Chancellor’s Year in Review 2022/2023

The rule of law

In line with the principle of the rule of law, state and local government institutions representing public power must act on the basis of the Constitution and laws in conformity therewith. The rule of law also includes the principles of separation of powers and legal certainty, and prohibits abuse of power. Unjustified unequal treatment is prohibited, and everyone must have access to fair administration of justice. The state must ensure people’s fundamental rights, which may be circumscribed only if unavoidably necessary.

The executive must act under the conditions and within the limits established by the Riigikogu, and these conditions must be clearly set out in laws. Once again, the unfortunate conclusion had to be drawn that sometimes, even when drafting high-impact legislation, norms could not be formulated so that all parties could understand them uniformly and accurately.

An example is a provision in the Aliens Act, according to which before issuing a visa the Police and Border Guard Board (PBGB) must first coordinate it with the Estonian Internal Security Service. It appears that differently from the substance of the word *kooskõlastamine* (approval; coordination) in the Administrative Procedure Act, the Aliens Act uses the same word within the meaning of giving an opinion. It transpires from § 82(2) of the Aliens Act that refusal to approve a visa application cannot automatically constitute grounds to refuse issue of a visa.

If the Internal Security Service does not approve the issue of a visa the PBGB must ascertain why the Internal Security Service adopted this position and then, having regard to all the circumstances, decide whether to issue the visa. It has now appeared that the PBGB does not ask for any reasons from the Internal Security Service and simply refuses to issue a visa to the applicant.

Of course, a visa may not be granted to someone who may pose a threat to Estonia's security. However, when making its decision, the PBGB must consider, on the one hand, the level of security risk and the probability of its actually occurring, and on the other hand, the reasons why the person is applying for a visa to stay in Estonia.

Another example of the ambiguity of a norm relates to the provisions of the Hunting Act on granting the right to use a hunting district. The currently effective Hunting Act entered into force on 1 June 2013. It follows from the law that although existing permits to use a hunting district were valid for ten years, new permits must be issued on the basis of the provisions of the Hunting Act entering into force in 2013. It was found that different interest groups had interpreted the Hunting Act differently: according to whichever solution was more suitable for the specific interest group. Current users of a hunting district want their permits to be extended for up to ten years and the current law not to be applied to their activities.

So far, the Environmental Board has indeed followed the norms for extending the right of use permit instead of the norms for granting a permit for the right to use a hunting district and thus partially failed to comply with the requirements of the current Hunting Act. For example, the Environmental Board failed to ascertain whether another hunting society that does not currently have a permit to use the hunting district would be interested in using the hunting district.

The Chancellor emphasised that the executive cannot arbitrarily impose conditions on granting someone the use of limited public resources or overlook the conditions laid down by the Riigikogu.

The Chancellor also monitors whether and how the authorities observe the principle of good administration when communicating with people. This means that, in addition to communication which is polite and to the point, the authorities must arrange their work so that no one is left in an information gap due to the authorities' action or inaction. Unfortunately, state agencies often fail to register people's petitions or reply to applications. Several ministries and local authorities had problems with responding to memorandums and requests for clarification, and on several occasions people received a reply only after a reminder from the Chancellor of Justice.

However, it is positive to note that quite a few problems were swiftly resolved after an enquiry made by the Chancellor's Office. An example is the procedure for registering going on

a transboundary water body, about which the website of the PBGB stated that registration was possible only by sending an SMS or via the PBGB's self-service website, but not by calling. The PBGB reacted quickly to the Chancellor's request, and within two weeks the simple possibility of registering by phone was restored.

Even if most people generally prefer to send an SMS or the website, it is reasonable also to offer other channels of communication. This is necessary, for example, in the case of a technical failure in one of the systems. Duplicative notification options ensure smooth conduct of everyday matters regardless of technical failure.

When creating or developing any services, the state must take into account people's possibilities and needs. When developing e-government, it should not be forgotten that everyone must be able to communicate with the state and obtain services regardless of whether they know how, can or want to conduct their affairs through e-channels. Additionally, it should be taken into account that some regions (e.g. border areas) do not always have the best mobile coverage, and this also prevents the use of e-channels. For this reason alone, several solutions need to be considered.

Under the Constitution, local authorities must be able to independently decide and administer local matters. Issues of local life are often closest to people's hearts and essential to them, so that the Chancellor regularly receives questions and complaints about the work of local authorities. The Chancellor verifies whether, in their activities, rural municipalities and cities observe the Constitution and other laws and respect people's fundamental rights and freedoms.

Petitions sent to the Chancellor revealed that even though under the Local Government Organisation Act cities and rural municipalities may establish regulations (property maintenance rules, regulations on keeping dogs and cats, etc), it is not clear from the legal rules how a city or rural municipality can discipline a violator of the rules before they commit an offence. For example, there are disputes as to whether the owner of a dog that endangers people (especially a dog running around freely) can be given a warning in the form of a precept to restrict the movement of their dog. It is debated whether the general powers provided under the Law Enforcement Act can be relied on to issue a precept.

In the Chancellor's opinion, such disputes should stop and people's sense of security be ensured. To this end, local authorities must be given the right to effectively control compliance with the rules established on the basis of the provisions of the Local Government

Organisation Act. Local authorities should also be entitled to issue a precept for non-compliance with the rules and, if necessary, to implement substitutional performance or impose a coercive penalty payment.

Local authorities have also been confused by provisions in the Anti-corruption Act regulating procedural restrictions. The Chancellor also drew attention to the same issue in 2018 when presenting an overview of her activities to the Riigikogu. Since violating a procedural restriction carries a penalty, the distinction between what is allowed and what is prohibited must be clear and unambiguous in the law. For example, making individual decisions with regard to oneself has raised questions in a situation where a connection between an official and a legal person arises from the official duties of the particular official. Also ambiguous is the basis for applying a procedural restriction laid down by § 11(1) clause 3 of the Anti-corruption Act, according to which an official must recuse themselves from making a decision or performing an act if the official is aware of a risk of corruption. The risk of corruption is a general and undefined concept, so it is often complicated to presume that an official is always able to accurately define the risk of corruption.

Several complaints concerned the activities of the prosecutor's office. Quite a few people in Estonia believe that criminal proceedings in Estonia are initiated and conducted selectively. The Chancellor has explained to people that every suspicion of a crime must be checked, but in doing so, no one must be considered guilty of a crime until a judgment of conviction has entered into force.

Criminal proceedings are initiated in respect of facts indicating a crime, not in respect of a person. The identity of a potential suspect must not influence the initiation of criminal proceedings. Refusal to initiate criminal proceedings and termination of criminal proceedings initiated are subject to judicial review. A prosecutor performing the functions of a public prosecutor's office in specific criminal proceedings is also subject to supervisory control.

Good administration

People are often dissatisfied with how state agencies resolve their applications. The problem starts right from an agency's failure to register an application.

Under the Public Information Act (§ 12(1) clause 1), applications and other documents must be registered in an agency's document register not later than on the working day following the day on which they were received. The requirement to register documents helps to ensure

that each application leaves a trace and is also dealt with.

The Chancellor found that applications had not been properly registered, for example, by Kambja Rural Municipality Government and Tartu Rural Municipality Government.

In carrying out its tasks, an authority is obliged to comply with the deadlines set by legislation. Compliance with deadlines and informing people is part of good administrative practice. According to the law, memorandums and requests for explanation must be replied to promptly but no later than 30 calendar days as of registration. In complicated cases, the deadline for reply may be extended to two months. The following institutions had problems with responding on time to memorandums and requests for clarification: the Ministry of Justice, the Ministry of Economic Affairs and Communications, the Social Insurance Board, Tallinn City Government, Harku Rural Municipality Government, Kiili Rural Municipality Government, Kose Rural Municipality Government, Saku Rural Municipality Government, Türi Rural Municipality Government, Kambja Rural Municipality Government, Narva-Jõesuu City Government and Peipsiääre Rural Municipality Government.

Kambja Rural Municipality Government also failed to respond to a proposal to initiate a detailed spatial plan within the statutory deadline and did not extend the deadline for resolving it. After receiving an application to initiate a detailed spatial plan, the local authority must take the necessary steps enabling it to resolve the application within the deadline laid down by the Planning Act. If establishing essential facts takes more than 30 days, the applicant must be informed of the extension of the time limit for resolving the application.

Several complaints were made about the activities of the Data Protection Inspectorate. The Chancellor found that the Inspectorate has problems with responding to memorandums and requests for clarification, as well as with resolving formal challenges and complaints about violations of the processing of personal data. For example, the Inspectorate failed to respond to applications and extended the deadlines for reasons not provided for in legislation. It also extended deadlines beyond what is allowed by legislation.

Since the Inspectorate justified the situation by lack of resources, and the delay in responses indicated that a critical situation had lasted for a long time, the Chancellor asked the Inspectorate and the Ministry of Justice to solve the problem together. In 2023, the Inspectorate did receive additional money to increase salaries as well as to recruit new staff.

Organising public events

Haapsalu City Government and Tartu Rural Municipality Government failed to act lawfully or in accordance with the principles of good administration when responding to applications concerning public events (a car rally, an entertainment event). The Chancellor asked these local authorities to consider, among other things, the interests of people living in the immediate vicinity of the venue of an event before granting permission for an event in the future.

When resolving a petition it was also revealed that Tartu Rural Municipal Council had failed to establish a regulation on the requirements for organising and holding a public event, which the rural municipality government should observe when resolving an application for organising a public event. Tartu Rural Municipal Council informed the Chancellor that the regulation had been adopted and entered into force.

Business continuity of the register of construction works

The Chancellor was contacted by an individual whose house could not be found in the map application of the register of construction works, so that the designer of their solar park could not upload the solar park project and the construction of the park was delayed. The Construction Works Register Division of the Ministry of Economic Affairs and Communications admitted the problem and promised to send a relevant error notice to the developer of the register of construction works.

The Chancellor pointed out that unfortunately problems with the operational reliability of the new register of construction works had occurred even beforehand, which impeded the processing of building and occupancy permits. Glitches in implementing a new system are humanly understandable to a certain extent. However, this should include an analysis of problems along with a possible solution.

A heavy administrative burden could be an indication that the resource needs of the register of construction works and of the helpdesk should also be reviewed. New officials should be hired, if necessary.

Once the state has created a register that should facilitate communication with the state,then the state must also ensure the smooth operation of the register and, in case of failures, quickly provide people with effective assistance.

A pupil's school route

The local authority must organise a pupil's transport to and back from the school assigned to the pupil based on their place of residence. In this respect, it should be taken into account that the length of walking distance for a child should not be more than three kilometres. The purpose of the applicable requirements is to ensure an opportunity for the child to receive basic education in the school at their place of residence.

When considering transport options, the local authority must also assess how the way to school may affect a child's ability and will to learn. The route to school must not be dangerous to the life and health of the child, nor should it be too tiring. Once in school, the child must be able to learn.

If circumstances change and the proposed school transport solution does not meet the needs and best interests of the child, the local authority must reassess the situation.

Receiving identity documents

The Chancellor was contacted by an individual who had applied for a new passport but could not receive it, because, although they tried several times to collect the document, there were very long queues in the service bureau of the Police and Border Guard Board (PBGB), and during the coronavirus pandemic they did not want to wait long in a crowded room. When the person was finally able to go and collect the document, the PBGB had destroyed their passport. The PBGB had not informed the person that it intended to invalidate and destroy the document. The person asked why it was not possible to get the documents through the postal service.

The Chancellor explained that, according to the law, the PBGB may invalidate an issued identity document and destroy it if the document has not been collected within six months. However, the PBGB must make this decision in accordance with the requirements of administrative procedure. At the same time, the person must be notified if it is planned to invalidate and destroy their identity document. All the relevant circumstances should be taken into account when making this decision. The PBGB must also notify the person of the

decision by which the document was invalidated. Unfortunately, the PBGB did not do this and thereby violated the requirements of administrative procedure. The state must also inform those who do not use e-services.

However, investigation of the circumstances revealed that due to the coronavirus pandemic, the PBGB had kept documents in service bureaus longer than usual. The petitioner's passport was also kept in the service bureau for more than a year, during which time it would still have been possible to go and collect the passport.

Under the law, a person must also be able to receive identity documents by post if they so wish. Although the relevant legal provision already entered into force on 1 January 2016, the PBGB does not comply with the law. For this reason, it is not possible to send documents home by courier within Estonia, although this option would make receiving documents much easier.

A precept in resolving problems in private law

The Chancellor explained to Luunja Rural Municipality Government that in resolving a private law dispute between the rural municipality and a private person the municipality cannot invoke the powers of a public authority and issue a precept to a private person. Disputes in private law must be resolved in line with private law rules and principles.

In this case, the municipality issued a precept to demolish a fence with the justification that the fence had been built over the border of the immovable and was located on municipal land. The owner would have incurred considerable expense by demolishing the robustly built fence. Moreover, the issue was only about a few dozen centimetres and the plot border data may have also been imprecise.

Registration of going on a transboundary water body

The Chancellor was informed that allegedly, as of 30 July 2021, it was no longer possible to register going on a transboundary water body by calling from a landline telephone. According to the petitioner, registration was only possible via a mobile phone SMS or via the self-service website.

Although the PBGB did not confirm this, the restriction could also be inferred from theoptions offered by the automatic answering machine as well as information published on thePBGB website.

The possibility of registering by phone is necessary because people must also be able to fulfil their obligations in ways other than merely e-channels. For example, there may be a technical failure in e-channels or a person does not have the opportunity to use the e-channel for some other reason.

It is worth acknowledging that the PBGB took the Chancellor's recommendation into account and restored the previous situation within two weeks. Now it is again possible to register going on a transboundary water body via a telephone call, and information about this can also be found on the PBGB website.

Population

Entering into a registered partnership contract and applying for a residence permit

The Chancellor received a complaint that Estonian notaries did not allow same-sex partners to enter into a registered partnership contract even though their marriage contracted in a foreign country is not recognised in Estonia, and for this reason, a person could not apply for a residence permit to settle with their partner.

The Chancellor explained that it must be possible to enter into a registered partnership contract even if same-sex partners have registered their marriage in a foreign country but this is not recognised in Estonia. Such cases have been heard in Estonian courts. In this case, these people can legitimately formalise their relationship in Estonia only through a registered partnership contract. After conclusion of a registered partnership contract, it is possible to apply for a residence permit to settle with a same-sex partner.

Legal status of a newborn child of parents staying in Estonia on the basis of a visa

The Chancellor was asked about the legal status of children born in Estonia if their parents are staying in Estonia on the basis of a visa. The Police and Border Guard Board had told the parents that their child born in Estonia was a person living in Estonia illegally, for whom it is possible to apply for a visa or a residence permit only in a foreign country.

The Chancellor found that since this issue is clearly not regulated by law, a gap exists in the Estonian legal order. In the event of a gap in legislation, it must be overcome through interpretation. In order to guarantee fundamental rights, an analogy with the provisions of the Aliens Act must be applied. These provisions state that newborn children of persons residing in the country on the basis of a residence permit acquire, directly by law, the same status as their parents. Consequently, the correct interpretation should be that a child born in Estonia to parents staying in Estonia on the basis of a visa is also staying in Estonia legally and it must be possible to issue a visa for them in Estonia.

The Chancellor also dealt with this issue in a report sent to the Riigikogu Constitutional Committee. She noted that, in order to ensure legal clarity and fundamental rights, the Aliens Act must clearly stipulate that a child born in Estonia to parents staying in Estonia on the basis of a visa is staying in the country directly on the basis of law.

Visa procedure

When resolving petitions submitted to the Chancellor, it was revealed that the PBGB automatically refuses to issue a visa to a person if the Estonian Internal Security Service has declined to approve their visa application. The PBGB also denied the objection against the visa decision solely because the Estonian Internal Security Service did not consider it justified to change its position.

Under the Aliens Act, the PBGB is entitled to decide domestically on the issuance of visas. The law stipulates that issuance of a visa must be coordinated with the authority designated by the Minister of the Interior, which is the Internal Security Service. The Chancellor explained to the PBGB that under the Aliens Act the term coordination/approval (*kooskõlastamine* in Estonian) is understood in the sense of expressing an opinion. Thus, if the Estonian Internal Security Service fails to coordinate/approve a visa application, the PBGB must ascertain the reason for the position of the Service, but may then make a decision regardless of that position, while having regard to all the circumstances of submission of the application. Thus, the current practice of the PBGB is not in line with the Constitution or the Aliens Act.

It transpires from § 82(2) of the Aliens Act that refusal to approve a visa application cannot automatically constitute grounds to refuse issue of a visa. The PBGB as the competent body must itself decide on the issue of a visa and, while examining a challenge filed against a visa decision, ascertain all the essential facts and resolve the objection by having regard to those

circumstances.

Of course, a visa may not be granted to someone who may pose a threat to Estonia's security. However, security risk is an undefined legal concept and an administrative authority enjoys a broad margin of appreciation in interpreting it. When making that decision, the level of security risk and the probability of its actually occurring should be assessed, as well as the circumstances why the person is applying for a visa to stay in Estonia. This is particularly important if a visa applicant has compelling family reasons for staying in Estonia.

Examination of applications for a residence permit

People also expressed dissatisfaction with proceedings for resolving applications for residence permits, as these proceedings often take too long. When resolving the petitions, it was found that PBGB officials extended procedural deadlines repeatedly and for long periods at a time.

Under the legislation, an application for a residence permit must generally be examined within two months, and the deadline may be extended by up to two months at a time (§ 34(2) of the Aliens Act, Minister of the Interior regulation § 26). However, PBGB officials extended procedural deadlines, for example, immediately by three or four months at a time.

The Chancellor was also approached by a person who was unable to submit an application for a residence permit because for the next two months all the time slots for submitting an application had been booked. The PBGB also did not offer people new times because it was waiting for a decision on the immigration quota for 2023. At the same time, it was also impossible to obtain time slots for people whose application for a residence permit was not subject to the immigration quota. This shows that although, according to the legislation, the PBGB should generally resolve an application for a residence permit within two months, it might not even be possible to submit an application for a residence permit during this period. Thus, through its booking system the PBGB prevents people's access to the procedure. (See also the chapter on "Security".)

Administrative fines

Due to proposed amendments to the Competition Act, administrative fines and related issues were also the focus of attention during the reporting year. The idea of wider application of administrative fines has been abandoned, at least for the time being. At the same time,

Estonia has still not transposed the Competition Law Directive of the European Parliament and of the Council into its legal system. The Directive lays down a possibility of imposing fines outside criminal proceedings in the field of competition. In order to implement the Directive, Estonia intends to start imposing fines for infringements of competition law in administrative proceedings and to bring judicial review under the jurisdiction of the administrative court.

The Chancellor has referred to several problems related to administrative fines that need to be resolved before the law is passed.

Among amendments to the Competition Act (version sent for an approval round on 15 May 2023), most questions arise in connection with protecting the confidentiality of messages (§ 43 Constitution) and privilege against self-incrimination (§ 22(3) Constitution).

According to this draft, the Competition Authority would be entitled to gain access to information or collect information when applying an investigative measure, regardless of the medium. This includes any exchange of information, including unopened messages, with the exception of confidential exchange of information between a person subject to proceedings and their contractual or state legal aid representative.

However, § 43 of the Constitution guarantees confidentiality of messages to everyone, and exceptions in this respect can only be made by a court for the purpose of preventing a crime or for ascertaining the truth in criminal proceedings. The Draft Competition Act would also allow infringement of the confidentiality of messages in administrative proceedings.

In addition, the Draft Act obliges a person subject to proceedings, or another person, to provide information available to them, including explanations. Complying with a request for information may only be refused to the extent that the person would directly be pleading guilty to violation. According to the Draft Act, all evidence in the possession of a person subject to proceedings must be surrendered, even if it tends to incriminate them. On the basis of that information, an administrative fine may be imposed of up to ten per cent of the total worldwide turnover of an undertaking or association of undertakings in the business year preceding imposition of the fine. In order to ensure compliance with the duty of provision of information, a coercive penalty payment or a fine is laid down.

The Constitution stipulates (§ 22(3)) that no one may be compelled to testify against themselves, or against their next of kin. Thus, the obligation written into the Draft Competition Act might not be compatible with the Constitution. The same has been conceded

by the authors of the draft, who, in the explanatory memorandum to the draft, counter a possible problem with the argument that presumable constitutional interference cannot concern legal persons whose rights are protected somewhat differently from the rights of natural persons (explanatory memorandum, pages 7–8).

Both protection of confidentiality of messages and the privilege against self-incrimination are of fundamental significance to protection of fundamental rights. Therefore, we hope that, on the basis of feedback on the draft, it will nevertheless be amended to ensure the best protection of fundamental rights.

In the end, however, legal peace must be achieved, and it is clear that Estonia must transpose the European Union Competition Law Directive. If necessary, the Chancellor of Justice can apply to the Supreme Court after the law has been promulgated. The Supreme Court assesses the constitutionality of norms and, if necessary, also offers guidance on how questionable provisions can be constitutionally interpreted and implemented.

Courts

The Chancellor comes into contact with the work of the courts in three ways. The Chancellor of Justice is a member of the Council for Administration of Courts, she may initiate disciplinary proceedings in respect of all judges, and additionally, she submits opinions for the Supreme Court in constitutional review court proceedings.

Participation in the work of the Council for Administration of Courts

In the second half of 2022, the Council for Administration of Courts convened on three occasions, and twice in the first half of this year.

Complaints about the work of judges

Under the Courts Act, alongside the chairs 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.

The Chancellor does not assess substantive issues concerning administration of justice. She can only assess whether a judge has failed to fulfil their official duties or has behaved disreputably.

However, mostly the Chancellor is contacted about issues in which she cannot intervene. Generally, people are not satisfied with a court decision or how the court has assessed evidence. Thus, people expect the Chancellor to intervene in judicial proceedings and assess the court decision. The Chancellor cannot do this since, under the Constitution, justice is administered by the courts, and only a higher court can assess substantive issues of administration of justice.

Nevertheless, every year there are also cases where the Chancellor examines the work of judges more specifically in the information system of the courts in order to decide whether a reason exists to initiate disciplinary proceedings. During the reporting period, there were ten such cases. On some occasions, the Chancellor also asked for an explanation from a judge and/or chair of the court. In none of the cases did the Chancellor find a reason to initiate disciplinary proceedings in respect of a judge.

Complaints to the Chancellor mostly concerned the issue that judicial proceedings become protracted. First and foremost, this concerned cases dealt with by Harju District Court, but the issue of reasonable length of proceedings also arose in connection with the work of other courts.

A *reasonable length of proceedings* is an undefined legal concept and its substance is interpreted on a case-by-case basis. The Supreme Court disciplinary chamber has explained that assessment of the reasonableness of judicial proceedings depends on several circumstances. In order to conclude whether judicial proceedings took place within a reasonable time, it is necessary to assess the complexity of a case, the importance of the benefits at stake, and the conduct of parties to the proceedings. Certainly, the workload of a particular court and judge and the resulting objective circumstances must be taken into account: the court's resources, the availability of support staff, the number of complaints, and the like.

In one instance, it had to be noted that a case concerning child maintenance support had indeed lasted too long, even though no judge could be reproached for having delayed with resolution of the case. The lawsuit repeatedly passed through several court levels, which inevitably took time. In resolving the case, the courts had to follow the views and guidance of

the higher court and take into account changes in legislation on payment of minimum maintenance support. Among other things, the speed of resolution of the case was also affected by the conduct of the parties.

In general, the number of complaints about the conduct of judges has decreased over the years. This is probably because in most cases audio recordings of hearings are made. This makes it easier to verify what happened at a hearing and probably also motivates all the parties to better control their conduct.

Opinion in constitutional review court cases

The Supreme Court may ask for the Chancellor's opinion in constitutional review court proceedings.

One such opinion concerned the procedure for grant of a temporary residence permit. Specifically, Tallinn Circuit Court had declared the Aliens Act unconstitutional insofar as it did not enable grant of a temporary residence permit to a foreigner to settle with their parent in need of care (constitutional review case 5-23-6). The court also declared unconstitutional the Regulation of the Minister of the Interior No 7 of 12 January 2017 insofar as it failed to lay down the list of data to be provided in the application and the evidence to be attached to the application in the event where an adult foreigner applies for a temporary residence permit to settle with their parent in need of care.

The Chancellor found that both legal acts contravened §§ 11 and 26 and § 27 subsections 1 and 5 of the Estonian Constitution. The Supreme Court found that the respective Acts were in conformity with the Constitution and rejected the application by Tallinn Circuit Court.

The Chancellor also submitted an opinion to the Supreme Court concerning Government of the Republic Regulation No 322 on "The procedure for paying remuneration and compensating expenses to participants in proceedings in criminal, misdemeanour, civil and administrative cases". The Chancellor found that the regulation was unconstitutional because the government exceeded the powers conferred on it by the Code of Criminal Procedure when establishing the amount of fee for a forensic psychological evaluation. The Supreme Court in its judgment declared the regulation unconstitutional for the same reason.

State legal aid

The Chancellor made a proposal to the Minister of Justice that provisions of Regulation No 16

of 26 July 2016 on the "The procedure for paying the state legal aid fee and compensation of expenses to an attorney" concerning rates of remuneration paid for provision of state legal aid should be brought into conformity with the Constitution. The current system of rates no longer guaranteed the right to a fair trial or the right of defence of a criminal suspect.

The Supreme Court analysed the constitutionality of payment of remuneration in judgment No 5-22-2 of 7 November 2022. The court found that in this specific case the maximum remuneration limit was not unconstitutional because the attorney could find out in advance how laborious the case was, and on that basis they could also drop the case. The Supreme Court also found that since in this particular case the attorney was a member of the management board of a law firm and not a paid employee, they could provide state legal aid alongside and on account of other activities (presumably more profitable provision of contractual legal aid). At the same time, the Supreme Court noted that, at current rates, provision of state legal aid might not be sustainable.

In the opinion of the Office of the Chancellor of Justice, the situation has become difficult for many people. Those people who, even with the best of will, are unable to pay for expert legal assistance, may have been deprived of the necessary legal aid and the court proceedings also tended to drag on. This undermines the rule of law as a whole. It was difficult for the Estonian Bar Association to find attorneys who would have voluntarily agreed to provide state legal aid (see the website of the Estonian Bar Association "Advokatuur tegutseb riigi õigusabi kriisi ennetamise nimel" (The Bar works to prevent a state legal aid crisis) and "Advokatuur: õigusemõistmine rippus juuksekarva otsas juba septembris" (The Bar: administration of justice was hanging by a thread already in September).

If legal aid is necessary to protect someone's fundamental rights but the person is not able to pay for it, legal aid must be provided by the state. This legal aid must be competent and reliable. State legal aid is provided from the money allocated for this purpose from the state budget. The state must ensure that sufficient funds have been allocated to pay for provision of state legal aid (§ 30 State-funded Legal Aid Act). Insufficient funding does not guarantee high-quality legal assistance.

The Minister of Justice agreed with the proposal by the Chancellor of Justice and increased the rates for provision of state legal aid.

Local authorities

The Estonian Constitution guarantees the autonomy of local government, i.e. the right of local authorities to resolve and manage local matters independently. The Riigikogu, the Government of the Republic and ministries must respect the autonomy of local government. Naturally, rural municipalities and cities must also observe the Constitution and other laws in their activities. A local authority must respect people's fundamental rights and freedoms, save taxpayers' money and be honest in its dealings. Uniform fundamental principles of democratic local government in Europe are determined by the European Charter of Local Self-Government and its Additional Protocol.

A local authority is not a subsidiary body of the Government of the Republic or the ministries, but it is also not a state within the state. The idea of local government is that local matters are resolved by the community itself in a manner most suitable for the particular city or rural municipality. In doing so, a local authority must act lawfully. The state should provide support to a local authority: matters should be arranged so that local authorities have the appropriate levers and enough money to promote local life. The state may also impose functions of the state on local authorities by law, but in that case sufficient funds should be provided from the state budget to fulfil those functions. Local and state budgets are separate.

During the reporting year, the Chancellor helped to resolve problems regarding internal working arrangements in local authorities and checked whether local authority legislative acts (regulations) were in conformity with the Constitution and laws. The Chancellor also monitored that rural municipalities and cities performed public functions lawfully and did not violate the fundamental rights and freedoms of persons.

Restriction of the right of self-organisation

The Chancellor was asked to verify whether § 13(6^2) of the Place Names Act violated local authorities' right of self-organisation, i.e. local government autonomy. Under the Place Names Act, the right of a rural municipality or city to assign a place name in its capacity as a names authority transfers to the minister if the minister has proposed to the respective local authority to change a place name that contravenes the requirements of law but the local authority has failed to comply with the proposal within two months. In this context, the law has in mind a commemorative name associated with a person who acted against creation of the Republic of Estonia, maintenance of constitutional order or restoration of Estonia's

independence, or a place name clearly incompatible with Estonian history and culture.

The Chancellor found that even though § 13(6^2) of the Place Names Act restricts a local authority's right of self-organisation, it does not violate it. The restriction has a legitimate purpose, as it aims to ensure that place names are compatible with Estonian history and culture and to avoid the use of inappropriate place names. The restriction is also proportionate to its objective, i.e. appropriate, necessary and narrowly proportional.

This conclusion can be deduced from a number of procedural requirements laid down by law. For example, before changing a place name, the minister must officially consult with the Place Names Board and the respective local authority. The draft ministerial regulation is published and the local authority as well as local residents can express an opinion on it.

The minister's right to establish a place name is limited and this does not concern most place names. The costs and losses that a rural municipality or city has to bear as a result of assigning a new place name are reimbursed from the state budget. The local authority may contest the minister's regulation in court.

In the opinion of the Chancellor, it is also constitutional that, under the Earth's Crust Act, the state may also grant a permit for extraction of mineral resources without taking into account the comprehensive plan or even in contravention thereof (see e.g. Supreme Court Constitutional Review Chamber judgment of 20 May 2020, 5-20-2, paras 34, 36 et seq., including judgments cited in para. 16; the Chancellor's opinion of 17 March 2020).

By law, the planning autonomy of a local authority can be restricted. It would be incompatible with the principle of the unitary state (§ 2 Constitution) if resolving an important national issue would prove to be impossible due to local authority opposition.

Mineral resources are natural riches, which must be used sustainably (§ 5 Constitution). The requirement of sustainable use of mineral resources also means that it should be possible to extract a resource. In accordance with the Earth's Crust Act, mineral resources belong to the state, and consequently the state also organises any procedures undertaken with mineral resources. The Constitution obliges the state to guarantee that a local authority would not render making use of a mineral resource excessively expensive or impossible.

Consequently, when preparing a comprehensive plan, a rural municipality or city must take into account that mineral resources are located within its boundaries and at some point the state may wish to make use of those resources (§§ 14 and 15 Earth's Crust Act). Thus, the

state can force a local authority to lay down a spatial plan in the interests of the state. This is also compatible with the principle of balancing and integrating interests as laid down by § 10(3) of the Planning Act. Even if a comprehensive plan lays down conditions not enabling extraction of mineral resources, these conditions cannot prevent the issue of an extraction permit if overriding national interest for this exists (§ 55(4) Earth's Crust Act).

Local government supervision of compliance with local regulations

Under the current Local Government Organisation Act, the municipal council enjoys exclusive competence for establishing the rules for excavation operations and property maintenance rules in order to ensure maintenance (§ 22(1) clause 36^1). Only a municipal council can establish rules for keeping dogs and cats (§ 22(1) clause 36^2) and the requirements and procedure for organising commerce on land which is in public use (§ 22(1) clause 36^7). Issues related to waste management rules (§ 22(1) clause 36^3), including supervision of compliance with those rules, is regulated more specifically by the Waste Act.

Unfortunately, a situation has arisen where it is not clear from the legislation how a local authority can discipline a violator of the rules before they commit an offence. Misdemeanour punishments (see Chapter 66^2 of the Local Government Organisation Act) have been prescribed for cases where a person's health or property has already been damaged.

The Chancellor drew the attention of the Minister of Public Administration and the Riigikogu Constitutional Committee to the need to supplement and clarify legal provisions. In order to improve the sense of security and public order, it is possible and necessary to legally ensure effective control by local authorities over compliance with the rules established on the basis of the Local Government Organisation Act and that the provisions regulating it are unambiguous and take into account the right of self-organisation of local authorities (§ 154(1) Constitution). The Local Government Organisation Act should stipulate that rural municipalities and cities may issue a precept for non-compliance with the rules and, if necessary, to implement substitutional performance or impose a coercive penalty payment.

Protection of rights of municipal council members

The Chancellor drew the attention of members of the Riigikogu Constitutional Committee to the fact that municipal council members should be guaranteed the opportunity to defend their rights in an administrative court. Under current law, although the administrative court has jurisdiction to resolve legal disputes within a municipal council, council members do not

have the relevant legal standing.

A legal dispute arising in internal relations between a collegiate body (council) and its member (councillor) can be resolved by an administrative court only if the law clearly provides for it. Currently, the law does not allow this. For members of the Riigikogu, such regulation is established by §§ 16 and 17 of the Constitutional Review Court Procedure Act. The Riigikogu can also introduce similar regulatory provisions to protect the rights of municipal council members.

The Chancellor dealt with the same issue in a letter sent to the Riigikogu Constitutional Committee as long as four years ago.

Funding of local authorities

Under § 4(1) clause 1^1 of the Land Tax Act, land tax is not payable on land of strict nature reserves and special management zones of protected areas and land of special management zones of species protection sites. In addition, some land (land of special conservation areas, limited management zones of species protection sites, land of the water protection zone of shores) is exempted from land tax to the extent of 50 per cent (§ 4(2) Land Tax Act). As a result of these tax incentives, municipalities lose some of their tax revenue.

Haljala and Kuusalu rural municipality mayors asked the Chancellor to assess whether it was lawful that land tax revenue not collected from nature conservation areas was not compensated to local authorities. Much of the land of Haljala and Kuusalu rural municipalities is covered by Lahemaa National Park, so a great deal of money is lost to both municipalities.

The Chancellor of Justice can intervene if political choices of the Riigikogu and the government go beyond the bounds of constitutionality. In the instant case, the Chancellor had to limit herself to explanations.

Complaints about non-compensation for unpaid land tax have also been resolved by thecourt (see e.g. case No 3-11-1819). In doing so, the courts have also considered the issue ofnon-compensation of loss of land tax in the context of §§ 154 and 157 of the Constitution.Both the administrative court and the court of appeal denied the local authority complaint.The reasoning given by the court was that that neither a rural municipality, nor city has a legitimate expectation to be compensated for loss of tax revenue resulting from amendment to the tax law. Nor did the local authority have any legitimate expectation that the share ofthe tax received by it will always remain the same.

No law imposes an obligation on the state to compensate a rural municipality or city for land tax not received on land exempted from land tax (in whole or in part). However, the state must provide rural municipalities and cities with sufficient funding to enable them to perform local government functions. Local authorities are also entitled to money from the state budget for performance of state functions assigned to them by law. The state is not prohibited from reducing funding if, after this happens, a particular rural municipality is still able to perform local government functions to the minimum extent necessary (Supreme Court *en banc* judgment of 16 March 2010, 3-4-1-8-09 , para. 68).

Räpina Rural Municipal Council and Government approached the Chancellor about the issue of financing care reform. In their application, they noted that since 1 July 2023 Räpina rural municipality will have to pay a higher fee to a care home for a person residing in a care home but the state has not given Räpina rural municipality enough money to fulfil this obligation.

The Chancellor explained that if the rural municipal council believes that not enough money has been allocated to Räpina rural municipality for performing the functions assigned by the Social Welfare Act then constitutional review directly from the Supreme Court may be sought by a majority of members of the municipal council (see § 7 Constitutional Review Court Procedure Act; § 45(5) Local Government Organisation Act). The Supreme Court has exclusive competence to decide whether the state has violated the Constitution.

Municipal council working arrangements

Under § 156 of the Constitution, the local authority representative body is the municipal council. This gives rise to the municipal council's right of self-organisation, meaning that a municipal council is entitled to establish its working arrangements and procedural rules. Under the Local Government Organisation Act, a municipal council establishes the rural

municipality or city statutes specifying the working arrangements of the municipal council and government.

However, the council's right of self-organisation is not unlimited; it must be compatible with the Constitution and laws (about the working language, see the section "Municipal council's working language" and "The working language of municipal council committees").

The Chancellor ascertained that Kose rural municipality statutes failed to regulate clearly by what time municipal council committee members are entitled to receive materials of a committee meeting. Thus, the relevant provision of the statutes contravened the principle of legal clarity (§ 10 Constitution), and the Chancellor asked the municipal council to formulate this provision clearly and unambiguously. The rural municipal council amended the municipality statutes.

Municipal council audit committee

When replying to a petition by Saarde Rural Municipal Council Audit Committee, the Chancellor explained some important issues concerning the work of an audit committee.

Section 48(4) of the Local Government Organisation Act states that an audit committee performs the functions within its competence in line with the procedure laid down by the rural municipality or city statutes and on the basis of its work plan or as required by the municipal council. Thus, according to the law, rural municipality or city statutes must lay down the procedure for performance of the functions of the audit committee.

Performing an audit is a public task of an audit committee. If experts participate in the work of the audit committee, this means that the experts are involved in performing a public task. Involving experts in the activities of the audit committee is not just a formality, but an important issue that must be regulated in the rural municipality or city statutes. An expert from outside the rural municipality or city government involved in the work of the audit committee should act on the basis of a written contract. This contract can and should deal in more detail with the rights, duties and responsibility of the expert.

An audit committee is entitled to obtain information and all documents needed for its work (§ 48(6) Local Government Organisation Act). The work of an audit committee is described in § 48(3) of the Act. According to this provision, the committee must verify and assess the lawfulness, purposefulness and productivity of the activities of a rural municipality or city government, their administrative agencies as well as agencies under the administration of

those administrative agencies, or companies, foundations and non-profit organisations under the dominant influence of a local authority, and the purposeful use of rural municipality or city funds, and compliance with the rural municipality or city budget. In the course of each audit, the audit committee is entitled to receive all the documents necessary for it in view of the purpose and substance of the particular audit. The purpose and substance of an audit arise from the work plan of the audit committee or a task assigned by the municipal council. However, the law does not specifically lay down the substance or form of an audit committee's work plan.

In order to carry out its tasks, the audit committee must collect the necessary evidence in a reasonable manner so that the evidence can also be recorded and reproduced. Supervisory control (§ 66[1] Local Government Organisation Act) does not limit the audit committee's control-related competence.

Requirements for a public event

A public event is an entertainment event, competition, performance, commercial event or other similar event where people gather together and which takes place in a public place and is aimed at the public but which is not a meeting (§ 58(3) Law Enforcement Act). Under the Law Enforcement Act, the requirements for organising and holding an event within the administrative boundaries of a local authority are established by a municipal council regulation (§ 59(1) of the Act). The law does not regulate the requirements for organising and holding public events in substance but only lays down a delegating provision under which a rural municipal or city council itself can set those requirements. When authorising a public event, the rural municipality or city government must comply with the requirements laid down by that regulation.

When resolving a petition submitted to the Chancellor, it was revealed that Tartu Rural Municipal Council had failed to establish requirements for organising and holding a public event. The Chancellor drew the attention of the municipal council to the fact that this situation was not lawful, and asked when the council would establish the requirements for organising and holding a public event. Tartu Rural Municipal Council did this by its Regulation No 6 on 17 May 2023.

The Chancellor also approached Tartu Rural Municipality Government and explained that since authorising a public event is an administrative procedure the rural municipality government must also involve in the proceedings those persons whose rights or duties the

public event may affect (§ 11(1) clause 3 Administrative Procedure Act; see also Supreme Court Administrative Law Chamber order of 1 November 2018, 3-18-763, para. 13).

Authorising a public event is a discretionary decision (an administrative act within the meaning of § 51(1) of the Administrative Procedure Act). A discretionary decision must be made in accordance with the limits of authorisation, the purpose of discretion and the general principles of law, taking into account relevant facts and considering legitimate interests (§ 4(2) Administrative Procedure Act). Thus, in its decision, the rural municipality government must consider, inter alia, the interests of the persons concerned living in the immediate vicinity of the venue of the public event and the circumstances they present in this regard.

The Chancellor also explained issues of authorising a public event to Haapsalu City Government.

The public and the budget strategy

The Chancellor explained to Kuusalu Rural Municipality Government that municipality residents must also be involved in preparing the budget strategy.

Under the Local Government Financial Management Act (second sentence of § 20(1)), budget strategy must be prepared, processed, adopted and published in accordance with the provisions of § 37^2(5) of the Local Government Organisation Act. In line with that provision, a rural municipality or city government must organise public debates in order to involve all interested persons in preparation of a development plan and budget strategy.

So the law explicitly states that a rural municipality and city government must hold public debates when drawing up the budget strategy. It is not enough to simply disclose the draft budget strategy: each requirement is regulated by a different provision under § 37^2 (subsections 5 and 6). If public debate were only to consist of disclosure of the documents then § 37^2 (5) of the Local Government Organisation Act would become devoid of substance.

A local authority is entitled to decide how to organise these debates. However, it should be kept in mind that the right to submit a proposal is not yet a public debate. A public debate requires justification of the objectives and choices of the budgetary strategy, as well as an overview of opinions already expressed.

A public debate also means that everyone enjoys the right to participate and discuss. This is

broader than introducing the draft to the authorities and agencies under their administration.

Enforcement procedure

The Chancellor also often receives complaints about the work of bailiffs. As a rule, the Chancellor explains to the petitioner the opportunities they have to protect their rights, but sometimes it is also necessary to draw attention to shortcomings in the work of bailiffs.

The state has decided that child maintenance claims are enforced as a priority. Due to a mistake by a bailiff, a child did not receive money from the father's mandatory funded pension disbursement to cover the maintenance claim. Since the bailiff failed to determine the type of claim correctly, the claim reached the Pension Centre's information system as an ordinary attachment and in making disbursements the Pension Centre proceeded from the order in which attachment notices had been received (the maintenance claim was the second in the queue).

The Chancellor found that the bailiff had failed to demonstrate sufficient diligence in enforcing the maintenance claim and recommended that the bailiff should consider remedying their error. Although the bailiff initially acknowledged that the claim in question was a child maintenance claim which is to be satisfied as a priority, after receiving the Chancellor's recommendation, the bailiff took the view that only periodic maintenance claims and not the maintenance debt should be enforced as a matter of priority.

The Chancellor did not agree with this interpretation and reiterated her recommendation. The law adopted by the Riigikogu does not stipulate that only periodic maintenance claims must be enforced as a matter of priority. Nor does the law contain a provision to the effect that a maintenance debt accumulated from the moment of submission of a maintenance claim to the entry into force of a court decision, or a maintenance debt incurred after the entry into force of a court decision (including during enforcement proceedings), might not be enforced as a matter of priority.

The bailiff refused to remedy their error and believed that the matter should be resolved in court.

National Electoral Committee

The National Electoral Committee has been set up on the basis of the Riigikogu Election Act

and its main task is legal supervision of all the decisions and steps taken in connection with elections. In addition, the Electoral Committee organises elections for the President of the Republic and the Board of the Riigikogu.

The Electoral Committee ascertains the voting results in elections for the Riigikogu and for the European Parliament or in a referendum. It also registers members of the Riigikogu and members of the European Parliament elected from Estonia. The Electoral Committee also handles election-related complaints.

The mandate of the Electoral Committee lasts for four years; the mandate of the current members began on 1 June 2020 and runs to 31 May 2024. Under the law, members of the Electoral Committee include a first instance judge appointed by the Chief Justice of the Supreme Court, a second instance judge appointed by the Chief Justice of the Supreme Court, an adviser to the Chancellor of Justice appointed by the Chancellor, an official of the National Audit Office appointed by the Auditor General, a State Prosecutor appointed by the Prosecutor General, an official of the Government Office appointed by the Secretary of State, and an information systems auditor appointed by the Board of the Estonian Auditors' Association. Every member of the Electoral Committee also has a substitute member.

During the reporting year, elections to both the Riigikogu and the Board of the Riigikogu took place. During the reporting period, the Committee held 23 meetings, the majority of which related to decisions in connection with Riigikogu elections and resolving election complaints.

Marking the reporting year are two more long-term processes, which are expected to reach a final outcome in regular elections to the European Parliament in June 2024. First, it should become clear whether it will be also possible to use Smart-ID as an identity document in elections and whether m-elections will also be introduced as a subcategory of e-voting. The National Electoral Committee stressed that a public and parliamentary debate should take place on implementation of m-elections and that all security risks arising from technology should be mitigated. Second, based on Supreme Court case-law, it is planned to clarify the technical organisation of online voting laid down by the Riigikogu Election Act.

On its own initiative, the Chancellor's Office checked the organisation of Riigikogu elections in general care homes. Under the Constitution, the right to vote is a fundamental right of every citizen of the Republic of Estonia.

Those who, for example, due to age, poor health or any other reason, are unable to cast their

vote at a polling station or to vote by e-voting, must also be able to perform their civic duty. In cooperation between election organisers and welfare institutions, elections are also held in care homes. To do this, on-site election organisers go to a care home with a ballot box, paraphernalia, voter lists, and other necessary means.

The practical details of organising elections (including statutory requirements) are set out in the election manual prepared by the State Electoral Office, which is also used as a guide by election organisers, i.e. district and divisional polling committees formed in the run-up to elections.

During these inspection visits, the Chancellor's advisers monitored in particular whether the voting process was secret and whether the identity document required for voting was checked. No significant violations of electoral law that would have provided grounds to challenge the election results were identified during the inspection visits. However, a number of observations were made on the basis of monitoring, which can be used to supplement and clarify the election manual and to train staff for the next elections. These observations were also sent to the State Electoral Office.

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. The Chancellor has appointed Kaarel Tarand, the editor-in-chief of the cultural paper *Sirp*, 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.

The previous composition of the Riigikogu and the governments formed by it were still unable to resolve long-standing problems and shortcomings in the financing of political parties and supervision thereof. Two years ago the Riigikogu and the Government attempted to start moving in the right direction, and there was hope that the financing of political parties taking place before and after the 2023 Riigikogu elections could already be controlled by the supervisory body – the Political Parties Financing Surveillance Committee – by relying on a new and better basis.

However, initiatives stalled despite the fact that improving the rules of supervision is primarily in the interests of political parties themselves, as this would, first of all, ensure fairer

competition and thereby also increase the overall credibility of political parties in the eyes of the electorate.

Nevertheless, even within the limits of the current rules, supervision of funding has been working slowly but effectively in areas that can be controlled. Political parties have learned to comply with the law in areas subject to control, but alongside this have found – and not always on their own initiative – new ways of gaining a competitive advantage in the so-called grey area, where it is known that supervisory proceedings cannot be brought to a clear and non-contestable final decision.

The most notable and probably the publicly best-known example of this is promotion of a certain world-view, analysis of the patterns and wishes of the electorate, and data processing through non-partisan associations (i.e. through their affiliated organisations), which has been of interest to political parties.

Affiliated organisations do operate in practice and political parties even complain about them to the supervisory bodies, while well aware that the current law does not force political parties to register their actual affiliated organisations and thus subject them to supervision. For this reason, in legal terms affiliated partisan organisations do not exist in Estonia. By deliberately providing unresolvable tasks to supervisory bodies, political parties discredit supervision, but inevitably also themselves and the functioning of Estonia's constitutional democracy as a whole.

Regardless of what elements of the funding of political parties the supervisory bodies are able to check and how well they are able to do it, data on the economic situation of political parties have been public for years and demonstrate a persistently unstable, risky and poor financial situation of the parties. After the last Riigikogu elections, all political parties, no matter large or small, were at least in the short term incapable of covering expenses and paying for services received, and had to take out loans or defer payments. The very strong dependence by political parties on contributions from individual so-called major donors is also known, which in turn increases the risks of corruption. This proved once again that the current model of political party funding does not ensure sufficient revenue and economic stability for political parties.

The total income of political parties in 2014 was 6.9 million euros, and in 2022 it was 7.7 million euros, i.e. in eight years it increased by less than 12%. During the same period, the consumer price index increased by 44%, which means that political parties are falling into

ever deeper impoverishment, as less and less can be bought for the same money. All the tools for getting out of this situation are in the hands of the political parties, and more specifically their parliamentary representations.