints pending regarding equal financial treatment among employees of the Ministry on postings abroad.

In 2009, the Ministry for Foreign Affairs afforded the Chancellor of Justice an opportunity to issue an opinion on the following international conventions: the signing of the United Nations Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; The Convention on the Elimination of All Forms of Discrimination against Women and the monitoring of its application; Finland's position on the initiative to draw up a protocol establishing an individual complaint mechanism under the UN Convention on the Rights of the Child; Finland's sixth periodic report under the UN International Covenant on civil and political right; and drafting the final Council of Europe recommendation on equal rights and the dignity of sexual minorities. The Chancellor of Justice also issued a commentary on the Government's report to Parliament on Finnish human rights policy. In his comments, the Chancellor of Justice referred to relevant previous rulings and resolutions made by the Deputy or the Chancellor of Justice.

The Deputy Chancellor of Justice conducted an inspection visit to the Embassy of Finland in Tallinn.

# 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 at his own initiative. As in previous years, the majority of complaints concerning the purview of the Ministry of Justice related to the activities of the general courts. There were 291 complaints relating entirely or in part to this in the year under review, a slight increase on the year before (253 complaints received in 2008). The number of decisions made on complaints totalled 320 in 2009, which is a significant increase from the previous year (237 decisions in 2008). Total of nine complaints lead to measures being taken, and in one case the Chancellor of Justice decided to bring charges against a District Court Judge for negligent breach of official duty.

A large number of complaints received and resolved regarding courts of law dealt with the question of whether the fundamental and human right to a fair trial was actually realised in practice. Other common complaints concerned delays in legal proceedings, the conduct of judges, the overall treatment of parties in court cases, evaluation of evidence by the courts and judicial reasoning. It is also common for a complainant to ask the Chancellor of Justice to override a court decision. The Chancellor of Justice, however, has no authority to do so, and he may only express his opinion on whether the court of law in question has acted properly within its discretionary powers.

The number of complaints about other authorities under the purview of the Ministry of Justice was considerably fewer than those pertaining to general courts of law. For example, the number of complaints received regarding prosecutors was 91 (127 in 2008); administrative courts 62 (51), enforcement authorities 52 (48) and special courts 22 (31). In 2009, the Chancellor of Justice gave rulings on all of the above categories resulting in corrective measures being taken. Within the purview of the Ministry of Justice, complaints also lead to new measures regarding the conduct of the Legal Register Centre, the Data Protection Ombudsman and the Prison Service Administration.

In addition, the Police inform the Chancellor of Justice of any reports of offence concerning judicial conduct, and appeal courts notify the Chancellor of Justice of circumstances, which may lead to actions being brought against an official at the court of appeal. During 2009, one case in each of these categories resulted in measures being taken. Following a notification from a court of appeal, the Chancellor of Justice decided to bring charges against a district judge for misuse of official authority and negligent breach of official duty.

Two lines of investigation initiated by the Chancellor of Justice led to new measures, both of which involved misconduct by a district court. In addition, a case initiated by a written communication from the Prosecutor General led the Chancellor of Justice to bring charges against a writ-server for negligent breach of official duty.

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

In 2009, the Deputy Chancellor of Justice inspected the Legal Aid office of Lappeenranta, the Prosecutor's Office in Oulu, the Administrative Court of Oulu, and the District Courts of Kotka and Oulu. The Deputy Chancellor of Justice also made an on-site inspection visit to The Department of Judicial Administration of the Ministry of Justice.

# Rulings

## Ministry

### Electronic voting trial

In the 2008 local elections, voters in Karkkila, Kauniainen and Vihti were able to choose to vote either with traditional paper ballot cards or an electronic system. The trial was implemented under a temporary Act (880/2006) of the Election Act (714/1998), which was in force between 1 December 2007 and 31 December 2008. The trial did not meet expectations. The trial municipalities lost 232 votes due to voting having been aborted (as described below). In these cases, the votes were not registered by the electric ballot box and were not cast at all.

The interface of the electronic voting system allowed the voter to remove their ballot card from the card reader before the vote was registered. If the voter did this, voting was aborted and the system would reboot without any notification. The system did not show that the voting had been aborted and so the voter might have believed that they had cast their vote successfully.

In his ruling on the complaints received, the Chancellor of Justice assessed the operation of the voting system, instructions given to voters, the testing of the system and the integrity of the secret ballot.

Concerning the operation of the voting system, the Chancellor of Justice's ruling noted that voters had been given an option to abort voting. In cases where voting had been aborted, however, the Chancellor of Justice deemed it more likely that this was due to deficiencies in the system and instructions for its use. Voters had received a written instruction card, which instructed them to insert the ballot card into a card reader and type the name of the chosen candidate on the touch pad at a voting terminal. The system then brought up the candidate's details on the touch pad screen and the vote needed to be confirmed by pressing an OK button. Graphics on the instruction card and a poster inside the ballot booth instructed the voter to press the OK button twice, once to confirm the candidate's number and a second time to confirm the vote. The written instructions, however, lacked this information and suggested that the OK button needed to be pressed only once. If a voter wanted to cast a null vote, according to the graphic instructions they should have inserted their ballot card into the card reader and then pressed the "Null vote" button. Finally, after having confirmed their vote or null vote, the voter needed to remove the card from the reader and return it to an election official.

The Chancellor of Justice noted that ease of use and reliability were important features of a voting system. Voters should be able to cast their vote no matter which system they chose to use. This is why alternative voting systems should be equally easy to use and equally reliable. The electronic voting system that had been used had a fault, which unintentionally aborted votes without any notification, and thus could not be regarded as equal to the traditional ballot card system. Because electronic voting was a new voting method, it should have been especially important to offer correct and adequate instructions for its use. When instructions were written for different media, it should have been ensured that they were consistent.

Concerning the testing of the voting system, the ruling noted that a system test report had mentioned that the system did not notify aborted votes, and that the information had been passed on to those who had an opportunity and the duty to take action to rectify the fault. There was no clear indication as to where and how this communication had failed and why no action had been taken. The Chancellor of Justice deemed that those involved in the testing and execution of the voting system were better placed than average voters to monitor and evaluate the voting process, and to react to any unexpected eventualities. In addition, the act of voting itself may have made it harder for voters to cope with the unexpected. Because this was a trial, it would have been reasonable to have tested the system on average voters and to have employed a usability expert to improve the system.

Concerning the secret ballot, the Chancellor of Justice noted that the voting register was a publicly available document, and the information it contained regarding the unused votes in cases when voting had been unintentionally aborted was still correct. A voter who had told other people that they had fulfilled their civic duty by voting might have found themselves in an awkward position if their vote had been unintentionally aborted, as the register would show that they had not voted. In such a case, the voting register would not have revealed, and could not have revealed, the reason why the vote had not been cast. The Chancellor of Justice did not think there was any real danger of breaching the secret ballot.

The Chancellor of Justice noted that from the perspective of supervision of legality, the matter concerned the Ministry of Justice's responsibility as the highest electoral authority, under Section 14(5) of the Government Rules of Procedure and Section 10 of the Election Act, to ensure that any voting system used in local elections was operational and that those entitled to vote were able to use their right to vote as prescribed in Section 14 of the Constitution, and thus to ensure that the elections were conducted successfully. For the electronic voting trial to fail was essentially due to the fact that the system failures picked up at the testing stage had for some unknown reason(s) been left unrectified. The project involved many people and parties, and the way in which repairs and their supervision had been carried out in practice had not worked. Questions of liability were mostly a matter between the Ministry of Justice and the system supplier, and because the relationship was governed by civil law, it was outside the Chancellor of Justice's authority. Regarding the fact that local elections were rerun in the trial towns, the Chancellor of Justice deemed it sufficient to remind the Ministry of Justice, as the highest electoral authority, of its responsibility to ensure the smooth running of elections, and he drew the Ministry's attention to the views expressed in his ruling, for future reference when new plans were made to implement electronic voting systems (OKV/1406/1/2008).

## Courts

### Charges against a district judge on suspicion of judicial offences in office

The Court of Appeal informed the Chancellor of Justice that three cases handled by a district judge (namely a demand for payment in a rental claim, a matter of biased judgement in an accident compensation claim, and handling of a debt restructuring process) had been unduly delayed. The cases had been pending before the judge for periods ranging from three years and five months to four years ten months. The compensation claim case had been pending before the district judge for almost four years without the judge reaching a decision on it or requesting a statement from the defendant regarding the claim. The debt restructuring case had been returned from Court of Appeal for hearing in the district court, so it should have been handled especially promptly.

The handling of cases took an unreasonably long time given their nature. Long handling times had threatened the fundamental right of having one's case dealt with without undue delay, and they had damaged trust in the due process of law. Pre-trial investigations did not reveal anything to suggest that the cases were exceptionally extensive or difficult to judge, and there was no evidence that the district court judge had an unusually heavy workload. It seemed, rather, that the delays were due to the judge's attitudes towards his work and the importance of prompt handling of cases. The district court judge had given a statement to the court of appeal in which he claimed that he had started to weary of the cases, and that he had more interesting cases to work on.

The court of appeal also notified the Chancellor of Justice that the district court had not listed the cases in two of its half-yearly reports, which the court of appeal requests on cases that have been pending for over a year, and that the cases had not emerged during the court of appeal's site inspection at the district court. Unaware of these cases, the court of appeal had recommended the district court judge to the Judicial Appointments Board for an appointment to another post of a district court judge, to which he had later been appointed.

According to the pre-trial investigation, the cases were not visible in the case handling system reports the district court had sent to the court of appeal, because he had marked them as resolved before printing the reports. His aim was to try to prevent the disclosure of his neglect of official duties in the reports being sent to the court of appeal, in order to avoid adverse consequences. The concealment had happened when the judge had applied for another appointment as district court judge. To sustain the erroneous image he had created, the judge had made more false annotations after his appointment. The purpose of the actions was to obtain benefit on false grounds.

Deliberately making false annotations on documents entrusted to a judge in his official duty, and to do this repeatedly and with an intention to obtain benefit, demonstrates that the person is dishonest, which is contrary to the requirement of exceptional personal integrity expected of judges discharging their official duty, and it thus indicates that the person is unfit to hold office as a judge. A judge's dishonesty seriously damages public trust in the due process of law and operation of the legal system. In addition, it is imperative that where the administration of law, supervision of its legality and management of courts of law are concerned, citizens can have faith that judges do not inten-

tionally make false annotations in documents, and that dishonesty by court officials in courts of law does not undermine their perception of the operation of the legal system.

The Chancellor of Justice considered that according to the pre-trial investigation there was enough evidence to support the assertion that the district court judge had recklessly failed to deal with these cases promptly and had breached his official duty under regulations pursuant to Section 40(10) of the Criminal Code and thus acted in a way that constituted negligent breach of his official duties. In addition, the Chancellor of Justice stated that the balance of probabilities indicated that the district court judge had in a dishonest way, as described above, breached his official duty as required by regulations, with an intention to obtain benefit when preparing or taking decisions, and that he had acted in a way that constituted a punishable abuse of public office under Section 40(7) of the Criminal Code.

The Chancellor of Justice requested that the Prosecutor General bring charges against the district court judge for the above crimes. The actions demonstrated dishonesty of a kind that was entirely improper for somebody in a judicial position, and thus the Chancellor of Justice saw it fit for the prosecutor to demand before a court of law that the district court judge be dismissed from office.

The court of appeal sentenced the district court judge to a fine for negligent breach of official duty. According to the court of appeal, the charges against the judge for making false annotations did not constitute participation in, or preparation for, decision-making as referred to in the law concerning abuse of public office. The court of appeal stated that the judge's dishonest conduct did not meet the expected standard of conduct of judicial office, and that his actions had harmed public trust in the due process of law. The court of appeal did not, however, find that the district court judge had breached his office in such a grave way that the crime would have rendered him unfit for the role of a district court judge, and rejected the demand for the judge's dismissal.

The Chancellor of Justice appealed to the Supreme Court against the court of appeal decision. In his complaint the Chancellor of Justice requested that the court of appeal ruling be overruled so that the district court judge be sentenced for abuse of official duty and dismissed. The Supreme Court did not overrule the court of appeal's decision. Concerning the request for dismissal, the Supreme Court stated that even if the alteration of annotations regarding delays to avoid potentially adverse consequences might raise questions over the judge's suitability to his role, it did not make him obviously unfit OKV/15/31/2008).

## Incorrect composition of a court

A court of appeal had cancelled five criminal sentences issued by district court notaries in single judge hearings, due to the court being inquorate. The notaries themselves had lodged complaints over the rulings to the court of appeal. The Chancellor of Justice, at his own initiative, started investigations into the conduct of the district court.

According to the District Court Act, a senior district court judge has the authority to order a notary, who has been in office for a minimum of four months, to chair a single-judge criminal hearing, if none of the possible maximum sentences for any of the charged crimes, under the circumstances as mentioned in the charges, exceed a fine or a maximum of eighteen months' imprisonment.

The senior district court judge had ordered a notary to chair two single-judge hearings in which the possible maximum sentences for the charged crimes exceeded the set limit, as well as a second notary to chair another such hearing as a single judge. The former notary had issued three decisions and the latter notary one decision that they had had no legal authority to issue in single-judge hearings. The former notary had sentenced the defendant to imprisonment in two of the above cases and in another case, and the latter notary had sentenced the defendant to imprisonment in the above case, although according to the District Court Act, a notary chairing a single-judge hearing has no authority to issue any other sentence, or a more severe sentence, than a fine.

The Chancellor of Justice reprimanded the senior district court judge and notaries for their unauthorised conduct (OKV/6/50/2009).

### Failure by a district court to notify the National Supervisory Authority for Welfare and Health of crimes committed by a nurse

According to the Act on Healthcare Professionals, a court of law should send without delay to the National Supervisory Authority for Welfare and Health a copy of the minutes and decision when a healthcare professional has been sentenced to imprisonment for a crime committed in a professional capacity. A district court had neglected this duty in a case where it had sentenced a nurse to imprisonment for the theft of hospital medications, and other crimes.

The Chancellor, at his own initiative, launched an investigation into the case. In his ruling, he drew the relevant district court judge's attention to the obligation to report and reminded him to observe it in future (OKV/9/50/2009).

## 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 proportion of the notifications of 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 any formal errors 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 is designed effectively to weed out any recurring and common errors.

Errors detected may lead to a reprimand, position statement or an order to bring charges against an official.

Bringing charges against an official may be considered when an error constitutes a judicial offence in office, such as described in Section 40(10) of the Criminal Code. 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 caution may also be issued for unlawful conduct that does not constitute an offence. Less serious errors result in a position statement, 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 to the Supreme Court that the judgement be reversed. 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 2009, a decision was issued on a total of 94 cases arising from the review of penal judgments. One of the cases had been filed in 2007, six cases in 2008 and the rest in 2009. Eight cases resulted in a reprimand and 18 cases resulted in the issue of a position or other statement or instruction. 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, or that the error had been rectified at the judge's or court's initiative, or that the error was to be considered so minor as not to give rise to action.

| Action taken due to errors observed | | | | |
|---|---|---|---|---|
| Charge | | | | |
| 2005 | 2006 | 2007 | 2008 | 2009 |
| **1** | - | - | - | - |
| Caution | | | | |
| 2005 | 2006 | 2007 | 2008 | 2009 |
| **6** | **7** | **3** | **4** | **8** |
| Position or instruction | | | | |
| 2005 | 2006 | 2007 | 2008 | 2009 |
| **49** | **54** | **34** | **27** | **18** |

## Prosecutors

### The right to remain silent in criminal proceedings

A complainant claimed that their right to a proper defence in a criminal case was breached when they were not informed of their status in Finnish criminal proceedings as a criminal suspect during pre-trial investigations and the consideration of charges. Acting on a request for legal assistance, German police officials had questioned the complainant as a case witness.

In his ruling, the Deputy Chancellor of Justice stated that pre-trial investigation officers have a very wide authority over whom they treat as suspects. Utmost care should be taken, however, not to label anybody a witness if there is even the smallest doubt that they may be guilty. In the complain-

ant's case, it was clear that they had always been considered a suspect in the Finnish criminal proceedings. As they were beyond the reach of Finnish officials, however, the National Bureau of Investigation had not been able to contact them directly to inform them of the initiation and course of criminal proceedings. This, and the fact that the foreign officials had misinterpreted the complainant's status in the proceedings, should not, according to the Deputy Chancellor of Justice, prevent the National Bureau of Investigation from continuing the criminal proceedings and treating the complainant as a suspect. It was important to consider the gravity of the alleged crime and the obligation to seek clarification. The Deputy Chancellor of Justice noted that the National Bureau of Investigation had been correct to transfer the case to a State prosecutor so that a more precise legal interpretation of the case could be obtained.

Assessment of the procedures followed by the State prosecutor's focused on the question of whether it was possible to proceed with consideration of charges even if the complainant had not been questioned specifically as a suspect in the crime. Due to the complainant's arguments it was also necessary to assess whether the procedures followed by the State prosecutor had breached the right to remain silent.

The right to remain silent essentially means that a crime suspect has the right to silence and in addition, the suspect is not bound by the obligation of truthfulness, as are witnesses and complainants. A crime suspect may choose to remain completely passive, and has no obligation to answer any questions asked of him or her.

There is no absolute legal provision or pre-requisite, which requires a person to be questioned as a suspect in a pre-trial investigation before consideration of charges. However this is the established procedure and the starting point in a Finnish crime investigation, and the spirit of the law. When an official in the legal system considers the question of guilt in a criminal case, the starting point should be that the accused must be given an opportunity to address the allegations against him or her, and make use of the rights and responsibilities the law prescribes for crime suspects. Evidently, any deviation from this procedure requires very good grounds even in a case in which the prosecutor's consideration of charges leads him or her to drop the charges completely.

The Deputy Chancellor of Justice noted in his ruling that the right to remain silent is one of the central guarantees of due process in Finland and its observance must be appropriately ensured at every stage of criminal proceedings.

According to the examination record, the German officials had told the complainant that they were being questioned as a witness. At the beginning of the questioning, the complainant had also been advised that they had the right not to answer any questions, which might risk them or their closest family members being accused of a crime.

The Deputy Chancellor of Justice did not think, however, that this had sufficiently fulfilled all the requirements prescribed for the crime suspect's right to silence, especially in view of the differences between a suspect's and witness's status in criminal proceedings. The complainant who had been questioned as a witness had never had the opportunity directly to address the criminal allegations against them. Anyone facing a pre-trial investigation has a considerably poorer chance to prepare themselves for criminal proceedings if they do not have a correct understanding of their status in the proceedings. In the case under review, the situation was especially unfair as the case involved several other suspects, who had been questioned as crime suspects.

The Deputy Chancellor of Justice assessed the conduct of the Prosecutor General as a whole, noting that the state prosecutor had decided to drop the charges against the complainant, and the complainant had not suffered any real damage during the process. It had not been up to the State prosecutor to decide in what capacity the complainant should have been questioned in a request for legal assistance carried out in Germany. The Deputy Chancellor of Justice also referred to the European Convention on Human Rights, which prescribes that everyone is entitled to trial within a reasonable time.

According to established legal practice of the European Court of Human Rights, this legal requirement must be followed even if no charges are brought against a suspect. The Deputy Chancellor of Justice stated that in this type of situation, in which an innocent person has been made a suspect in criminal proceedings, the requirement of 'reasonable time' should be emphasised. The State prosecutor had decided to drop charges when it was obvious that there was not enough evidence against the complainant. Had the complainant been questioned again as crime suspect, it would only have caused significant further delay to the handling of the case.

Furthermore, the Deputy Chancellor of Justice noted in his ruling that the complainant's pre-trial investigation report had not been used against them in a court of law. It was also worth noting that the State prosecutor had dropped all charges against all the other suspects in the case.

The Deputy Chancellor of Justice ruled that the State prosecutor's conduct had not been unauthorised, but he reminded the prosecutor of the meaning of the right to silence during pre-trial investigations and in consideration of charges, and sent a copy of his ruling to the Prosecutor-General for information (OKV/130/1/2007).

## Inspections carried out in the purview

The Department of Judicial Administration at the Ministry of Justice,
Legal Aid Office of Lappeenranta,
Administrative Court of Oulu,
District Court of Oulu,
Prosecutor's Office in Oulu,
District Court of Kotka.

# Purview of the Ministry of the Interior

In 2009, the majority of complaints concerning the purview of the Ministry of the Interior related to police activity. The Office of the Chancellor of Justice received 280 complaints (286 in 2008) and resolved 283 (237). The majority of the complaints received and resolved related to the performance of the police as a pre-trial investigation authority.

Following his own investigations, the Deputy Chancellor of Justice issued a reprimand in two complaints. The first complaint concerned a police officer's conduct in an animal welfare case, in which animals had been put down; and the second concerned the employment of summary penal proceedings in a case in which they were not legally permissible. Some more minor events, such as the handling of documents and registration of reports of offences, also resulted in reprimands. Complaints that did not result in consequences most commonly regarded complainants' discontent with a decision not to launch pre-trial investigations, the thoroughness of pre-trial investigations or their promptness. It was also common for people who had had action taken against them by the police to regard such action as unjustifiable.

Complaints about other agencies under the Ministry of the Interior's purview are received only occasionally. Most of these relate to emergency response centres, and in 2009, the Chancellor of Justice received seven complaints concerning action undertaken by response centres. Out of all the resolved cases, other than police matters, only one complaint about another agency lead to measures being taken. The case prompted the Deputy Chancellor of Justice to inform the emergency services of certain details on conducting a fire safety inspection.

The Chancellor of Justice issued a commentary on the Criminal Investigations and Coercive Measures Committee's report regarding the reform of the most important policing legislation, namely the Police Act, Criminal Investigations Act and Coercive Measures Act. In addition to comments on some individual provisions, the Chancellor of Justice noted more generally that the legislative proposals included an inappropriately large number of expressions of probability, such as 'there is a risk of', 'it is to be expected', 'there is reason to suspect', 'it is likely', 'it is highly likely', 'with probable cause', 'probably', 'apparently', 'it can be expected', 'there is reason to expect', 'there is justified reason to expect', 'we can probably expect', and 'we have good reason to expect'.

The Chancellor of Justice and the Deputy Chancellor of Justice made a visit to the Finnish Security Police and examined its use of data collection methods.

The Chancellor of Justice made an on-site inspection visit to the Emergency Response Centre Agency of the Emergency Response Centre Administration, and the Deputy Chancellor of Justice made an on-site inspection visit to the Police Department of the Provincial Government of Oulu as well as to the District Police Department of Oulu.

## Statements and reports

### Amendments to the Aliens Act; Report on asylum-seekers policy

The Ministry of the Interior requested an opinion from the Chancellor of Justice regarding amendments to the Aliens Act. The proposed amendments included linking the right of an asylum-seeker to work to verification of their identity, and the introduction of new time limit requirements for aliens under international protection (refugees) who wish to bring family members to Finland.

The Chancellor of Justice noted that as the amendments seemed aimed at making the process of asylum granting more efficient and quicker, and at eliminating any potential abuse, legal protection must be given special attention. For example, the proposal to link the right of an asylum-seeker to work to verification of their identity would constitute a new policy.

According to the report, the right to work should be based on an asylum-seeker's being able to prove their identity. However, if verification of their identity proves impossible based on the available documentation, it would suffice if the asylum-seeker co-operated and assisted in attempts to verify their identity.

The Chancellor of Justice stated that identity verification is part of the asylum investigation. Linking the right to work to identity verification as proposed might create an image of a kind of 'bargaining', which did not sit comfortably with the idea of appropriate, neutral and due conduct by the authorities. During the preparation stage, the legislative proposal should be weighed against Section 18 of the Constitution, with attention to the proportionality principle; it was also important to consider the necessity of the amendment and its implications for the Finnish labour market; as well as the need to assist immigrants to find employment and integrate into Finnish society.

The compilation of linguistic analyses always includes, according to the report, several factors of uncertainty (such as the competence of the analysis compilers) and significant risks of inaccuracy. An applicant's place of origin has an impact on the contents of a decision on their application and the evaluation of grounds for refusal of entry. This is why the Chancellor of Justice drew the Ministry's attention to Section 80(1) of the Constitution, which stipulates that rights and obligations of private individuals shall be governed by Acts.

Concerning the requirement of one year's residence in Finland for those who wish to bring family members to Finland, i.e. sponsors (excluding those who have been granted refugee status), the Chancellor of Justice noted that even if there is a need to streamline policies around the parentage principle, it is equally important to assess this proposal in the light of Section 10 of the Constitution and the sanctity of home life, and consider whether the unequal treatment of refugees and those who have obtained a residence permit on the basis of secondary, humanitarian and temporary protection is justifiable in this situation.

According to the report, there is an aim to improve procedures relating to family reunification, for example, by clarifying the interview process. It should be clarified, for example, whether 'it is essential to interview a relative, if a sponsor has no right to obtain a residence permit for them.'

With examining and possibly further preparing the matter, it is important also to consider the right to be heard as one of the central principles of the legal protection under Section 21 of the

Constitution. Any limitation on the right to be heard must be made only in exceptional circumstances and on sufficient grounds. The preamble to the provision of the Administrative Procedure Act regarding the hearing of a party (Government bill 72/2002 vp, detailed preamble p. 90) states, inter alia, that trying to ensure administrative efficiency by curtailing an interested party's legal protection cannot be regarded as in line with the generally accepted legal principles.

To improve procedures for family reunification, there is also an intention to examine whether the sponsor should be considered a minor only if they are still a minor at the time when the decision is reached. The Chancellor of Justice stated that even if Section 6(3) of the Aliens Act requires officials to process cases involving minors urgently, legal protection for an individual applicant might become too dependent on the Finnish Immigration Service and an individual official's workload, should the application procedure be changed to the proposed model. The equal treatment of applicants should be safeguarded regardless of the fact that cases may occasionally pile up, that there are staff shortages or other such unpredictable events (OKV/28/20/2009).

## Amendments to the Aliens Act; Verification of age

The Ministry of the Interior requested an opinion regarding a Government bill on amending the Aliens Act. It was suggested that the Aliens Act should be amended by adding provisions on forensic age verification, and that the provisions on family reunification and the right to work of those who apply for international protection should be amended.

### Forensic age verification

Forensic age verification impinges on the right under Section 7 of the Constitution to bodily integrity. This requires that any legislation on the matter must be particularly exact, accurate and transparent, and that it is also essential to ensure that verification methods allowed by such legislation are only be used for the purposes of age verification, in line with the principle of purposefulness, and not for purposes of assessing the reliability of another aspect of the applicant or their application. According to the grounds for the proposal (p. 32), refusal of an age verification examination would have an impact on the credibility of the applicant's identity. Here it would be important to define precisely what the concept of identity entails.

Sections 6a and 6b of the proposal include very little definition regarding who is responsible for assessing the need for examination and on what grounds it should be undertaken, how examination procedures and the actual performance of an examination should be supervised, whether a legal representative of the applicant or any other person has the right to be present during an examination, and the way in which the examination report should be given. According to 6b(3) of the bill, a government decree could provide further guidance on carrying out the examination. In the chapter titled 'Objectives and Main Proposals' (p.27), it is stated that in order to streamline procedures used in age verification and to ensure co-operation between the various authorities, guidance should be drawn up in cooperation with those authorities. Decrees and guidance may set out in more detail procedures that have been laid down by legislation.

### Working without a residence permit

It is worth emphasising the importance of the exact, accurate and transparent nature of legislation that limits the right to work of aliens who are resident in the country without a residence permit. According to Section 81 of the Government bill, the right to gainful employment without a residence permit should extend to an alien who, after applying for international protection, has resided in Finland for three months and whose identity has not been verified due to reasons not dependent on the applicant. According to the detailed grounds of the proposal, the police and the Finnish Border Guard carry out verifications of asylum-seekers' identities as prescribed in Section 97 of the Aliens Act. The documents passed by the police to the Immigration Service must clearly indicate that identity has been verified, failing which they must confirm that the applicant has not prevented the verification of their identity. Under Section 97(1) of the Aliens Act, the police or the Border Guard should establish the identity, travel route and point of entry into the country of an alien applying for a residence permit on the basis of international protection. When establishing an applicant's identity, personal data on the applicant's family members and other relatives are collected.

Section 81 of the bill would be better understood if a more precise definition of the term 'identity' were used. The phrase 'for reasons not dependent on the applicant' should also be better defined at the beginning of the proposal in order to ensure that the most common cases, such as intentionally destroyed travel documents, would not fall foul of any difficulty in interpretation. As one applicant's application may be handled by different officials over a long period of time, these officials should not possess differing opinions on whether the identity has been verified, whether the applicant has interfered with the verification of their identity or which official is to make a decision on the right to work.

The Deputy Chancellor of Justice made no other observations on the report (OKV/34/20/2009).

## Rulings

### The police

#### The right to be present during a house search, and interpreting at pre-trial investigation

A complainant who had arrived in Finland as a refugee criticised the conduct of police in a matter involving a house search and interpreting an interview. The complainant had not been given the opportunity to be present at his home during the house search due to an ongoing criminal investigation, and a police sergeant had not provided an English language interpreter as requested by the complainant but had conducted the interview in English by himself.

The Deputy Chancellor of Justice noted in his ruling that under Section 4(2) in Chapter 5 of the Coercive Measures Act, an individual, or if they are absent, their family member, has the right to be present at their home during a house search and they have a right to call in a witness if it does not

delay the search. Because this right involves the fundamental right to privacy and domestic peace, it is only possible to deny the right to be present if it would actually delay the search and threaten its intended purpose. A possibility of delay does not itself legitimate departure from the main rules.

A supporting report revealed that the police sergeant had only tried to reach the complainant on his home telephone number. When there was no answer, the police sergeant had decided to enter the property with the help of a property maintenance person.

According to the Deputy Chancellor of Justice, the fact that the police sergeant's only attempt to reach the complainant was to telephone him his home number leaves some room for criticism. The police sergeant had acknowledged in his own statement that the complainant's mobile telephone number would have been available in an examination report kept at the police station. Other information revealed that, at the complainant's property situated about half a kilometre from the police station, the sergeant had a mobile telephone at his disposal and another police officer accompanied him. Thus the house search would probably not have been delayed in the manner envisaged in the law, even if the other police officer had had to return to the police station to look for the complainant's mobile number or alternatively, if had had to telephone the police station and ask another officer to find the number for them. It was also worth noting that the house search warrant had been granted for two months, but the search had been conducted on the first day of its validity.

In the light of the above details, the Deputy Chancellor of Justice concluded that as the chief sergeant had decided to conduct the house search, he had not sufficiently taken into account the content, meaning and legal requirement of Chapter 5, Section 4(2) of the Coercive Measures Act.

Concerning interpreting in a pre-trial investigation, the Deputy Chancellor of Justice concluded that under Section 37(3) of the Language Act there was no impediment to an official's providing interpreting by themselves. This naturally assumed, however, that the official's language skills were adequate.

Reports showed that the chief sergeant who conducted the interview had been dealing with foreign affairs for 17 years, had studied English, received an additional language skills bonus as part of his salary, and had used English as a working language as a plain-clothes police observer when employed in Bosnia. In view of this information, the Deputy Chancellor of Justice did not see any reason to doubt that the chief sergeant would have done anything unauthorised when he provided the interpreting by himself (OKV/593/1/2007).

## Inspections carried out in the purview

Emergency Response Centre Administration (Emergency Response Centre Agency),
Police Department of the Provincial Government of Oulu,
District Police Department of Oulu,
The Finnish Security Police.

# Purview of the Ministry of Defence

## Rulings

### Ministry

#### Housing arrangements for the senior personnel of the Defence Forces

The Chancellor of Justice reminded the Defence Command of the importance of accurate and careful preparation of documents. A document drawn up at the initiative of the Defence Command regarding housing arrangements for senior personnel had omitted a reference to a Ministry of Defence guidance letter, which ruled that housing arrangements for senior personnel and other defence administration staff must follow the same principles. The document gave the false impression that senior personnel had an automatic right to receive rented accommodation provided by their employer. In addition, the document had omitted the fact that the decision also applied to the Chief of Defence, although with the limitation that in that case the decision on rental accommodation should be made by the Ministry and with regard to expense monitoring guidelines (OKV/33/20/2009).

# Purview of the Ministry of Finance

In 2009, the vast majority of complaints concerning the purview of the Ministry of Finance related to the Tax Administration. Fewer complaints related to the performance of customs officers, the State Treasury, the Regional State Administration and local register offices.

Most of the complaints that did not lead to measures being taken fell outside the Chancellor of Justice's authority. Taxpayers in particular raised complaints about cases that were still pending before the tax authorities; cases resolved by tax authorities, where the taxpayer had ignored the standard appeal route by lodging a complaint with the Chancellor of Justice; and cases pending before an appeal body. Some complaints were also received considering matters within Parliamentary jurisdiction.

## Rulings

### Tax Administration

#### The obligation to hear an interested party in tax proceedings

A complainant was not permitted to view confidential pre-trial investigation documents that were used in drawing up a tax audit report, until a tax decision based on the report had been made. According to the tax audit report, permission to view the documents was not considered necessary, because the examination report and crime inspector's report had not been used as the basis of a proposal for tax, but only as background information to the tax audit.

Under Section 26 of the Tax Procedure Act, the taxpayer must be allowed an opportunity to be heard if their taxation is going to differ substantially from a tax return completed by the taxpayer, or if an official adjusts taxation to the detriment of the taxpayer. Under Section 2 of the Tax Procedure Act, if at all possible the taxpayer must be allowed an opportunity to be heard within a reasonable time before the tax audit report is completed. The Administrative Procedure Act, Section 34, also provides for the grant of a hearing to a party. According to the law, before the matter is decided, an interested party should be granted an opportunity to express an opinion on the matter and to submit an explanation concerning the demand and information, which may inform the decision.

Hearing an interested party is important for the legal protection afforded to the taxpayer and in settling their case. A decision must not be based on material that a taxpayer has not been able to view. According to the legal literature, a taxpayer must have the right to view all material that is used in determining their taxation. Good tax inspection aims to arrive at tax decisions that are correct in terms of the taxable amount and the grounds used to reach the decision. (Savolainen - Teperi, Jälkiverotus, Helsinki 2000, p. 159 and 222).

Section 26(3) of the Tax Procedure Act and the provision on hearing an interested party is based on Article 6 of the European Human Rights Convention. The article of the Convention does not apply to normal taxation as such, but reassessment of taxation usually also involves a tax increase, which may be considered a punishment-like sanction and to which Article 6 of the European Human Rights Convention would apply (as before, p. 177). According to the rulings of European Court of Human Rights, a tax increase has been considered a criminal sanction (see for example Bendenoun v. France (24.2.1994; A284, no. 12547/86) and Jussila v. Finland (9.11.2004; no. 73053/01). In the case of Jussila v. Finland, the Court ruled that according to the Finnish legal system, a tax increase is not a criminal sanction but it is part of the fiscal system. This is not relevant, however, when we consider the nature of the criminal procedure employed. The Court ruled that a tax increase is not a type of indemnification, but it has a punitive and preventative purpose and as such, the Court deemed, it entails that an act that leads to a tax increase is considered a criminal offence in the sense of Article 6 of the European Human Rights Convention, and the Article may be applied to a case no matter how small the sanction is. The ambit of the Article does not cover taxation itself, but instead covers the imposition of a tax increase as part of taxation procedure.

Following the approval of a tax audit report, the taxation and debiting according to the report's details shall be checked or overpaid tax refunded. Tax officials empowered to make decisions on taxation and debiting make their independent decisions on the basis of the report's details or other information. Before the final decision, the taxpayer should be heard again. In other words, the tax audit report should not determine the taxable amount, but this happens at the next stage of the process. In the case under review, according to the tax audit report prepared at the tax office, the tax decisions that affected the taxpayer had been made at a business tax unit of another tax office. The Deputy Chancellor of Justice deemed that the above-mentioned Article 6 of the European Human Rights Convention should thus not be applied to the tax audit process at the local tax office, but to the business tax unit where the tax decisions had been made.

The tax office responsible for the tax audit report stated that the basis of calculation used to compile the report had been included in the report and its attachments. The Deputy Chancellor of Justice noted that examination of the documents had not shed any light on whether the pre-trial investigation documents might have included facts that were used for the purposes of the tax auditing, but had not been disclosed in it. Regarding the fact that a taxpayer has the right to view all materials used to determine their taxation, the Deputy Chancellor of Justice stated that the tax office responsible for the tax audit report should have considered extending the deadline for issuing their decision until the pre-trial investigation materials had been given to the complainant to review. In the light of the above provisions on hearing an interested party, and the rulings by the European Court of Human Rights in the cases S.H. v.

Finland and Janosevic v. Sweden, the tax office issuing the decisions should have considered postponing the decisions until after the pre-trial materials had been given to the complainant.

The Deputy Chancellor of Justice noted, however, that it should also be borne in mind that the tax office is under an obligation to compile tax audit reports according to current legislation and without delay; that the complainant could have made use of an appeal route to express their views on matters they only learnt from pre-trial investigation reports after the decision had been issued; and that the tax decision had not been solely based on documents that the complainant had been unable to see.

The Deputy Chancellor of Justice sent his opinion on hearing an interested party in tax proceedings to the attention of all tax offices (OKV/1219/1/2007 and OKV/488/1/2008).

## Inspections carried out in the purview

Local Register Office of Lappeenranta,
Provincial Government of Oulu.

# Purview of the Ministry of Education

The Ministry of Education is responsible for education, science, cultural, sport and youth policy issues, maintaining archives, museums and public libraries, administering matters relating to State Churches and other religious communities and overseeing student financial aid and copyright issues.

Complaints concerning the purview of the Ministry of Education calling for measures from the Chancellor of Justice most commonly related to cases regarding the obligation of officials to provide replies and written, reasoned decisions on their customers' enquiries without delay, as prescribed in the Administrative Procedure Act and in accordance with the principles of good governance. Providing replies in accordance with the principles of good governance requires, for example, that the purpose of customers' enquiries be investigated to a satisfactory extent (decisions OKV/167/1/2007 and OKV/576/1/2007). Ruling number OKV/898/1/2007 states that according to the Administrative Procedure Act, a decision must have been taken on sufficient grounds and should include information on relevant appeal routes.

The complaints that did not lead to any measures by the Chancellor of Justice did not relate to any single policy area. Complaints that were not investigated due to their falling outside of the Chancellor of Justice's authority included complaints on the conduct of individuals or requests for legal advice or opinions on various issues. There was also no need for measures when a decision fell within the discretionary power of an official, or when a complainant had the opportunity to lodge a complaint with a designated appeal body.

During 2009, the Deputy Chancellor of Justice requested that a pre-trial investigation be launched on a complaint relating to the purview of the Ministry of Education, and was undertaken by the police.

A Ministry of Education decision (OKV/1181/1/2007) to issue emergency response instructions following the Jokela school shooting incident, concerning mainly the constitutional right to freedom of speech, also raised the issue of a safe learning environment as prescribed in the Basic Education Act.

In 2009, the Chancellor of Justice began investigations at his own initiative on the realisation of appropriate pupil care services and a safe learning environment in basic education.

# Rulings

## Education administration

### Ministry of Education instructions for emergency response and limits on the freedom of speech

On 7 November 2007, in the aftermath of the Jokela school shootings, the Ministry of Education published on their website instructions for emergency response by schools. The instructions included the following: "One person in the school administration should have responsibility for communication (including media contacts). Journalists should not be allowed on the school premises to interview students or staff, for fear of further traumatising them. The best way to handle enquiries from the media is for the school administration to provide them with appropriate information, bearing in mind data protection requirements and legal safety considerations."

The Deputy Chancellor of Justice stated that from the wording of the instructions it was not possible to conclude that they were intended simply as recommendations and general guidance. Nor did the instructions make clear that in each individual case the school should make its own decisions about possible restrictions on journalists covering tuition or interviewing pupils and staff. To the extent that the Ministry of Education instruction might have been interpreted as recommending a general ban on journalists entering schools to interview students or staff, such a ban may have constituted interference by an official authority with freedom of speech as prescribed in Section 12 of the Constitution It is worth noting, however, that although journalistic work prior to the actual publication or broadcast in the media is also covered by freedom of speech, there may be limitations as to how messages, opinions, facts and other materials may be gathered. For example, there may be direct legal restrictions on entering school premises or classes or to safeguard other fundamental rights.

Schools have an obligation to guarantee a safe learning environment for those taking part in tuition, and this obligation is linked to the right to bodily integrity and security as prescribed in Section 7 of the Constitution. Section 10 of the Constitution regarding the protection of privacy is also valid in this context. It could be said that the importance of a safe learning environment is even more important when most of those taking part in tuition are children attending compulsory education. The right to receive information does not thus carry with it the right to collect news material in circumstances that violate other fundamental rights. Schools must evaluate the safeguarding of freedom of speech against the need for a safe learning environment.

When the Ministry of Education issued the instructions, it justified them as an attempt to safeguard students' rights to a safe learning environment. This is a right that every education law guarantees. According to the Deputy Chancellor of Justice, however, these laws cannot be used as grounds for issuing instructions or general anticipatory restrictions on the constitutional right of freedom of speech. According to restriction clauses regarding fundamental rights, fundamental rights may only be restricted by law, and in each case that restrictions are imposed, they must be weighed against other fundamental rights. Within the rule of law, schools are able to make their own case-by-case

decisions on restrictions applying to media relations just as they are able to decide on their own disciplinary regulations.

The Deputy Chancellor of Justice stated that the original instructions had been posted on the Ministry of Education website only for a short period of time, and the National Board of Education had amended them the day after publication. It could be understood that the original instructions were mainly a reaction to a deeply disturbing situation, in which reliance on freedom of speech had also been somewhat excessive in unprecedented ways. With regard to the above, the Deputy Chancellor of Justice did not consider any further action was necessary, apart from bringing the points in the ruling on restricting the freedom of speech in relation to other fundamental rights, and schools' obligation to weigh these against each other, to the attention of the Ministry of Education (OKV/1181/1/2007).

# 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 resolved in 2009 related to the conduct of the Ministry, Metsähallitus (the forestry agency), the Finnish Food Safety Authority and District Survey Offices. Several complaints dealt with issues concerning the setting of boundaries, easements (rights-of-way), and expropriation and administrative proceedings for the execution of a road construction plan. Complaints were also received regarding the payment of agricultural support, monitoring of recreational fishing on the River Tornio by various officials, and the conduct of Metsähallitus (the forestry agency) in a case regarding the renting of a ski café and designating state owned forestry areas for use by a hunting club. Some complaints criticised sentences issued by land courts. Complaints that led to measures included the Ministry's conduct in fulfilling its obligation to carry out fish restocking and maintain fish stocks, and a central government official's conduct in issuing instructions and replying to a document request.

In 2009, the Chancellor of Justice issued a commentary on a request by the Ministry of Agriculture and Forestry's regarding restrictions on net fishing on Lake Saimaa, and possible regulation of how restructuring aid and additional aid for the sugar industry should be allocated. A statement issued in 2008 on how restructuring aid for the sugar industry is to be allocated according to the "distance principle" is available in the 2008 report.

## Statements and reports

### Grounds for granting the sugar industry restructuring aid and additional aid

The Ministry of Agriculture and Forestry requested a statement from the Chancellor of Justice regarding possible regulation of how restructuring aid and additional aid for the sugar industry should be allocated. The Ministry had prepared three options for the allocation of aid. The options were to grant aid to all sugar beet growers, who had the basic right to receive supplies in the marketing years 2007/2008; to grant aid to those who had renounced their right to receive supplies; and a compromise between the

first two options with a basic amount of the restructuring aid being paid to all, and those who had renounced their right to receive supplies being granted more as additional aid.

## Case background

Restructuring of the sugar industry in the European Union was accomplished at the end of 2005. The aim of the restructuring process was to gradually bring the price of sugar beet down. In addition, a temporary restructuring fund was established to provide financial aid to farmers ceasing production, sugar beet growers and machinery contractors. Aid payments were based on Article 3 of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy. Article 3(6) stipulated that Member States should grant the aid on the basis of objective and non-discriminatory criteria, taking into account the losses resulting from the restructuring process.

Sucros Oy renounced its sugar production quota of 9,001 tonnes at the Säkylä factory in the marketing year 2008/2009. Sucros should have received restructuring aid at €218.75 per renounced production tonne according to Article 3(5)(c) of Council (EC) regulation No 320/2006. In the autumn of 2007, the Commission decided to pay growers additional aid of 237.50 Euros per renounced production tonne during the marketing year 2008/2009 according to the Article 3(7) of Council (EC) regulation No 1261/2007.

The Ministry of Agriculture and Forestry renounced its original plan to direct the restructuring aid according to the distance principle. The Ministry did not intend to take the matter before Parliament, but rather issue a ministerial decree.

## Aid forms

**Options on directing the aid:**

1) Aid for all farmers
Each sugar beet farmer who had a basic right to receive supplies in the marketing year 2007/2008 would be paid an equal amount of restructuring aid in addition to additional aid.

According to an assessment in the Ministry of Agriculture and Forestry brief this model would treat farmers equally. The Council stipulated that Member States should grant the aid on the basis of objective and non-discriminatory criteria, taking into account the losses resulting from the restructuring process. This aid model does not, however, take into account any losses resulting from restructuring.

2) Aid for farmers who renounce production
According to this model, aid would be paid to farmers who had renounced their basic right to receive supplies, i.e. those who had cut their production during the marketing years 2007/2008 and 2008/2009, according to how much of their basic right to receive supplies they had given up. According to an assessment in the Ministry of Agriculture and Forestry brief, this model would cater best to farmers and machinery suppliers who had experienced losses in the restructuring process, so in other words, this mod-

el would best fulfil the Council requirements. The model would also best fulfil the expectations, which Finnish farmers have had since spring 2008.

3) The basic amount of restructuring aid to all, and additional aid to those who had renounced quotas
The basic amount of the restructuring aid would be paid to all farmers who had the basic right to receive supplies during the reference period of 2007. Those who had given up their basic right to receive supplies would receive more aid. The Ministry emphasised that this model would grant aid to everyone, but the emphasis would be on those who had renounced quotas. The brief states that this form of aid would involve significant bureaucracy.

#### Assessment

The Ministry of Agriculture and Forestry abandoned the direction of aid according to the distance principle. The proposed models did not seem to contain any constitutionally problematic issues.

The Ministry had assessed in its brief that between the proposed models, option 1 would not fulfil the Council criteria on an objective and non-discriminatory selection process, which should take into account losses resulting from the restructuring process. In this model, the farmers who were going to continue production as before or with a larger quota would not experience any losses.

According to the Ministry brief, options 2 and 3 best fulfilled the Council criteria.

Options outlined in the Ministry brief, their interpretations and applicability seemed correct and justified. Option 1 seemed the most problematic in terms of meeting the Council criteria. Options 2 and 3 seemed to be applicable in the manner the brief had specified (OKV/8/20/2009).

## Rulings

### Finnish Food Safety Authority (Evira)

#### Instructions open to various interpretations

The Finnish Food Safety Administration (Evira) had issued guidance on 1 March 2007 regarding the height of turkey transport containers in relation to the size of the birds. The Deputy Chancellor of Justice considered that in issuing the guidance, Evira had breached Section 21(2) of the Constitution and Section 9(1) of the Administrative Procedures Act.

The ruling noted that guidance issued by Evira did not clearly state that they were not legally binding. The ruling emphasised that there should never be any doubt about the legal nature or content of given guidance. The Deputy Chancellor of Justice noted that since it was possible to describe the guidance as a firm and detailed opinion of a central government authority, they might well be seen to influence the actions of lower-ranking officials in carrying out their inspection duties. The effect of

the guidance beyond government might also give rise to difficulties, for example in the conduct and procedures of businesses involved in turkey transport and slaughtering (although just like those of the authorities, their activities are regulated by current animal transport and animal welfare legislation).

In addition, the guidance requirement to "monitor their application" is open to interpretation. The guidance did not clearly define exactly what Evira meant by monitoring their application. The Deputy Chancellor of Justice noted that guidance should abide by the principles of good governance, so that they are open about the reasons why a certain view, instruction or recommendation has been issued. The ruling further noted that guidance should not be used to guide actions and that they are not the equivalent of remedying possible flaws in the law, and they may not be used to replace the use of actual legal remedies. The Deputy Chancellor of Justice requested Evira to send a report by 31 December 2009 explaining what measures it had taken following the ruling. On 16 December 2009 Evira revoked the guidance and informed all those parties who had been given them by way of information in 2007. Evira also added that in future it would pay special attention to the need clearly and unambiguously to declare the legal nature of any guidance or other document, including interpretations of law (OKV/347/1/2008).

# Purview of the Ministry of Transport and Communications

## Rulings

### The Finnish Broadcasting Company (YLE)

#### The right to receive public services regardless of place of residence

The Finnish Broadcasting Company, YLE, provided data encryption cards free of charge to enable YLE satellite programming to be viewed outside the normal signal area or in dead areas, which their signal did not reach. If the area was a fringe area or terrestrial signal in the area was inadequate, in order to view programming the recipient had to either buy a new antenna system or redirect their old antenna, and YLE would not provide the card free of charge without a certificate from a professional antenna contractor. According to YLE instructions, the cost of the antenna contractor's visit would fall to the service user. A complainant claimed that as YLE was charged with a public service to provide television and radio programming to everyone on equal terms, it had no right to demand special arrangements or payments from anyone who wanted to receive the service.

As a response to the complaint, YLE management provided reports on its satellite broadcasting principles, which either was not included in, or differed from, its previous instructions.

The Deputy Chancellor of Justice noted that according to Section 7 of the Act on Television and Radio Operations, YLE was charged with making public television and radio broadcasting available to everybody on equal terms. This obligation applied to content but also the quality of broadcasting, so that the service provided should be available for everyone to receive. This public service obligation only applies to YLE channels, excluding any commercial channels. The law also obliged YLE to treat all service users equally, for example in terms of fees payable for the service. As the service is required to be available free of charge under normal circumstances, YLE cannot expect some of its customers to have to pay for it without a justifiable reason. YLE's public service broadcasting remit is prescribed by the Act on Television and Radio Operations, and it is also bound by the Constitution to provide equal service to all customers regardless of their place of residence. According to Section 6 of the Constitution, no one may be discriminated against without a justifiable reason due to personal characteristics. One such unjustified reason for discrimination may be, for example, a place of residence. People living outside the signal area or in a dead area cannot be expected to have to pay to receive the same service that other people receive free of charge.

Section 21(2) of the Constitution guarantees everyone's right to good governance. The Administrative Procedure Act lays down the details of good governance, and Section 9(1) of the law obliges authorities to use appropriate language. Instructions and communications issued by the authorities must thus be as unambiguous as possible, and the wording must be exact and reflect the intended meaning of the message.

The Deputy Chancellor of Justice also stated that internal instructions, which are used to define service terms and conditions, make it more difficult for customers to receive correct and relevant information concerning different service options and fees. Even if internal instructions are not directly given to service users, inadequate and inconsistent internal instructions may still complicate the delivery of consistent service. YLE has a legal obligation to inform customers of the above issues in an appropriate and correct manner, and to provide public service broadcasting to all on equal terms.

YLE submitted a report to the Deputy Chancellor of Justice stating that contrary to the satellite viewing instructions it had issued, a visit from an antenna contractor had not been required and that it had been possible to obtain the data encryption card free of charge. On the basis of that report, the Deputy Chancellor of Justice ruled that under the circumstances discussed in the report, YLE had not breached its legal obligation to provide its programming to all customers on equal terms, and thus it had not breached the constitutional right to equal treatment. However, the Deputy Chancellor of Justice sent YLE his opinion on the requirement of authorities to use proper and exact language, as prescribed in the Administrative Procedure Act (OKV/131/1/2007).

# Purview of the Ministry of Employment and the Economy

During 2009, there were no major events regarding the supervision of legality within the purview of the Ministry of Employment and the Economy. Most complaints dealt with the activities of local employment authorities and the former Employment and Economic Centres. Few complaints were received regarding the Ministry's actions in trade permit and state support issues.

Complaints that did not result in measures being taken most commonly related to cases where an applicant had been disappointed by the handling and decision of their application for support. Several of these cases fell outside the Chancellor of Justice's authority.

## Rulings

### Energy Market Authority

#### Notification of a case decision

Pursuant to its decision on the legality of electricity connection pricing structures, the Energy Market Authority required an energy network owner to carry out repair works specified in the decision, and to inform the Authority by a specified deadline. A representative of the Energy Market Authority then telephoned the network owner and gave an approval for the completed works over the telephone.

The Deputy Chancellor of Justice pointed out to the Energy Market Authority that as the network owner had been obliged to inform the Authority of the completion of requested repair works, which was then to inspect and either approve or disapprove the works, it would have been in accordance with good governance practice to have issued the final approval in writing. No grounds had been apparent during the course of the matter to support deviation from the Authority's standard procedure (OKV/564/1/2007).

# Purview of the Ministry of Social Affairs and Health

Under the Finnish Constitution, one of the Chancellor of Justice's duties is to issue reports and statements on legal issues to ministries and other bodies at their request. In fulfilment of this part of his duties in 2009, the Chancellor of Justice issued statements to the Ministry of Social Affairs and Health on the status and rights of a social services client; on amending the legislation on the status and rights of a patient; and amending the decree on professional healthcare staff. The Chancellor of Justice also issued a statement on the obligation to ensure that generally binding collective bargaining agreements are available in both Finnish and Swedish. The Insurance Advisory Board Guarantee in Emergency Conditions requested a statement from the Chancellor of Justice on whether the decision on guarantees as laid down in the Act on Insurance in Emergency Conditions falls within the remit of the Ministry of Social Affairs and Health or the Government plenary session. The above cases are discussed in Section 3, The Chancellor of Justice and the Government.

The Ministry of Social Affairs and Health and its related administrative organisations underwent major restructuring in 2009: at the beginning of the year, two new institutions were established, namely The National Institute for Health and Welfare (THL) and the National Supervisory Authority for Welfare and Health (Valvira). At the same time, the National Public Health Institute, National Research and Development Centre for Welfare and Health, National Product Control Agency for Welfare and Health and The National Authority for Medicolegal Affairs ceased and their activities were transferred to the new institutions. At the end of the year, the Finnish Medicines Agency (Fimea) was also established, and the Chancellor of Justice received some complaints regarding the decision of the Ministry of Social and Health Affairs on its location. Some complaints were also lodged regarding preparatory work on the establishment of Fimea.

Other rulings within the purview of the Ministry of Social Affairs and Health that led to measures being taken were concerned with, for example, the response to a letter from a member of public, and security in children's daycare. The case regarding security of daycare revealed that the Ministry was trying to use administrative guidance to influence the security of daycare and security planning at the municipal level. The Chancellor of Justice expressed his concern over the adequacy of such guidance, and reminded the Ministry of the importance of a proper monitoring procedure for administrative guidance: information collected through follow-ups may be used to evaluate the adequacy and appropriateness of the guidance that had been given, and it is also possible to evaluate how effective the method of administrative guidance is in the round.

Complaints regarding social insurance mostly concerned the Social Insurance Institution of Finland (Kela) and its handling of benefit issues and related decisions. Rulings on Kela that led to measures being taken concerned, for example, the submission of complaints that had been sent to Kela

instead to the Social Security Appeal Board, and giving reasoned grounds for a Kela decision. In the latter ruling the Chancellor of Justice criticised both Kela and the [present] Social Security Appeal Board decision for insufficient justification.

The Social Insurance Appeal Board featured on the agenda of the Office of the Chancellor of Justice in another context. During 2009, the Deputy Chancellor of Justice gave ten rulings on cases regarding the Social Security Appeal Board and handling times for complaints against its decisions on housing, disability and care support matters. The Deputy Chancellor of Justice noted that handling times for the referred cases were unreasonably long, and he drew the Board's attention to the importance of prompt handling of certain individual matters, but also of complaints more generally. Following an on-site inspection visit in 2008, the Deputy Chancellor of Justice launched investigations at his own initiative on the performance and operation of the Board, and focused particularly on handling times and possible ways of improving the Board's performance so that legal protection for complainants might be ensured. The ruling of the Deputy Chancellor of Justice, dated 16 May 2008 (Document no OKV/6/50/2008), informed the Ministry of Social Affairs and Health of the shortcomings he had identified, and requested the Ministry to issue a report on what measures had been implemented and what results they had achieved, by 30 April 2009. In addition, he requested information on the Appeal Board's performance targets and how they had been met during 2008, and the Board's situation at the beginning of 2009. As a follow-up to the information he had received, the Deputy Chancellor of Justice conducted a second on-site inspection visit on 12 November 2009, and due to the situation at the Board at the time, he initiated further investigations concerning the performance of the Appeal Board and the legal protection offered by it.

In addition to the above, the Deputy Chancellor of Justice conducted on-site inspection visits to the Accident Insurance Appeal Board, the Unemployment Appeal Board and the Traffic Accident Board. During these visits, the appointment of board members and their disqualification, and ensuring the consistency of decision-making processes, were discussed. The visits also focused on handling issues at the boards and the possibility of oral hearings.

## Rulings

### Ministry

#### National implementation of a Directive on Medicinal Products

The Ministry of Social Affairs and Health had adopted the Directive on Medicinal Products without hearing representatives of the natural health industry. The adoption of the Directive on Medicinal Products had implications for the natural health industry.

The Chancellor of Justice noted that hearing from a sufficiently broad base of interested parties is an important part of good legislative preparation, on the basis of which the Government plenary

session and the parliamentary plenary session assess the legislative proposal. Such hearings are vitally important for the proper impact assessment. Interest groups and bodies who would be affected by the proposed legislation can bring valuable information to the preparation of legislation and decision-making concerning the impacts of proposed methods and options. As the national implementation of the Directive on Medicinal Products had implications for the natural health market, the industry should have been given a hearing.

The Chancellor of Justice stated, however, that any information collected through hearings does not automatically bring new input to the process of legislative preparation, or that inadequate hearings would mean that the directive's contents would have been incorrectly implemented (OKV/17/21/2008).

## Social services

### Security of children's daycare

The Chancellor of Justice initiated his own investigations into the state of security arrangements in children's daycare, based on newspaper articles about their possible shortcomings. In 2002, the Chancellor of Justice had initiated an investigation on the same topic. The Chancellor of Justice requested a report on the matter from the Ministry of Social Affairs and Health. According to the report and other information acquired from the Ministry, the Ministry was trying to use administrative guidance to influence the security of daycare and security planning at the municipal level. The Chancellor of Justice stated that there must also be a proper monitoring procedure for administrative guidance: information collected through follow-ups may be used to evaluate the adequacy and appropriateness of the guidance that has been given, and it is also possible to evaluate how effective the method of administrative guidance is in the round. The Ministry had appointed a committee in April 2009 to prepare a reform of social welfare legislation. The reform included legislation on daycare provision. The Chancellor of Justice stated that there was no need for him to take any measures at this stage. Nevertheless, he reminded the Ministry of the importance of monitoring the effectiveness of administrative guidance (OKV/5/50/2005).

## Occupational Safety

### Statement on the justified grounds for discrimination under the Non-Discrimination Act

A senior inspector of an occupational safety district had signed an inspection report concerning a case in which the complainant had alleged discrimination on the basis of their treatment, and alleged unfairness, on the basis of occupational activities and complaints about injustices in the workplace. The senior

inspector considered that the issues the subject of the allegation could not be classified as among those potentially giving rise to a claim for discrimination under the Non-Discrimination Act, and thus the prohibition against discrimination as described in the Act had not been breached.

In his ruling, first of all, the Deputy Chancellor of Justice was clear that discrimination suffered as a result of expressing personal opinions about shortcomings in the workplace, as the complainant had done according to the documents, would amount to grounds giving rise to potential discrimination as described in Section 6(1) of the Non-Discrimination Act. Secondly, the Act specifies "personal characteristics" as an unjustified basis of discrimination, and this covers occupational activities as well as non-membership of trade unions. The Deputy Chancellor of Justice referred to the fact that according to the legislative preparatory materials for the Non-Discrimination Act, Section 6, the list of prohibited grounds for discrimination should be consistent with the Constitution, Section 6(2) and Non-discrimination Directive and Non-Discrimination at Work Directive (Government bill 44/2003 vp p. 41). The prohibited grounds for discrimination in Section 6(2) of the Constitution do not mention occupational activities, but do mention other personal characteristics. The legislative preparatory materials for the Constitution (Government bill 309/1993 vp, p. 44) state that such characteristics could be, for example, trade union membership. The Constitution, Section 13(2), states that each individual has the freedom to join trade unions and this includes the right to be or not to be a member of a trade union.

As the senior inspector's interpretation of the grounds potentially giving rise to a claim for discrimination as described in the Non-Discrimination Act, Section 6 (1), was incorrect, the Deputy Chancellor of Justice informed the senior inspector of his interpretation of the said section of law. See also page 16 (OKV/1233/1/2007).

## Inspections carried out in the purview

Accident Insurance Appeal Board,
Unemployment Appeal Board,
Traffic Accident Board,
Social Security Appeal Board.

# Purview of the Ministry of the Environment

In 2009, the purview of the Ministry of Environment included the Finnish Environment Institute, Regional Environment Centres and environmental permit agencies. During 2009, one ruling led to measures being taken, namely a case concerning errors in mapping the borders of protected areas. Rulings on complaints that did not lead to measures being taken included the tone of a regional environment centre brief on environmental requirements for horse stables, which may have given a false impression that the principles expressed in the brief were binding. Another ruling dealt with the Finnish Environment Institute's decision not to take any further action against a company, which had obtained an environmental permit but had expanded its activities into an area, which was not clearly defined in the permit. Several complaints received on the Ministry's purview were outside the Chancellor of Justice's authority. Such cases included communications in which the complainant was not satisfied with decisions of an environmental permit agency, the environment centre or an administrative court, and appealed against them to the Chancellor of Justice.

During 2009, the Deputy Chancellor of Justice inspected the regional environment centres of Hämeenlinna and Uusimaa.

## Ruling

### Regional environment centres

#### Revision of erroneous map markings

A municipality and a regional environment centre had together compiled a leaflet on dredging and other types of hydraulic engineering. The booklet included a map, in which the complainant's entire property had been erroneously marked as being a protected area. According to further information, the map was based on the Finnish Environment Institute's electronic data about different protection schemes. The regional environment centre claimed that the leaflet did not infringe on the complainant's rights or any rights enjoyed by them, because it was not legally binding and any hydraulic engineering permits regarding the property would be handled according to standard procedure under the Water Act.

The Deputy Chancellor of Justice noted that the case had raised an issue about the reliability and accuracy of databases maintained by authorities. The status of the property in question had been

discussed in various courts several times, for example, in the Supreme Administrative Court, with the result that only some of the property had been protected. The Deputy Chancellor of Justice stated that it should be an obvious starting point in all activities by the authorities that any data they maintain should always be correct, up-to-date and free from errors. A client who uses administrative services is right to expect that the map they receive from an official includes correct, reliable map markings. It is unacceptable that the authority has not even attempted to correct the errors, even if the facts were known and undisputed. The regional environment centre was reminded of the importance of correct map markings, and of the authorities' duty to provide their clients with appropriate administrative services. The ruling was sent as information to the Finnish Environment Institute, National Land Survey of Finland and the municipality (OKV/1223/1/2007).

## Inspections carried out in the purview

Regional Environment Centre of Häme,
Regional Environment Centre of Uusimaa.

# 7

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

# General

Supervision of legality in municipal administration, church administration and the autonomous government of Åland is part of the Chancellor of Justice's remit. The greatest number of cases resolved in 2009 related to municipal administration. The Chancellor of Justice received numerous complaints particularly regarding subsistence support and child protection, as well as treatment and examinations undertaken in municipal hospitals and health centres. Cases regarding subsistence support most often related to handling times for applications and the right to receive subsistence support. The amount of subsistence support does not typically come under the jurisdiction of the Chancellor of Justice, but falls under the jurisdiction of the relevant authority. Complaints raised aimed at overturning a decision by a competent authority usually do not call for action. In some cases, however, the complaint and the response to it in cases that did not warrant any action were sent for competent supervising authority for information.

Many of the Chancellor of Justice's rulings that led to measures being taken cited the constitutional right to good governance and a fair trial. Fundamental rights were of the essence in, for example, complaints regarding officials' responses to enquiries and requests for documents; officials' duty to the making of official decisions and their communication to clients. The requirement to issue a written decision was established, for example, in a case on animal welfare (OKV/1068/1/2006), see page 50, and the duty to inform a client of a decision was established in a case regarding schooling arrangements for a child taken into custody by a municipality, see page 52 (OKV/1031/1/2006).

The prohibition of discrimination under the Constitution and the Non-Discrimination Act was cited in two rulings, in which a municipality had discriminated against candidates who were employees on the basis of their place of residence.

The Chancellor of Justice launched investigations at his own initiative into a case in which a child had gone missing from a daycare centre. A report on the conduct of the daycare centre established that there was no need for measures to be taken by the Chancellor of Justice.

Inspection visits within the municipal administration were conducted at the Land Use and Environmental Services Department of the City of Hämeenlinna, the Construction Supervision Department of the City of Vantaa and child protection services at the Board of Social and Health Affairs of the City of Oulu.

# Municipal administration

## General administration

### Discrimination in a job advertisement

A municipal environmental services department had advertised for a local business administration student to join them as an office administrator. The substitute to the Deputy Chancellor of Justice informed the city executive board of his view that as far as the job advertisement specified that the candidate should be a local resident, it was in breach of the prohibition of discrimination under Section 6(2) of the Constitution and Section 6(1) of the Non-Discrimination Act (OKV/250/1/2007).

### Conduct of municipal parking services

A municipal parking services department had refused to carry out patrolling on a private property, because the property owner had entered into a contract with a private parking service contractor to provide patrolling services.

In his ruling, the Deputy Chancellor of Justice stated that according to Section 2(3) of the Constitution, "the exercise of public powers shall be based on an Act. In all public activity, the law shall be strictly observed". The law did not include any provision, which would allow a municipal parking service to refrain from patrolling solely because the owner of a private property had entered into a contract for patrolling services with e.g. a parking service contractor, security guard contractor or caretaker.

A report provided by the municipality did not include any acceptable reasons as to why the municipal parking services had refused to carry out patrolling when a representative of the property, i.e. the complainant, had requested them to patrol.

The municipality was reminded of its responsibilities, for future reference.

The Deputy Chancellor of Justice also reminded the head of parking services, for future reference, of the conduct expected of an officeholder, as prescribed in the Act on Municipal Officeholders, in the situation where, in the course of a conversation with the complainant, the Head of Parking Services had told the complainant about the loss of a customer by another company and its possible implications for the complainant's company (OKV/1335/1/2007).

### Discrimination in employment benefit allocation

According to the Deputy Chancellor of Justice, a municipality in Western Finland had breached the prohibition of discrimination by favouring local young people when allocating employment benefit. The municipality had paid employment benefit to employers who had hired local young people for temporary positions. The condition for receiving the payment had been that the municipality was the

registered place of residence of those hired. The Deputy Chancellor of Justice reminded the executive board of the municipality that, under the Non-Discrimination Act, no one may be discriminated against due to their personal characteristics. The Non-Discrimination Act also applies to hiring new staff. Personal characteristics that have nothing to do with performance of the job, such as place of residence, are prohibited as selection criteria (OKV/150/1/2008).

## Education administration

### Right to good governance

A complainant had made a written request to a board of education that the board make a decision in accordance with the Act on the Openness of Government Activities and classify certain information and documents that concerned the complainant's privacy as strictly confidential. The board of education had not processed the matter and the complainant had not received an appealable decision or any other response to their request.

The Deputy Chancellor of Justice stated that the board of education had an obligation under Section 21 of the Constitution to appropriately process the complainant's request and reach a reasoned decision, against which (in an unfavourable case) the complainant could appeal. In not doing so, it denied the complainant the fundamental right to good governance under Section 21 of the Constitution: the right to have their case dealt with by a legally competent court of law or other authority, to have a reasoned decision and to have the right to appeal. The Deputy Chancellor of Justice reprimanded the board of education, for future reference, for inappropriate conduct. In this case it was irrelevant how the complainant's request to the board of education for it to classify certain information and documents as strictly confidential should have been resolved under the Act on the Openness of Government Activities.

At the same time, the Deputy Chancellor of Justice cautioned the board of education and the executive board of the municipality, for future reference, for having ignored their obligation under Section 111(1) of the Constitution and Section 5(1) of the Act on the Chancellor of Justice of the Government to provide the Chancellor of Justice with an adequate report for the purpose of investigations into a complaint.

The executive board of the municipality was to provide a report by the board of education to the Deputy Chancellor of Justice by 30 April 2009 stating what measures it had taken after the ruling.

By the due date, the executive board of the municipality provided the Deputy Chancellor of Justice with information on the measures it had taken after his ruling. On 21 April 2009, the board of education rejected the complainant's request to classify certain documents as strictly confidential. The complainant appealed against the decision (OKV/733/1/2007).

## Social services and health care administration

### The right of inspection under the Personal Data Act

Under Section 26 of the Personal Data Act, a complainant had requested to see the record of their personal data held in their local municipal social services database. The printouts the complainant received by post were largely illegible. The complainant had not been offered any other method to view the data, as they had received the data in a comprehensible format as prescribed in Section 28 of the Personal Data Act, albeit over five months after requesting them. The substitute to the Deputy Chancellor of Justice drew the attention of the municipal social and health services Board to the application of the right of inspection as prescribed in the Personal Data Act (OKV/886/1/2007).

A client had requested to check all their patient details held in a patient register, and any information on data transfers during a certain time period. The local Board of Social and Health Services had sent the client details that had not previously been sent to them during that year. They had not provided the complainant with a certificate of refusal for the details that they had not sent, and they had not provided access to all details. The Deputy Chancellor of Justice noted that the obligation of reliability and confidentiality is particularly important where patient data registers are concerned, and therefore the right of inspection must be observed so that the client is confident of receiving information on all details. If there were details that had not been given to a client, the Board of Social and Health Services should have provided the client with a certificate of refusal, stating the reasons why the right of inspection had been refused. The Deputy Chancellor of Justice reminded the social and health services Board of the requirements of good governance and the Personal Data Act in granting the right of inspection (OKV/1226/1/2008).

## Inspections carried out in the purview

Land Use and Environmental Services of the City of Hämeenlinna,
Board of Child protection services at the Social and Health Affairs of the City of Oulu,
Construction Supervision of the City of Vantaa.

## Church administration

### Processing an administrative matter in a church council

A complainant, who was also a member of a church council, had in September-October 2007 asked the parish to provide some documents and information regarding the letting of parish accommodation. The complainant received a response to his requests in a church council meeting on 18 March 2008, when

a report of the board of property services had been attached to the presentation agenda. It could not be proved that the complainant had received the extract of minutes that he had requested, or that he had been informed as to why the request had not been fulfilled. For lack of any other evidence, the complainant's claim that the church council had not made a decision regarding the information he had requested had to be considered correct.

The Deputy Chancellor of Justice reprimanded the church council for its conduct that had been in breach of the Constitution, the Church Code and Administrative Procedure Act:

When it neglected to respond to the complainant within a reasonable time and notify them that the council was not able to provide the requested extract of minutes, the church council was in breach of the principle of good governance as prescribed in Section 21 of the Constitution. At the same time, the church council neglected to observe the special provisions under Chapter 25 Section 8(2) of the Church Code. In this regard, the church council's conduct was particularly reprehensible. Transferring the letting enquiry to be prepared by the board of property services (on 19 September 2007) and the church council's handling of a letter addressed to it by the complainant (on 23 October 2007) – noting the matter [in the minutes] for information only, forwarding the letter to the property board, neglecting to attach the letter to the minutes – had at least in part been done so that the complainant's information request could be rejected by referring to secrecy of matters in the preparation stage. Thus the church council had not only been in breach of the above-mentioned regulations, but also the principle of commitment to purpose as prescribed in Section 6 of the Administrative Procedure Act (OKV/1175/1/2007).

## Autonomous government of Åland

### Determination of children's daycare fees

A municipality in Åland had between 1 August 1997 and 2005 neglected to observe the regulations of the Act on Social and Health Care Client Fees in determining its fee tables for children's daycare services. The municipality had neglected to consider an amendment of law 1134/1996 in mainland Finland and its effects on the Provincial Administration Act 1995:101 regarding the application of mainland social legislation in Åland. Because of the omission, some people whose children attended municipal daycare had been paying higher fees than they would have had the municipality observed the law in determining its fees.

After considering all matters, including the fact that the amendment to mainland law and its effect on local law had not been easy to spot due to the technical legislative procedure that had been used, and the consequent significant risk of confusion; and that as soon as the municipality had discovered its erroneous application of the law, it had started revising its fee tables and processing refunds, the Deputy Chancellor of Justice regarded it as sufficient to draw the municipality's attention to the erroneous application of law that had been revealed (OKV/100/1/2007).

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# Supervision of the Bar

# Overview

Supervision of the Finnish Bar Association by the Chancellor of Justice is carried out as part of the overall supervision of legality, and the Association has the immediate responsibility for the supervision of its members. The division of supervision duties between the Bar Association and the Chancellor of Justice is intended to secure, on the one hand, the independence of those who provide advocacy services in defence of their clients' rights, and on the other hand, efficient supervision. Thus far, no other legal services providers, advocates or public legal aid counsels are covered by this supervision.

On 16 May 2008, the Ministry of Justice appointed a committee of public legal aid counsels, which 25 November 2009 submitted a report titled 'Competence and Supervision of Public Legal Aid Counsels' (OM 2009:17). It recommended that the qualification requirements and supervision of legal aid counsels and advisers should be tightened, and counsels and advisers who were granted a licence should adhere to the central principles of a professional code of conduct for lawyers. Counsels and advisers operating under a licence should be supervised by the Chancellor of Justice and the Disciplinary Board of the Association. Circulation of reports for comment was completed on 8 February 2010.

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 the activities of advocates therefore lies with the Disciplinary Board and the Board of the Association itself.

Supervision of advocates and public legal counsels, as well as the supervision of the Bar Association, discussed below, form a part of the general supervision of legality performed by the Chancellor of Justice. Any citizen who considers that an advocate has neglected their duties or has not followed the professional code of conduct of the Bar may turn to the Finnish Bar Association or the Chancellor of Justice. The Chancellor of Justice also has the right of appeal in respect of any decisions taken by the Board of the Association or its Disciplinary Board.

# Membership of the Finnish Bar Association

According to Section 1 of the Advocates Act (496/1958), an "advocate" is a person who is registered in the Roll of Advocates as a member of the Finnish Bar Association. A lawyer with practical experience and expertise in addition to the requisite 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.

## Duties of, and the Code of Conduct for, lawyers

Under Section 5 of the Advocates Act, an advocate should honestly and conscientiously fulfil the tasks entrusted to them and they should, at all times, observe the rules of proper professional conduct for advocates. This definition of advocates' overall duties ensures the interests of both the public and clients. Safeguarding the public interest assumes, for example, that an advocate should, in the performance of their duties, support the due administration of justice as far as possible.

The principles of good professional conduct have been defined in greater detail in the Bar Association's Code of Conduct for Lawyers. The Code has recently been amended and adopted at the meeting of the Delegation of the Finnish Bar Association in January 2009, and came into force on 1 April 2009. The Code contains provisions 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 matters

## System of supervision

Under Section 6 of the Advocates Act, the Board of the Bar Association shall supervise advocates in fulfilment of their obligations when appearing in a court of law or before another authority as well as in their other activities.

Under Section 7(1) of the Advocates Act (697/2004), an independent, nine-member Disciplinary Board of the Bar Association considers and decides on supervisory matters. The Chair and five members are advocates, elected by the Delegation of the Bar Association. The Government appoints the three members who are non-members of the Bar on the recommendation of the Ministry of Justice following receipt of a favourable opinion from the Bar Association concerning the qualifications of the candidates. Members of the Disciplinary Board act in a quasi-judicial capacity.

A supervisory matter arises when a written complaint is lodged against an advocate by a client or the opposite side, when raised in the course of supervision by the Association, or by a notice issued by the Chancellor of Justice or a court of law. The Disciplinary Board considers and decides matters usually in three divisions, and each includes at least one non-member of the Bar. Matters so assigned by the Chair of the Disciplinary Board or reassigned by the divisions shall be dealt with in plenary session. The plenary session considers, for example, exceptionally serious, difficult or significant matters and complaints raising issues that are of importance to all Disciplinary Board members. Decisions on disbarment and the imposition of a monetary penalty are always made in plenary session.

Written proceedings shall be employed in matters of supervision. The advocate shall be afforded an opportunity to be heard before the case is decided and the complainant shall be given an opportunity to comment on the response of the advocate. However, a decision on disbarment or the imposition of a monetary penalty may be made only if an oral hearing has been held. The Disciplinary Board or a division may also hold oral hearings under other circumstances. The advocate concerned and the complainant should be summoned to the oral hearing.

It is important the disciplinary procedure meet the requirement that the advocate supplies the requisite information and accounts for his or her conduct openly and truthfully. The Disciplinary Board and a division should also ensure that the matter is investigated thoroughly in all other respects.

Resignation of an advocate from the Bar Association will not prevent disciplinary proceedings from being concluded. If it is found that an advocate has breached their duties, a statement will be issued on what disciplinary sanction is to be imposed on the advocate.

A public record shall be kept, and reports issued on the complaints dealt with by the Bar Association, containing information on the complainant or applicant, the advocate, the type of case and the result of the case.

## Disciplinary sanctions

If it is revealed, during supervisory proceedings, that an advocate has breached their duties, the Disciplinary Board should impose a disciplinary sanction on the advocate; the disciplinary sanctions are disbarment from the Association, a monetary penalty, caution and reprimand. It is also possible for the Disciplinary Board to remind the advocate of appropriate conduct in cases in which the Board considers that no actual breach of duty has occurred, but that the advocate's conduct was inappropriate.

The monetary penalty shall be no less than 500 Euros and no more than 15,000 Euros; the amount of the penalty shall be based on the degree of misconduct, the experience of the advocate and the advocate's financial circumstances, so that the penalty is in due proportion to the misconduct.

If an advocate acts dishonestly or otherwise deliberately infringes the interests of another person while practising as an advocate, the advocate shall be disbarred. If there are mitigating circumstances, a monetary penalty or a caution may be imposed instead.

If an advocate otherwise acts in breach of proper professional conduct, a caution or a reprimand shall be imposed. If the advocate engages repeatedly in such conduct, or if there are aggravating circumstances, the advocate may be disbarred or a monetary penalty imposed.

If a client objects to an advocate's invoice, they apply to the Bar Association Disciplinary Board for a recommendation of a reasonable fee. Any fee disputes shall be considered in a Board division, which shall be chaired by a non-member of the Bar. A recommendation issued in a fee dispute is not enforceable, however, and it does not have the legal effect of a court decision. A client may take a fee dispute to a district court or the Consumer Disputes Board as a civil case. The Chancellor of Justice does not have the right to appeal against fee dispute decisions.

## Notifications from public prosecutors

According to guidance issued by the Prosecutor General (VKS:2000:6), public prosecutors must notify the Chancellor of Justice of any charges being brought against an advocate in a court of law, which may have an effect on their capacity to serve as an advocate or reflect unfavourably on the legal profession. The notification is served by sending a copy of the charges brought against the advocate and a court decision or waiver of charges to the Office of the Chancellor of Justice.

In 2009, public prosecutors sent the Chancellor of Justice six notifications regarding charges against an advocate or waiver of charges. In 2008, there were three such notifications.

Should the matter so require, notification by a public prosecutor shall also be sent to the Finnish Bar Association for it to begin its own disciplinary proceedings.

# Supervision by the Chancellor of Justice

## Applicable regulations and supervisory proceedings

The independent position of advocates is reflected on the Chancellor of Justice's work. The Chancellor of Justice supervises the discharge of advocates' responsibilities in their roles, but the Chancellor of Justice has no authority to intervene in their actual work or take any disciplinary measures against them.

Under Section 10(2) of the Advocates Act, the Chancellor of Justice has the right to appeal against decisions on disciplinary and membership matters as referred to in Sections 7 and 9. The Chancellor of Justice receives copies of Bar Association decisions on all supervisory issues. A decision shall be sent simultaneously to the complainant or person who originally raised the issue. Should that person consider that the supervisory issue has not been dealt with in an appropriate manner or if they are dissatisfied with the decision, they may refer it to the Chancellor of Justice who should consider their claim and may appeal against the decision. For purposes of supervision and consideration of appeal, the Office of the Chancellor of Justice may, if necessary, request relevant documents from the Disciplinary Board.

Advocates have the right to appeal against decisions on disciplinary sanctions against them. Most commonly, complaints are made against the most lenient sanction, i.e. reprimand. Because a complainant is not party to supervisory proceedings, they have no right to appeal against the final decision, but they must be heard at appeal. The Board of the Bar Association is still required to issue a statement on a complaint. The Court of Appeal of Helsinki must afford the Chancellor of Justice, the Bar Association and the complainant an opportunity be heard in a complaint case, and if necessary, also to present evidence or other clarifications.

## Complaints regarding the conduct of advocates

In practice, the primary supervisory responsibility of the Finnish Bar Association is exercised through the transfer to it of complaints with probable cause against an advocate under section 6 of the Advocates Act. Some of the complaints the Chancellor of Justice receives have already been processed by the Supervisory Board. Under Section 7(c)(2) of the Advocates Act, however, a supervisory matter that has been decided by the Bar Association shall not be reopened on the basis of a new complaint, unless the complaint contains relevant new information (see. KKO:1997:158).

Based on the complaint letters the Chancellor of Justice receives, it is possible to determine what areas of advocacy the public typically perceives as problematic. First and foremost, the Chancellor of Justice receives complaints concerning the winding up and distribution of estates, particularly in cases in which there are several interested parties to the estate. Complaints concerning delays regarding the distribution of inheritances and partition are also common. These cases are often influenced by disagreements between interested parties regarding the management of an estate or realisation of assets. These issues recur year after year, as do complaints concerning the impartiality of advocates.

Complaints concerning the conduct of public legal aid counsels and advisors often flow from clients' disappointment with a court decision. This is common in civil cases. Complaints concerning the conduct of advocates during court proceedings often allege that the advocate did not present a vital piece of evidence or otherwise acted inefficiently. In addition, it may be alleged that the advocate representing the opposite side exerted undue pressure on or mislead the complainant, or did something else against professional ethics.

## Commencing supervisory proceedings and appealing to a court of appeal

The Chancellor of Justice initiated supervisory proceedings by transferring complaints he had received to the Finnish Bar Association in a total of 14 cases.

## Decision on a complaint

### Obligation to advise

A complainant had written to the Finnish Bar Association criticising the conduct of an advocate and a senior lawyer. The Disciplinary Board of the Finnish Bar Association had given a decision regarding complaints concerning the conduct of the advocate. In preparing the decision, the Finnish Bar Association considered that it did not have the authority to investigate the complaint regarding the senior lawyer. The complainant did not receive notification of that.

The Chancellor of Justice noted that under the Administrative Procedure Act and its provision on the obligation to advise, the Finnish Bar Association should have notified the complainant by separate letter that the Association did not have the authority to handle their complaint regarding the senior lawyer. The Chancellor of Justice reminded the Finnish Bar Association of their obligation to advise under the Administrative Procedure Act (OKV/619/1/2008).

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# Statistics

## Caseload in 2009

### Cases pending on 1 January 2009

| | |
|---|---|
| filed in 2006 | 18 |
| filed in 2007 | 230 |
| filed in 2008 | 804 |
| Total | 1 052 |

### Cases filed in 2009

| | |
|---|---|
| complaints | 1 762 |
| other supervisory matters[4] | 750 |
| administrative matters | 44 |
| Total | 256 |

**Matters resolved in full in 2009** ..... **2 485**

### Transferred to the next year

| | |
|---|---|
| matters instigated in 2006 | 1 |
| matters instigated in 2007 | 11 |
| matters instigated in 2008 | 299 |
| matters instigated in 2009 | 814 |
| Total | 1 125 |

## Supervision of Government

### Sessions

| | |
|---|---|
| 1) Governmental plenary session | 67 |
| 2) Presidential session | 36 |

### Matters dealt with

| | |
|---|---|
| 1) Governmental plenary session | 1 680 |
| 2) Presidential session | 920 |

### Minutes reviewed

| | |
|---|---|
| 1) Governmental plenary session | 68 |
| 2) Presidential session | 37 |

[4] Including inspections and matters initiated at the Chancellor of Justice's own initiative, statements, judicial offences in office, supervision of advocates and matters on the basis of the review of penal judgments

## Requests for comments from the authorities

### Filed

| | |
|---|---|
| 1) President of the Republic, Government and Ministries | 58 |
| 2) other authorities | 10 |
| Total | 68 |

### Measures taken

| | |
|---|---|
| 1) charges brought | 1 |
| 2) opinion or instruction | 1 |
| 3) written statement | 52 |
| 4) other comment | 4 |
| 5) other measure | 1 |
| 6) no measures needed due to action taken at the initiative of the authority | 12 |
| 7) transferred to the Parliamentary Ombudsman | 1 |
| Total | 72 |

## Complaints

| | |
|---|---|
| **Filed in 2009** | **1 762** |

Complaints related to the following authorities or subject matters

| | |
|---|---|
| 1) Government or Ministry | 187 |
| 2) court of general jurisdiction, criminal case | 102 |
| 3) court of general jurisdiction, other type of case | 189 |
| 4) administrative court | 62 |
| 5) special court | 22 |
| 6) prosecution authority | 91 |
| 7) police | 280 |
| 8) enforcement authority | 52 |
| 9) prison authority | 7 |
| 10) other judicial authority | 21 |
| 11) foreign service authority | 2 |
| 12) provincial and other internal affairs authority | 44 |
| 13) defence forces | 5 |
| 14) tax authority | 40 |
| 15) other authority in State finances | 32 |
| 16) education authority | 35 |
| 17) agriculture and forestry authority | 23 |
| 18) transport and communication authority | 11 |
| 19) trade and industry authority | 17 |
| 20) social welfare | 99 |
| 21) social insurance | 73 |
| 22) occupational safety and other cases under the Ministry of Social Affairs and Health administrative sector | 15 |
| 23) health care | 84 |
| 24) labour authority | 30 |
| 25) environmental authority | 27 |
| 26) municipal authority | 149 |
| 27) church authority | 9 |
| 28) other authority or other person performing public duty | 95 |
| 29) Member of the Bar, public legal aid attorney | 114 |
| 30) civil law matter | 44 |
| 31) miscellaneous | 145 |
| Total [5] | 2 106 |

[5] Some complaints relate to more than one authority or matter.

**Complaints resolved** ..... **1 748**

Complaints related to the following authorities or subject matters

| | |
|---|---|
| 1) Government or Ministry | 172 |
| 2) court of general jurisdiction, criminal case | 115 |
| 3) court of general jurisdiction, other type of case | 204 |
| 4) administrative court | 52 |
| 5) special court | 20 |
| 6) prosecution authority | 109 |
| 7) police | 283 |
| 8) enforcement authority | 51 |
| 9) prison authority | 5 |
| 10) other judicial authority | 19 |
| 11) foreign service authority | 4 |
| 12) provincial and other internal affairs authority | 37 |
| 13) defence forces | 3 |
| 14) tax authority | 49 |
| 15) other authority in State finances | 25 |
| 16) education authority | 29 |
| 17) agriculture and forestry authority | 28 |
| 18) transport and communication authority | 18 |
| 19) trade and industry authority | 16 |
| 20) social welfare | 99 |
| 21) social insurance | 61 |
| 22) occupational safety and other cases under the Ministry of Social Affairs and Health administrative sector | 22 |
| 23) health care | 75 |
| 24) labour authority | 30 |
| 25) environmental authority | 27 |
| 26) municipal authority | 153 |
| 27) church authority | 8 |
| 28) other authority or other person performing public duty | 78 |
| 29) Member of the Bar, public legal aid attorney | 130 |
| 30) civil law matter | 46 |
| 31) miscellaneous | 139 |
| Total [6] | 2 102 |

[6] Some resolutions relate to more than one authority or matter.

### Measures based on complaints

| | |
|---|---|
| 1) charges brought | 2 |
| 2) reprimand | 10 |
| 3) proposal | 1 |
| 4) position or instruction | 128 |
| 5) other comment | 18 |
| 6) other measure | 9 |
| 7) rectification or adjustment while complaint was pending | 8 |
| Total | 176 |

### Decisions on complaints where no fault in official conduct was found[7]

| | |
|---|---|
| 1) no erroneous conduct was revealed | 928 |
| 2) outside the competence of the Chancellor of Justice | 220 |
| 3) pending before competent authority or appeals not exhausted | 231 |
| 4) transferred to the Parliamentary Ombudsman | 60 |
| 5) transferred to the Prosecutor-General | 15 |
| 6) transferred to the Finnish Bar Association | 11 |
| 7) transferred to the competent authority | 3 |
| 8) incomprehensible | 136 |
| 9) lapsed following withdrawal of complaint or other reason | 282 |
| 10) exceeded five-year time limit | 50 |
| Total | 1 936 |

## Reviews of penal judgments and judicial offences in office by the judiciary

### Review of penal judgments

| | |
|---|---|
| Penal judgments received for review | 6 389 |
| Filed on the basis of review of penal judgment | 94 |

### Judges offences in office

Notices to the Chancellor of Justice

| | |
|---|---|
| 1) Court of Appeal | 6 |
| 2) police | 13 |
| 3) Office of the Prosecutor-General | 1 |
| 4) local prosecution offices | 5 |

[7] In most of these cases, the complainant has been notified in writing.

**Measures taken**

| | |
|---|---|
| 1) charges brought | 1 |
| 2) reprimand | 8 |
| 3) written statement | 2 |
| 4) opinion or instruction | 18 |
| 5) rectification or adjustment while complaint was pending | 1 |
| 6) no measures needed due to action taken at the initiative of the authority | 86 |
| Total | 116 |

**Inadmissible**

| | |
|---|---|
| 1) pending before competent authority or appeals not exhausted | 1 |
| 2) transferred to the Parliamentary Ombudsman | 1 |
| Total | 2 |

## Own initiatives and on-site inspections

| | |
|---|---|
| own initiatives | 14 |
| on-site inspections | 24 |
| Total | 38 |

**Measures taken**

| | |
|---|---|
| 1) reprimand | 1 |
| 2) position or instruction | 2 |
| 3) other opinion | 5 |
| 4) other measure | 1 |
| 5) no measures needed due to action taken at the initiative of the authority | 4 |
| 6) inspection or tour of authority | 24 |
| Total | 37 |

**Inadmissible**

| | |
|---|---|
| 1) transferred to the Finnish Bar Association | 2 |
| Total | 2 |

## Supervision of the Bar

### Filed

| | |
|---|---|
| 1) supervision and fee disputes | 502 |
| 2) other supervision of the Bar | 14 |
| Total | 516 |

### Admissible

| | |
|---|---|
| 1) written statement | 9 |
| 2) other measure | 2 |
| 3) no measures needed due to action taken at the initiative of the authority | 450 |
| Total | 461 |

# 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:

1) Matters pertaining to the supervision of the Government;
2) complaint matters connected to the supervision of the Government;
3) matters pertaining to the supervision of advocates and public legal aid attorneys;
4) matters pertaining to international organisations for the oversight of legality, as well as international matters pertaining to fundamental rights and human rights;
5) matters pertaining to the national preparation of European Union affairs; and
6) 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:

1) 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;

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

***Section 6***
***Administrative Unit***
The Administrative Unit deals with the following matters:
1) Matters pertaining to the internal administration and finances of the Offfice;
2) matters pertaining to international co-operation, in so far as these do not fall within the competence of a Department;
3) matters pertaining to personnel training;
4) the editorial work on the Annual Report of the Chancellor of Justice;
5) matters pertaining to communications and public relations; and
6) 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:
1) To manage the internal activities of the Office of the Chancellor of Justice and to see to its performance and development;
2) to present the Rules of Procedure of the Office of the Chancellor of Justice for adoption;

3) to prepare matters pertaining to the operational and financial planning and budgeting of the Office of the Chancellor of Justice;
4) to deal with matters of appointment, leave of absence, termination and position rearrangement, as well as other personnel matters;
5) to see to the preparation of the Annual Report of the Chancellor of Justice;
6) to distribute the incoming matters to the Departments and the Administrative Unit;
7) to participate in the preparation of the statements of the Chancellor of Justice; and
8) 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:

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

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

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

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

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

*Section 11*
*Presenting officials*
The officials tasked to present draft decisions shall prepare and present the matters assigned to them for a decision by the Chancellor of Justice or the Deputy Chancellor of Justice, as provided above in section 2.

*Section 12*
*Personnel Secretary*
The duties of the Personnel Secretary are the preparation of the personnel, financial, training and other matters of the Office of the Chancellor of Justice, bookkeeping and the keeping of the official personnel records.

*Section 13*
*Communications Officer*
The duties of the Communications Officer are to see to the external and internal communications of the Office of the Chancellor of Justice and to assist in the preparation of the Annual Report of the Chancellor of Justice.

*Section 14*
*Information Officer*
The duties of the Information Officer are to serve as the librarian of the Office of the Chancellor of Justice, and to participate in the information services of the Office and the planning, search and maintenance of information sources.

*Section 15*
*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 2009

## Department for Government Affairs

| | |
|---|---|
| Head of Department, Referendary Counsellor | ***Hiekkataipale, Risto***, LL.M. trained on the bench |
| Referendary Counsellor | ***Snellman, Jorma***, LL.M. trained on the bench |
| Consulting Counsellor | ***Leskinen, Marja***, LL.M. trained on the bench |
| Legal Adviser | ***Pietarinen, Päivi***, LL.M. trained on the bench |
| Notaries | ***Ahotupa, Eeva***, LL.B.<br>***von Troil, Charlotta***, LL.M., M. Pol. Sc. |

## Department for Legal Supervision

| | |
|---|---|
| Head of Department, Referendary Counsellor | ***Martikainen, Petri***, LL.Lic., LL.M. trained on the bench |
| Refendary Counsellors | ***Löfman, Markus***, LL.Lic., LL.M. trained on the bench<br>***Mustonen, Marjo***, LL.M. trained on the bench<br>***Vasenius, Heikki***, LL.M. trained on the bench |
| Senior Legal Advisers | ***Kauppila, Outi***, LL.M. trained on the bench<br>***Kostama, Outi***, LL.M. trained on the bench<br>***Lehvä, Outi***, LL.M. trained on the bench<br>***Liesivuori, Pekka***, LL.M. trained on the bench<br>***Rouhiainen, Petri***, LL.M. trained on the bench<br>***Räty, Anu***, LL.M. trained on the bench<br>***Smeds, Tom***, LL.M. trained on the bench (on leave)<br>***Tolmunen, Irma***, LL.M. trained on the bench |

| | |
|---|---|
| Legal Advisers | ***Mäkelä, Sanna***, LL.M. trained on the bench<br>***Pulkkinen, Minna***, LL.M. trained on the bench<br>***Ruuskanen, Minna***, Doctor of laws, LL.M. trained on the bench<br>***Välinen, Henna***, LL.M. trained on the bench |
| Notary | ***Tuomikko, Helena***, LL.B. |

## Administrative Unit

| | |
|---|---|
| Secretary General | ***Wirtanen, Nils***, LL.M. trained on the bench |
| Human resources officer | ***Näveri, Anu***, BBA |
| Information officer | ***Kukkanen, Krista***, M.A. |
| Information specialist | ***Tuomi-Kyrö, Eeva-Liisa***, B.A. |
| Systems analyst | ***Kulppi, Marko***, computer science |
| Clerk | ***Snabb, Tuula*** |
| Clerical secretaries | ***Hanweg, Riitta***<br>***Pihlajamäki, Ira***<br>***Savela, Sari***<br>***Seppäläinen, Arja*** |
| Chief porter | ***Utriainen, Saku*** |
| Porter | ***Elf, Tomi*** |
| Caretaker | ***Venäläinen, Perttu*** |

THE OFFICE OF THE
CHANCELLOR OF JUSTICE

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