# The Rule of Law

## Judicial proceedings

The Chancellor of Justice receives many complaints about the work of the courts. The reason is mostly discontent and disagreement with a court judgment. Under the Constitution, courts are independent and the Chancellor of Justice does not intervene in the substantive work of administration of justice. The Chancellor initiates disciplinary proceedings if a judge behaves disreputably or fails to fulfil their duties of office.

The Chancellor also participates in the work of the Council for Administration of Courts. In the second half of 2019, the Council for Administration of Courts convened twice, and in the first half of this year also twice (both times in virtual format). At the meeting in March 2020, the courts were given recommendations on administration of justice during the emergency situation. The Chancellor may initiate disciplinary proceedings against all judges, and the Chancellor gives her opinion to the Supreme Court in constitutional review court proceedings.

**Complaints against the work of judges**

Under the Courts Act, alongside chairmen of the courts and the Supreme Court *en banc*, the Chancellor of Justice is the only institution outside the court system that may initiate disciplinary proceedings in respect of a judge. The final decision in a disciplinary case is made by the disciplinary chamber operating under the Supreme Court.

When deciding on initiation of disciplinary proceedings, the Chancellor does not assess substantive issues concerning administration of justice but only a judge's actions amounting to failure to perform their duties of office or disreputable conduct. However, the Chancellor is mainly contacted about substantive issues of administration of justice. Mostly, people are not satisfied with a court decision: either a judgment of conviction, an arrest warrant, a search warrant, or an order for seizure of property. Petitioners expect the Chancellor to intervene in offence proceedings and assess a court decision, but this is not what the Chancellor can do. Only a higher court can assess issues concerning administration of justice in substance.

Nevertheless, every year there are also cases where the Chancellor examines the work of judges more specifically in order to decide whether to initiate disciplinary proceedings in

respect of a judge. During the reporting period, there were 15 such cases.

The complaints mostly concerned conduct of criminal proceedings. For example, judges were criticised on the grounds that proceedings last too long, that a judge delayed with delivering a judgment, or that a judge had not explained the accused's rights to them. One complaint also concerned holding a court hearing during the emergency situation. Having examined the materials in the case files and, if necessary, also audio recordings of hearings, in none of these cases did the Chancellor find a reason to initiate disciplinary proceedings.

One complaint concerned the length of civil proceedings in connection with the right to custody of children. Examination of the materials in the case file revealed that the case was highly complicated. Neither of the parents complied with access arrangements set by the court and themselves caused the delay in court proceedings. The Chancellor explained that a judge can be criticised for delay in judicial proceedings if the judge fails to act without reason, which was not so in this case.

Several complaints were raised against administrative judges. All these complaints concerned the length of proceedings in the administrative court, and the petitioners were prisoners. Materials in the case files revealed that the administrative court could not be reproached for delay in proceedings. The Code of Administrative Court Procedure (CACP) does not set specific deadlines for adjudication of a court case, but when planning its work the court must ensure that the case is resolved within a reasonable time. Under § 100(1) of the CACP, if proceedings in an administrative matter have lasted for at least nine months and the court, without having a valid reason, does not perform a necessary procedural act, the parties to the proceedings or a third party may apply to the court to expedite the judicial proceedings in order to ensure the conclusion of judicial proceedings within a reasonable time. In none of the cases examined had the judicial proceedings in the matter lasted for more than nine months. The Chancellor explained to the petitioners that even by looking at the number of complaints filed with the court by the particular petitioners (in one case, for example, six complaints had been filed), it is clear that adjudicating these complaints takes time.

**Review of legality of the statutes of the information system of the courts**

This year, the Chancellor also analysed conformity with the Constitution and the laws of the current statutes of the information system of the courts. For example, the Chancellor assessed whether a conflict existed between the Courts Act and the procedural codes.

The Chancellor found no conflict between the Courts Act and the procedural codes. However, a conflict with the Courts Act and the Constitution exists in the case of those provisions of the statutes of the information system of the courts which entitle the Ministry of Justice to request judges to amend information in the system and lay down supervisory competence in respect of judges in using the information system. To ensure compliance with the requirements, the Chancellor made a proposal to the Minister of Justice to amend the statutes of the information system of the courts.

**The amount of security on appeal in cassation**

A petitioner asked the Chancellor to verify whether the requirement to pay security of 3000 euros for an appeal in cassation filed with the Supreme Court was constitutional.

The Chancellor found that the amount of security (3000 euros) to be paid for an action with a claim amounting to 300 000 euros was not unconstitutionally large. However, if paying that sum proves to be burdensome, procedural aid may be sought to pay the security.

## Violation of the law and its consequences

**Conformity of punishment with the Constitution**

During the reporting year, the Chancellor submitted an opinion to the Supreme Court on the constitutionality of § 422(2) clause 1 of the Penal Code.

In the contested case, the county court convicted the accused under § 422(2) clause 1 of the Penal Code: while in a state of intoxication the defendant had caused a traffic accident resulting in the death of a person. The punishment imposed was five years' imprisonment. The court of appeal overturned the county court judgment, declaring the sanction under § 422(2) clause 1 of the Penal Code to be unconstitutional, and accordingly referred the case to the Supreme Court. The court of appeal entered a new judgment, sentencing the defendant to 4 years and 6 months' imprisonment under § 422(2) clause 1 of the Penal Code.

In the opinion of the Chancellor, § 422(2) clause 1 of the Penal Code was not a relevant norm,

thus barring specific constitutional review. The applicable sentencing range allowed the court to impose punishment which seems proper in a specific case.

**Disclosure of a judgment of acquittal**

The Chancellor was contacted by an individual whose potential employer had declined a job interview because the petitioner had once been a party to criminal proceedings. In those criminal proceedings the petitioner had been acquitted since the prosecutor's office dropped all charges against them.

In the Chancellor's opinion, this was a very unfortunate case. Being a party to criminal proceedings in the past provides no grounds for someone's extra-judicial 'conviction' later. A judgment of acquittal by the court or the fact of criminal proceedings may not be used to a person's disadvantage. At the same time, the rule of law is characterised by the public nature of adjudication of justice and of court decisions. The main aim in this is to ensure transparency of judicial proceedings. Under § 24(4) of the Constitution, judgments are pronounced publicly, except in cases where the interests of a minor, a spouse, or a victim require otherwise. A judgment that has become final is disclosed at a designated place online.

In some cases, the fact of having been a party to judicial proceedings (even if the person was acquitted) may also stigmatise a person. In that case, the person must have the right to request that their name be removed from the judgment of acquittal. If someone finds that appearance of their name in a judgment of acquittal is not justified, they must apply to the court. Under the third sentence of § $408^1$(2) of the Code of Criminal Procedure, the court may also replace an acquitted person's name with initials. This is also supported by the general principles of personal data protection which require that personal data should be processed only to the extent necessary for the purpose of processing. If no reason exists for continued disclosure of an acquitted person's name, the name must be replaced with initials or characters.

**Possible bias on the part of the prosecutor's office**

The Chancellor was asked to assess within the limits of her competence whether a reason existed to accuse the prosecutor's office of political bias. An explanation was also sought as to how to effectively verify the truthfulness of such accusations.

The Chancellor explained that the court, the prosecutor's office and all other state agencies

must be independent, professional and honest and follow the law. The rule of law is endangered if it is found that law enforcement agencies do not follow the law but, instead, political guidelines. Sound and specific grounds must exist for such accusations. The validity of each such suspicion must be verified. Guarantees of independence have been established for law enforcement agencies in Estonia. The procedure for selection and appointment of prosecutors, and the restrictions and duties imposed on them, should protect them against influence by political parties or any other undue influence. Supervision has also been structured so that violations are revealed and followed by punishment. If a prosecutor violates their duties of office, disciplinary proceedings are initiated which may result in removal of the prosecutor from office. Under pain of criminal punishment, a prosecutor is prohibited from drawing up a statement of charges against a knowingly innocent person and from entering into a plea agreement with them in a plea bargain procedure. It is also prohibited knowingly to unlawfully terminate criminal proceedings or drop charges.

**Right of access to a criminal file upon termination of criminal proceedings**

The Chancellor was contacted by an individual in respect of whom criminal proceedings had been conducted and were terminated. The person wished to examine the information collected on them in criminal proceedings but was denied access because under the Code of Criminal Procedure (CCrP) only the victim has the right to examine the file.

The Chancellor explained that § 206(3) of the CCrP indeed lays down only the right of a victim to examine the criminal file upon termination of criminal proceedings, but this does not mean that other persons might not have the same right under a different law. The right of a victim to examine criminal proceedings is connected with their right to contest an order to terminate criminal proceedings. Granting access to personal data collected on someone in criminal proceedings which have been terminated is not, by nature, a criminal procedural step. Its aim is not to detect a criminal offence, to collect evidentiary information, or create other conditions for judicial proceedings. Therefore, this is not regulated by the Code of Criminal Procedure.

Under § 44(3) of the Constitution, pursuant to the procedure laid down by law, any citizen of Estonia is entitled to access information about themselves held by government agencies and local authorities and in government and local authority archives. This right may be circumscribed under the law to protect the rights and freedoms of others, to protect the confidentiality of a child's filiation, and in the interests of preventing a criminal offence,

apprehending an offender, or of ascertaining the truth in a criminal case. On that basis, data collected within criminal proceedings can be accessed, depending on circumstances and the stage of proceedings, either by relying on § 24 of the Personal Data Protection Act or Article 15 of the General Data Protection Regulation. Access to data may be denied (for example, for security considerations or to protect the rights of others) but substantive as well as legal reasons for denial must be provided.

**Constitutionality of restrictions imposed under the Traffic Act on persons carrying out roadworthiness tests**

The Chancellor analysed whether § 74($1^1$) of the Traffic Act was compatible with the Constitution. Under § 74($1^1$) of the Traffic Act, a person testing the roadworthiness of vehicles may not be a person subject to a prohibition on business imposed by a final judgment or a person who has been deprived of the right to work as a roadworthiness tester. A tester may also not be a person deprived of the right to engage in roadworthiness testing or another similar field of activity by a final judgment due to misuse of their professional or official rights or violation of their official duties. Also, a person may not be punished for an intentionally committed criminal offence, and the restriction applies until deletion of conviction data from the criminal records database.

The Chancellor found that the provision was constitutional because persons testing the roadworthiness of vehicles perform a public function under an administrative contract. It is admissible to impose stricter requirements on them since this helps to ensure the credibility of roadworthiness testing and, thus, indirectly the protection of people's life, health and property. The ban imposed under that provision restricts the right under § 29 of the Constitution to freely choose one's area of activity, profession and position of employment. However, in justified cases the Riigikogu may impose such restrictions. For example, qualification requirements may be set for certain areas of activity (e.g. doctors, judges, lawyers), as well as requirements for prior experience or language proficiency (e.g. a requirement of sufficient proficiency in Estonian).

This is not a lifetime restriction. The period of validity of the restriction depends on the severity of the offence committed and the punishment imposed, as well as on how law-abiding the person has been, i.e., how long ago they served their punishment and have refrained from further offences.

**Personal data in an order for termination of criminal proceedings**

The Chancellor was asked whether it was constitutional that, upon termination of criminal proceedings on the basis of conciliation, a suspect's name in a disclosed court order was not replaced with initials.

Indeed, the Code of Criminal Procedure (CCrP) does not contain provisions laying down replacement of a suspect's name or other personal data with characters in the event of termination of criminal proceedings due to conciliation under § $203^1$ of the CCrP. In the event of termination of criminal proceedings on account of lack of public interest in the proceedings or lack of proportionality of punishment (i.e. under §§ 202 or 203 of the CCrP), the suspect's name and personal data are replaced with initials or characters (§ 206(5) CCrP).

The Chancellor drew the attention of the Ministry of Justice to the legislative gap. Until the law is amended, an individual whose name is in a disclosed court decision may apply to the court to have their name and other personal data in the court decision replaced with characters. This can be done by relying on the principles of personal data protection laid down in Article 5 of the General Data Protection Regulation.

**Regulation on electronic monitoring**

The Chancellor was asked to assess whether the Minister of Justice Regulation on "The procedure for enforcement and supervision of electronic monitoring" established under § $419^1$(5) of the Code of Criminal Procedure was compatible with the Code of Criminal Procedure and the Constitution. Under § 8(2) clause 9 of the Regulation, a probationer subjected to electronic monitoring (i.e. wearing an electronic ankle bracelet) instead of remand in custody is given time to go to an investigator or prosecutor and to attend court hearings but is not given time to go to their defence counsel.

The Chancellor found that this clause in the Regulation contravened § $224^1$(1) of the Code of Criminal Procedure. The provision lays down that materials in the criminal file of which a prosecutor's office has prohibited making copies may be presented by the counsel to a suspect or an accused only in the counsel's office premises or in a custodial institution. Thus, a suspect or an accused has no opportunity to examine those materials, or the opportunity of access to materials in the file depends on the discretion of officials. On this basis, the provision in the Regulation is also contrary to the principle of guaranteeing the rights of

defence (§ 21 Constitution) and the principle of legal clarity (§ 13 Constitution). The Chancellor made a proposal to the Minister of Justice to bring the Regulation into conformity with the Code of Criminal Procedure and the Constitution.

**Punishment data in misdemeanour proceedings**

During the reporting year, the Chancellor received several complaints revealing that some officials of the Police and Border Guard Board, when making a decision in misdemeanour proceedings and taking account of prior punishments, relied on data not included in the criminal records database. Those data might include, for example, data deleted from the criminal records database and archived, or earlier decisions on imposing a fine registered in the procedural information system which are not entered in the criminal records database (e.g. deterrent fines imposed in an abridged procedure).

Under § 5 of the Criminal Records Database Act, data concerning punishments of persons have legal effect until deletion of the data from the database. In ascertaining the recurrence of criminal offences or misdemeanours committed by a person, only punishment data entered in the criminal records database have legal effect. Relying on other data is not lawful. The Chancellor drew the attention of the Police and Border Guard Board to this. The internal audit bureau of the Board reached the conclusion that these were isolated cases and no systemic problem exists.

**Time-out stop**

In autumn 2019, the Police and Border Guard Board carried out an experiment using the so-called time-out stop to control speeding. The Chancellor's Office pointed out that the police were not entitled to use such a sanction.

A time-out stop restricts people's freedom of movement (§ 34 Constitution). The right to restrict people's fundamental rights must arise from law. This cannot be decided by an executive government agency. The police cannot experiment with new penal or sanction measures on their own initiative. The principle of legality is a pillar of a democracy based on the rule of law.

On 18 June 2020, the Riigikogu Legal Affairs Committee initiated a Draft Act amending the Code of Misdemeanour Procedure and the Traffic Act. The amendment aims to create a legal basis to allow using alternative sanctions alongside a fine in misdemeanour procedure. The

first such measure to be legalised is the time-out stop.

**Probation supervision**

During the reporting year, the Chancellor received more complaints than before about probation supervision. People complained that restrictions imposed by probation supervisors were too strict and often also unclear. If such duties or restrictions seem inappropriate, an individual should contact a county court judge in charge of execution of judgments.

Even though probation supervisors are staff members of prisons, probation supervision should not become a new type of punishment. The aim of probation supervision is − as an alternative to imprisonment − to direct offenders to law-abiding behaviour and develop their social skills. Unfortunately, some complaints left an impression that sometimes probation supervisors treated probationers inhumanely: for example, not letting them visit a dying close relative or prohibiting a probationer for months from going to assist a parent with a mobility disability living in the same immovable as the probationer.

In her work the Chancellor sees that probationers often lack social skills. Therefore, more attention in probation supervision could be paid to improving those skills in particular. Additional conditions or bans imposed by a probation supervisor should be intelligible and related to a specific violation and not amount to a kind of 'punishment' having humanly the most painful effect.

At the same time, there were also complaints based on which probation supervisors could not be reproached for anything but, instead, the aim and nature of probation supervision had to be explained to the probationer. For example, the fact that a person sent to do community service cannot choose an activity to their liking in any area in Estonia, or the fact of transfer of probation supervision to a foreign country does not depend on a probation supervisor in Estonia.

## Avoiding conflict of interest

The Anti-corruption Act regulates prevention of corruption and avoidance of conflict of interest in very different areas. The law  which is of a general nature and applicable in different situations  is often difficult to understand and implement. Norms aimed at preventing conflict of interest also exist in other laws. Therefore, the Chancellor often has to analyse and explain how the Anti-corruption Act is implemented.

**Prevention of corruption risk in local authorities**

The Chancellor has repeatedly had to explain the application of the Anti-corruption Act in deciding on official travel on the mayor of a rural municipality, town or city and the chair of a municipal council. In the opinion of the Chancellor, it is compatible with the law that an application for official travel by the chair of a municipal council is approved by the deputy chair of the municipal council. In the case of a procedural restriction, an official is indeed prohibited from assigning the task of performing an act or making a decision instead of the official to his or her subordinates, but the deputy chair of a municipal council is not a subordinate of the chair of a municipal council (§ 11(2) Anti-corruption Act).

A municipal council in its rules of procedure (or other legal acts) may not restrict concepts defined by law or the bases for applying a procedural restriction. The Chancellor also had to deal with a problematic situation where the head of an agency administered by a rural municipality was simultaneously the chair of the municipality's audit committee, being directly subordinate to the rural municipality mayor (read in more detail in the chapter "Cities, towns and rural municipalities").

**Incompatibility of offices in a municipal council**

On 5 September 2019, the Chancellor made a proposal to the Riigikogu to bring § 18(1) clause 6 of the Local Government Organisation Act into conformity with the Constitution insofar as it did not allow a contractual employee of an administrative agency of the same rural municipality, town or city to be a municipal council member. The Riigikogu did not support this proposal (with 31 members of the Riigikogu voting in favour and 37 against). Then the Chancellor submitted an application to the Supreme Court seeking a declaration of invalidity of § 18(1) clause 6 of the Local Government Organisation Act to the extent that it contravened the Constitution.

In April 2020, the Supreme Court satisfied the Chancellor's application and declared invalid

part of the sentence containing the words “or working in an administrative agency of the same rural municipality, town or city on the basis of an employment contract” in § 18(1) clause 6 of the Local Government Organisation Act. The court postponed the entry into force of the judgment by six months, so as to enable the Riigikogu to review the restrictions on municipal council members as a whole. The court emphasised that “regulation should take into account the principle of equal treatment of local authority employees. A conflict between the interests of the mandate and of the place of employment as well as public and private interests may arise not only for employees of a local government administrative agency but also for employees of an agency administered by a local authority’s administrative agency” (para. 88 of the judgment).

The principle of equal treatment requires, inter alia, that the Riigikogu should give a clear and reasoned answer to the question whether a conflict of interest of contractual employees of a rural municipality, town or city administrative agency elected to a municipal council is or is not more severe than a conflict of interest of heads and deputies of an agency administered by a local authority’s administrative agency elected to a municipal council. Even after the court judgment the Riigikogu has a margin of appreciation to decide whether a more appropriate measure would be suspension of a municipal council member’s mandate or withdrawal from decision-making in specific cases, with a view to preventing a conflict between the interests of a mandate and place of employment of a contractual employee of a rural municipality, town or city administrative agency elected to the municipal council (see para. 76 of the judgment).

To regulate the issue, on 11 June 2020 the Riigikogu Constitutional Committee initiated a Draft Act (212 SE) amending the Local Government Organisation Act.

**Ministers on company supervisory boards**

The Chancellor was asked to explain whether a government minister may simultaneously serve on the supervisory board of a company, including on the supervisory board of a company owned by a local authority.

Section 99 of the Constitution does not allow members of the Government of the Republic to belong to the management board or supervisory board of a commercial enterprise. The concept of a commercial undertaking includes all types of companies. The Constitution does not distinguish between companies owned by the state, local authorities, or by private

entities. Consequently, the ban applies to membership of all management boards and supervisory boards of companies.

The Constitution does not prohibit a government minister from serving on the management board or supervisory board of a foundation or non-profit association. The Constitution also does not prohibit a government minister from operating as an entrepreneur or as a general partner in a general or limited partnership.

**Applying the Anti-corruption Act in the work of a (family) doctor**

The Chancellor receives many questions about implementation of procedural restrictions laid down in the Anti-corruption Act (ACA). This year, a wider public debate also emerged on whether and when a (family) doctor should refrain from taking a decision or a procedural step.

A doctor must observe the Anti-corruption Act in situations when performing public duties as an official. A public duty is a statutory duty performed in the public interest whose provision must be guaranteed by the state. A public duty may also be performed by private entities (e.g. a private company administering a family medicine centre).

The Chancellor found that a healthcare professional is acting in the capacity of an official when providing services which confer on a patient the right or a duty in relations with the state. For example, when issuing a health certificate to obtain a driver's licence or a weapons permit, ascertaining drug or alcohol intoxication, or the like. However, when a healthcare professional gives a diagnosis, prescribes treatment or refers a patient for a health examination, they are not acting in the capacity of an official.

Different interpretations of the Anti-corruption Act cause confusion among doctors and prevent them from focusing on their main work − i.e. treating people. Violation of the Anti-corruption Act may result in punishment. Therefore, norms must be very clear.

On that basis, the Chancellor recommended that § 11(3) of the ACA should be supplemented with a provision that procedural restrictions do not apply to provision of healthcare services within the meaning of § 2(1) of the Health Services Organisation Act or to those decisions and procedures inextricably linked to provision of healthcare services. In addition, practical guidelines should be prepared for implementing the Anti-corruption Act in the work of healthcare professionals. This would ensure legal clarity and protection of health as a

fundamental right.

The issue was discussed in the Riigikogu at a joint meeting of committees and at a meeting of the Legal Affairs Committee. The Legal Affairs Committee has promised to continue the debate and asked the Ministry of Justice and the Ministry of Social Affairs for feedback on the Chancellor's proposal.

**Constitutionality of merging a Board with an Inspectorate**

The merger of the Environmental Board and the Environmental Inspectorate raised the issue of supervisory independence in a situation where the tasks of the permit procedure and supervision are transferred to the same agency.

The Chancellor explained that boards as well as inspectorates are administrative agencies of the executive power. Under the law, one agency is not more independent than another. The purpose of the permit procedure and supervisory procedure are generally the same: one case involves an *ex ante* check of compliance with requirements and the other case an *ex post* check of whether the requirements are actually being observed. In the permit procedure, the state sets the rules for conduct for a permit recipient, and compliance with those rules is verified by the state in the course of performing supervisory functions. Those functions are not mutually exclusive and they can also be performed by the same agency.

In state organisation in Estonia it is customary and reasonable for people that the same board fulfils the functions of both the permit procedure and supervision. This, for example, helps to ensure that an agency is following the same administrative practice in setting the requirements as well as in verifying compliance with them. And people do not have to suffer when government agencies argue with each other over interpretations of the law.

The Riigikogu decided the merger of the Environmental Board and the Environmental Inspectorate on 17 July 2020.

**Calculating the training expenses of active servicemen**

The Supreme Court adjudicated the issue whether § 5(2) and (3) of the Minister of Defence Regulation on "The calculation and compensation of the expenses of resource-intensive training of active servicemen and the procedure for determination of the obligation to serve on active service for an unspecified term" take into consideration the principle of proportionality set out in § 156(2) of the Military Service Act. Tallinn Court of Appeal had held

that the Minister of Defence Regulation was unconstitutional since it required compensation of training expenses by persons interrupting their training or leaving active service for certain reasons in a larger amount than laid down by law.

The Chancellor agreed that the principle of legality was violated since the contested provisions in the Minister of Defence Regulation did not prescribe a proportional calculation, i.e. calculation by days, and thus exceeded the limits of the delegating norm laid down by § 156(7) of the Military Service Act.

The Supreme Court Constitutional Review Chamber found that the interpretation of § 5(2) and (3) of the Minister of Defence Regulation, which does not take account of a proportional service period in compensating training expenses, contravened the Military Service Act and thus also contravened § 3(1) (first sentence) and § 94(2) of the Constitution. The Supreme Court found that § 5(3) of the Regulation relevant to this specific case could be interpreted in a constitutionally compliant way, and the court had no possibility to assess subsection (2) in substance and to declare it unconstitutional.

Thus, the Supreme Court judgment left in force § 5(2) of the Minister of Defence Regulation which explicitly ruled out proportionality in calculating the training expenses to be compensated. The Chancellor made a proposal to the Minister of Defence to bring the calculation of reduction of expenses of resource-intensive training set out in § 5(2) of the Regulation into line with the requirement of proportionality laid down in § 156(2) of the Military Service Act.

The Minister of Defence agreed with the Chancellor's proposal. Section 5(2) of the Regulation was worded so that the obligation of compensation of expenses of resource-intensive training is reduced proportionally by one month as of the beginning of training to the end of the obligation to stay in active service. People who had compensated expenses for attending resource-intensive training in 2013–2019 without taking account of proportionality were refunded the amount paid in excess.

**Compensation of legal assistance expenses for enforcement procedure**

The Chancellor was asked to verify the constitutionality of § 175($3^1$) of the Code of Civil Procedure. The petitioner found that in case-law the provision was interpreted expansively and the claimant's legal assistance expenses were left for the debtor, i.e. the complainant, to bear. In the petitioner's opinion, the law did not prescribe compensation of the legal

assistance expenses of persons concerned, including the claimant, when adjudicating a complaint filed against the decision of a bailiff.

The Chancellor found that § 175(3[1]) of the Code of Civil Procedure was not unconstitutional since the procedure for compensation of procedural and other expenses of persons concerned contained in that provision was of sufficient legal clarity.

**Replacement of a weapons permit**

The Chancellor was also asked about a conflict between the Weapons Act and the Constitution since the law does not enable applying for replacement of a suspended weapons permit in the event of its expiry.

However, according to the Chancellor's assessment, no conflict with the Constitution exists. Regulatory provisions concerning replacement of a weapons permit may be interpreted differently. The provisions also do not rule out replacement of a weapons permit when the permit is temporarily suspended because the person has been punished for driving a motor vehicle while exceeding the maximum permitted level of alcohol in the bloodstream.

**The presumption of innocence**

A petitioner contacted the Chancellor to assert that disclosure of personal data in the yearbook of the prosecutor's office violated the presumption of innocence and independence of judicial proceedings. The petitioner also found it wrong that materials from a pending judicial case had been given to a journalist.

Under § 22 of the Constitution, no one may be deemed guilty of a criminal offence before they have been convicted by a court and before the conviction has become final. The requirement of the presumption of innocence must be observed by police officers, prosecutors, judges and other public officials. The European Court of Human Rights has found that no representative of public authority may express belief that a person is guilty of a criminal offence before a judgment of conviction has become final. For example, the presumption of innocence was violated by a prosecutor who, after a judgment of acquittal, declared publicly that the person was actually still guilty; or by a government minister who claimed that enough evidence existed to convict a person. However, expressing doubt, similarly to revealing the substance of the charges, is generally allowed. However, in so doing the words and expressions must be extremely carefully chosen. Everyone has the right to fair

and impartial adjudication of justice and no one may be declared guilty in public before justice has been administered.

The Supreme Court has emphasised that it is not compatible with the presumption of innocence if a representative of public authority draws public attention to the accused before a court judgment. The authority possessed by the state may give a different weight in the eyes of the public to information disseminated by a public authority. Journalists (like other private individuals) are indirectly bound to observe the requirement of presumption of innocence. The Supreme Court has explained that if courts have not agreed in their judgments with the version of events put forward by the defence, and the media has published materials about pending criminal proceedings, this does not automatically mean a violation of the presumption of innocence.

Although the prosecutor's office as the body bringing charges on behalf of the state must be convinced of a person's guilt, it may nevertheless not treat someone as an offender before a court judgment. This holds true even if materials already disclosed in the media are re-disclosed.

## Supervision over financing of political parties

Under the Political Parties Act, the Chancellor of Justice appoints one member to the Political Parties Financing Surveillance Committee (PPFSC). The Chancellor has appointed the editor-in-chief of the cultural paper *Sirp*, Kaarel Tarand, as a member of the Committee. The Committee and its members are independent, they have no obligation to report their activities to the persons or institutions appointing them, and they also do not accept or receive instructions from the persons appointing them.

In 2019, the PPFSC mostly dealt with proceedings concerning the 2017 municipal council elections and ending related court disputes. Both the Committee and the Chancellor have for many years drawn attention to the ambiguity of many provisions in the Political Parties Act. Those arguments are also raised in court disputes. Last year the issue of the legality of operation of the PPFSC was also raised in connection with a possible conflict of interest of its members. The courts did not see any errors or problems in the work of the Committee or the mandate of its members, and the decisions were upheld.

Surveillance of financing of political parties is a time-critical activity. The longer a political

party can evade remedying its mistakes, i.e. complying with precepts – and a court dispute is a useful means to this end – the longer the advantage obtained in elections persists, which by the time of the next elections may already have developed into an unfair advantage. As a result, election results will begin to embody distortions not compatible with the requirements of the Constitution, and under the current procedure those distortions will, inter alia, be manifested in the amount of (additional) funds obtained from the state budget.

During the more than nine years of its operation, the PPFSC has seen all the nuances of the ambiguous law. The political parties system itself has developed, adjusted to the methods of supervision, and understood its own limits and those of supervision.

In her presentation a year ago, the Chancellor emphasised that “revision of the Political Parties Act is of critical importance to ensure that the transparency of the Estonian political system would be able to remain at least on its current level, but also be ready for new threats arising from the development of technology and the practice of its use in political fighting in the rest of the world”. In June 2020, the coalition parties initiated a Draft Act on amending the Political Parties Act. Regrettably, from the moment of its initiation it was unclear by whom, for what purpose and for resolving what problems the Draft Act had been prepared. The Draft Act did not deal with the problems raised so far by the PPFSC and the Chancellor of Justice. However, it did focus on changing the relationship of subordination of the PPFSC, which at least to date has not inhibited the Committee from performing its statutory tasks.

Every law and the mechanism provided by it is a child of its own time. When society and/or circumstances change, the rules are also adapted and revised accordingly. Supervision of financing of political parties is no exception. Should real-life events confirm that, because of ambiguously worded norms, public resources are not used in the best possible way and norms let the subjects of law operate in a ‘grey area’, these should be addressed first.

Unfortunately, the debate on the Draft Act so far does not allow for the conclusion that the Riigikogu is focusing on problems found in the day-to-day work of the PPFSC. Effective supervision of financing of political parties has a broader meaning than that merely concerning the national context or national politics. For many years, Estonia has presented itself internationally as a success story of democracy. One of Estonia's main lines of action internationally is counselling on how to build democracy and honest, corruption-free institutions in partner countries which are developing democracies. However, unless we are able to cope impeccably with our own issues, this also inhibits Estonia's credibility.

The Riigikogu has initiated amending the Political Parties Act and this has opened up an excellent opportunity to do it right, in line with good law-making and rules of legislative drafting, by focusing on resolving real problems and relying on expert knowledge accumulated in the country over the years.

Supervision of financing of political parties cannot be made to somehow simply disappear  this is part of the foundation of a democracy based on the rule of law. And once something has already been created, the Riigikogu has the duty to ensure that a poor law does not prevent this creation from working with maximum effectiveness.

## National Electoral Committee

Since no elections took place in Estonia from 1 September 2019 to 31 August 2020, this was a so-called interim year for the National Electoral Committee (NEC), allowing it to ponder over lessons learned and to set new goals. By coincidence, this was also the year when the four-year mandate of the members of the Committee ended and the new composition started. On 1 June, the new composition of the NEC started working, and at its first session Oliver Kask, a judge of Tallinn Court of Appeal, was elected as chair of the Committee. Under the law, one member of the NEC is appointed by the Chancellor of Justice. For the second mandate, the Director of the Chancellor's Office, the Deputy Chancellor of Justice-Adviser, Olari Koppel, continues in this position.

During the reporting year, the management of the national election service responsible for organising elections also changed. Since October 2019, the head of the service is Arne Koitmäe and since January 2020 the deputy head of the service is Külli Kapper.

During the emergency situation established due to the corona pandemic, the NEC had to

offer flexible solutions to members of the Riigikogu for traditional election of the Board of the Riigikogu. As an unavoidable innovation, six voting places were set up in the grounds of the Riigikogu, enabling members of parliament to make their choice in compliance with all the requirements of social distancing. Public excitement was caused by voting in the courtyard of the Riigikogu where a member of the NEC carried out voting procedures in the middle of vehicles parked in the yard. This solution was, inter alia, due to the Chancellor's opinion that those members of the Riigikogu who feel sick or as posing a risk of infection are also entitled to elect the Board.

During the emergency situation, many municipal councils held their sessions over the internet. Unfamiliarity and innovation sometimes caused problems, and one such complaint was also heard in July by the NEC. The NEC had to decide whether a member of Peipsiääre Rural Municipal Council could be deemed to have been absent from three consecutive municipal council sessions or not, and whether the alleged absence was sufficiently proved in order to suspend the mandate of the particular municipal council member. The Committee reached the conclusion that the member had actually not participated in the work of the municipal council during three consecutive months, and dismissed the complaint.

With a view to the future, the NEC analysed legal, technical and budgetary aspects in connection with combining the referendum planned for October 2021 and local elections. A memorandum to this effect was sent to the Minister of Finance and several Riigikogu committees. The NEC also analysed all the proposals made by the committee set up by the Minister of Economic Affairs and Communications to remedy the alleged shortcomings in the organisation of online voting in elections in Estonia.