Chancellor’s Year in Review 2023/2024

Environment and infrastructure

Some topics reappear in the Chancellor of Justice’s report year after year. One such issue is the designation of a no-build zone, and the other is the quality of drinking water. Property restrictions imposed for nature conservation purposes are also an area about which petitions are submitted every year.

Clean drinking water is often spoiled by people themselves if wastewater is treated simply to the best of one’s own knowledge or as people are used to doing but no particular attention is paid to environmental protection requirements. Therefore, the Chancellor began reviewing wastewater treatment regulations of cities and rural municipalities and, where necessary, made relevant proposals.

Power outages emerged as a new problem this year. As a follow-up topic, more general climate protection rules were discussed, on which the Chancellor of Justice made a presentation to the Riigikogu. Climate protection and its legal aspects are expected to continue to be on the agenda. During the reporting year, a Chancellor’s representative participated in the work of the steering committee of the Climate Act as an observer and speaker.

Achieving climate goals

In 2023, the Chancellor of Justice presented a report to the Riigikogu, the purpose of which was to show the Riigikogu, relevant ministries and agencies, entrepreneurs and the public that norms necessary for fulfilling fixed-term international obligations which Estonia has assumed in the name of stopping climate warming have mostly not been enacted in legislation. However, without clear statutory obligations and restrictions, it is not possible to achieve these goals within the framework of the Constitution. In 2024, a Draft Act on a Climate-Resilient Economy was submitted for discussion. The debate on its constitutionality lies ahead.

The people have decided that the Estonian state exists for defence of internal and external peace and serves as a pledge to present and future generations for their social progress and general welfare. Under § 5 of the Constitution, the natural wealth and resources of Estonia

are national riches which must be used sustainably. Climate is an inseparable part of the natural living environment of the world and of Estonia. Section 53 of the Constitution imposes a basic duty on everyone to preserve the living and natural environment. The social and economic livelihoods of present and future generations must be ensured. Climate change that leads to stronger storms, heat waves, floods and droughts poses an immediate threat to the Estonian people.

Constitutional principles and basic duties to protect the environment may justify restrictions on the fundamental rights of individuals, such as the freedom to conduct a business or the right to property. However, these restrictions must be well-considered, reasonable and fair. Crop and livestock farming, manufacturing companies, entrepreneurship in general are similarly under the protection of the Constitution. The Constitution also strongly protects property.

The Chancellor of Justice heard serious concerns from young people fighting climate warming, as well as from entrepreneurs and owners. It is important to avoid a quarrel between generations. It is hardly unlikely that anyone here knows anyone who is sincerely indifferent to the well-being of future generations and Estonia. Totalitarian-like orders and prohibitions and excessive restrictions on the fundamental rights of owners and businesses spark protest. This, in turn, can mean abandoning necessary changes, a big setback. That this may be the case is confirmed by the experience of excessive political correctness and the onslaught of a culture of cancellation: society has not become safer, extremes have arisen instead. This has now been confirmed both by election results and by theorists such as Francis Fukuyama and Slavoj Žižek. Rules-based, balance-seeking, peaceful governance will bring desired results with greater certainty. Consensus democracy is better than pendulum democracy in terms of people’s well-being and safety.

Restrictions in construction and nature

Issues of a no-build zone

Regarding a no-build zone, the Chancellor of Justice has been making appeals and written presentations to the Riigikogu since 2016. Everything repeated itself in the last reporting year. A new report was sent to the Riigikogu, and additionally the Chancellor had to submit a proposal to the parliament to bring the Nature Conservation Act into line with the Constitution. On 6 June 2024, the Riigikogu supported the proposal. Hopefully, at next year's review, we can rejoice at amendment of the Nature Conservation Act.

Consistently addressing the problems of the extent of the no-build zone arises from a practical need, i.e. a forced situation. Unfortunately, in this balancing of human and conservation interests, individuals often find themselves in conflict with the state. Protection of natural values is indisputably important, but alongside this a person's desire to build a home or a summer house for themselves must not be underrated.

When the Chancellor of Justice first analysed the issues of a no-build zone and flood zone in 2016, merging of the two zones was not yet very common in administrative practice. Merging of the zones did happen, but the practice was not predominant or systematic. In recent years, the law has not been changed. The width of the no-build zone is the same, and so is the baseline for the prohibition zone laid down by law – the boundary of the water body. However, merger of the flood zone and the no-build zone has become a practice where the flood zone starts at the waterline and the no-build zone starts at the boundary of the flood zone.

This means that the restriction on property has been extended and this has been done in accordance with the administrative practice of the Environmental Board, but not on the basis of changes in the law. The decisions of the Environmental Board are reflected in the planning procedure of cities and rural municipalities. A spatial plan needs approval from the Environmental Board (§ 133 Planning Act). If a municipality does not add the flood zone to the no-build zone in the plan, the Environmental Board will probably not approve the plan. For this reason, cities and rural municipalities are no longer guided by the law, but by the requirements of the Environmental Board. If a landowner wants the law to be applied to them, they must challenge the spatial plan in court, whereas the dispute will be with the municipality, which is simply complying with Environmental Board requirements.

Deadline for registering a forest notification

The Chancellor of Justice received a complaint that the Environmental Board did not respect

the deadlines for registering forest notifications. Under § 2(3) of the Minister of the Environment Regulation No 28 of 11 August 2017 on the "List of data to be submitted in a forest notification, and the procedure and deadlines for submission, processing and registering a forest notification", the Environmental Board must check within 15 working days whether a forest notification complies with requirements and whether the planned cutting meets the requirements established by legislation. If making a decision on cutting requires approval or forest protection expertise, the Environmental Board has up to 30 working days to check the forest notification (§ 2(4) of the Regulation).

Thus, a forest notification should be registered or refused within 15 to 30 working days. Based on available information, the Environmental Board has started to inform the parties about exceeding the procedural deadline and, for example, in June 2024, announced that the procedural deadline had been extended until December 2024 (with the proviso that, if possible, a decision will be made earlier). Thus, based on information available, the procedural deadline was set at up to six months.

Under § 11(2) of the Environmental Impact Assessment and Environmental Management System Act, the decision-maker will examine an application for an activity licence and make a decision to initiate or refuse to initiate an environmental impact assessment. The decision must be taken no later than on the 90th day after it has received the information listed in § 6(1) of the Act. Thus, if necessary, the period for registering a forest notification can be extended, but for significantly less than six months.

The Chancellor of Justice asked that in the future the Environmental Board comply with the deadlines laid down in legislation (see the opinion on "The period of processing a forest notification in accordance with laws").

Land inventory

The Chancellor of Justice has received petitions from landowners who are annoyed by lack of information about a national inventory commissioned for their lands. As a result of the inventory, it may be decided to take land under nature conservation or to tighten the current protection regime. Both qualify as restrictions on property rights.

As a general rule, staying on a plot of land owned by another person is allowed only with permission of the owner (§ 32(1) General Part of the Environmental Code Act). This requirement also applies to the state. The law provides for some exceptions for a protected

natural object (see § 15 of the Nature Conservation Act), but permission granted by law to a state representative or inventory taker to stay on private land does not mean that notifying the owner about it is unnecessary. If the owner has marked or enclosed their land, then in order to take an inventory outside the protected area, consent of the landowner is required anyway (§ 32(1) and (2) of the General Part of the Environmental Code Act).

Informing the owner about the activities of the inventory taker complies with good administrative practice and is also a sign of elementary courtesy and respect. At the same time, dignified treatment of the owner creates a premise that the owner understands the actions of the state. The court has also considered it important that landowners should be informed when the habitat of a protected species is found on their property and entered in the register (Supreme Court Administrative Law Chamber judgment of 4 December 2023, case No 3-21-552, para. 22.2). This is important so that a person does not feel like an object of administrative proceedings.

The state may not act behind a person's back, but this is exactly how the state's actions may seem to a person if the state sends an inventory taker to record the natural values on the plot, but fails to notify the owner (see the opinion on "Notifying a landowner about a nature inventory to be undertaken on their land").

Protection of rare species

A petition received by the Chancellor of Justice drew attention to an emerging practice of determining habitats of protected species (e.g. the eagle owl) solely on the basis of claims that the sound of a representative of the species was heard there. This means that a species protection site is formed in a place where the voice of a protected bird is said to have been heard a couple of times, but the bird's nest has not been identified. There is also no evidence (recordings) allowing subsequent verification of occurrence of the bird song (sound) and identification of the place and time of the song (sound).

This situation raises the question whether protection of property is guaranteed in such a procedure and how the lawfulness of the state's conduct can be verified in retrospect. In order to protect a natural value, a restriction on property can be imposed if that natural value is actually located on a person's land. To do this, the state needs relevant, reliable and verifiable evidence of the existence of that natural value. This will help to prevent arbitrary decisions that lead to unnecessary and unlawful restrictions on the right to property.

Arbitrary restriction of the right to property is contrary to §§ 11, 14, 19 and 32 of the Estonian Constitution. Nor do the provisions of the Constitution expressly relating to protection of the environment – §§ 5 and 53 of the Constitution – state that it is appropriate to impose unjustified restrictions on property in order to protect the environment. The Constitution protects different values, all of which are equally important, so that protection of property must take into account the requirements of environmental protection, while protection of the environment must take into account protection of property.

All known habitats of category I species (e.g. the eagle owl) must certainly be protected. The existence of verifiable and reliable evidence gives certainty to both the landowner and the state itself, because the state must also be ready to purchase private land with restrictions from a person (§ 20 Nature Conservation Act). If the protected species is not actually located on the property, then this expense would be unnecessary and unfounded. At the same time, imposition of a restriction on property must be verifiable both in the form of administrative self-control and judicial review. In order for the court to be able to assess the substance of the activities of a state agency and to ascertain its legality, it is first necessary to collect evidence confirming the existence of the protected species, and the evidence must be reproducible and verifiable in retrospect.

The Chancellor of Justice made a recommendation to the Environmental Board, asking that in imposing property restrictions for purposes of nature protection, evidence of the particular natural value be collected and presented in a reproducible and verifiable form. If the property restriction turns out to be unlawful, it will reduce the credibility of the state in people's eyes and may result in the state being obliged to compensate for damage.

The right to hunt

The chancellor of Justice was contacted by a landowner with a complaint that although they had banned hunting on their land, hunting still continued there, including with motor vehicles and without advance notice. The landowner was worried because they did not feel safe on their property.

The landowner asked the Environmental Board to initiate surveillance of the activities of the local hunting society as it had transgressed the landowner's ban. The Environmental Board explained to the landowner that supervision would not be initiated because a landowner may not prohibit hunting if the purpose of hunting is to contain a disease spread by game (§ 25(3)

clause 3 Hunting Act). The Board also advised the landowner to address their concerns to the local hunting society.

Hunting must be lawful. This means that in order to contain a disease spread by game, the Environmental Board must first establish a hunting procedure that ensures effective prevention of a disease but also takes into account a landowner's property rights. Restrictions on landowners must be proportionate and hunting must be safe. In addition, in the course of state supervision, the Environmental Board must ascertain whether hunting on lands with a hunting ban is safe for people staying there (see the opinion on "Hunting on land with a hunting ban").

Drinking water quality

The Chancellor of Justice has received several petitions indicating that people do not have access to clean drinking water. At the same time, there is no information that these people have been left without clean drinking water due to their own negligence or inaction.

Under § 88 of the Water Act, rural municipalities and cities must organise access to clean drinking water on their territory. That is, if for some reason residents do not have drinking water, the local authority will have to resolve this problem. Among other things, a city or rural municipality must identify the cause of the problem and eliminate it. Residents must also be informed about other ways of obtaining drinking water if clean drinking water cannot be obtained from a tap or a well. With these amendments to § 88 of the Water Act, which entered into force on 17 February 2023, Estonia transposed the provisions of Article 16 of Directive (EU) 2020/21841 of the European Parliament and of the Council (hereinafter: Drinking Water Directive).

The explanatory memorandum to the Draft Act amending the Water Act states that the aim is to reduce the health and environmental risks related to drinking water, optimise the costs of drinking water treatment and ensure safe drinking water for everyone. It is very important that a local authority implement appropriate measures, if necessary, to ensure that drinking water is also more accessible to people in vulnerable situations. Where necessary, a public drinking water abstraction point must be set up, taking into account local circumstances (e.g. in winter, water may freeze in an outdoor drinking water abstraction unit).

Access to safe drinking water is directly linked to the right to health. One of the objectives of the Drinking Water Directive is also protection of human health (see the opinions on "Access to clean drinking water"; "Access to clean drinking water in Võõpsu small town"

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On-site wastewater treatment rules

Compliance with the requirements for on-site wastewater treatment is essential, as failure to comply with these requirements may result in contamination of groundwater, which in turn may jeopardise availability of clean drinking water.

Under § 104 of the Water Act, every city and rural municipality must establish rules for on-site wastewater treatment. These rules must address cases where wastewater from a property is not discharged into the public sewerage system.

Unfortunately, the law does not lay down sufficiently precise guidelines and conditions as to what cities and rural municipalities should address in their regulations. Thus, the Ministry of the Environment once drew up model rules, based on which many local authorities have established their own regulations. However, these model rules partly contravened the law and contained conditions that cannot be lawfully met. For example, they contained a requirement that the provider of a discharge service must be entered in the register of economic activities, even though no such requirement is laid down by any law and it is not possible for businesses to comply with it. It is to be hoped that wastewater collection tanks and dry toilets will still be emptied in these municipalities without endangering the environment.

Requirements established in a city or rural municipality regulation must have a legal basis and the regulation may not contradict the law (§ 154(1) and § 3 of the Constitution). The legal basis of a regulation cannot be replaced by explanations and recommendations given by the Ministry, especially if these are not based on the law.

The Chancellor of Justice has occasionally drawn the attention of several local authorities to the need to bring their regulations into line with the law (see memorandums to Viimsi rural municipality, Rapla rural municipality, Räpina rural municipality).

Power outages

The supply of electricity is inextricably linked to our way of life; the exercise of our fundamental rights depends on its existence, as well as the work of companies, and oftenalso health, and sometimes life. The Electricity Market Act also sets the goal of having aneffective electricity supply that meets people's needs.

During the reporting year, the Chancellor of Justice received several petitions regarding large-scale, frequent and prolonged power outages. The main complaints were about the activities of the network operator Elektrilevi OÜ.

The network operator operates on a private basis; its activities are regulated by law and are supervised by several authorities. The Chancellor of Justice can check whether legislation is sufficient and whether laws are complied with, including whether state authorities are making sufficient efforts to achieve the objectives laid down in the law. The Chancellor addressed this issue in a memorandum sent to the Ministry of Climate, the Competition Authority and the Consumer Protection and Technical Regulatory Authority.

Power outages are not caused, and their rapid elimination is not hampered, by poor or inadequate legal space. The legislation contains both requirements and options, careful observance of which can reduce the risk of power outages and eliminate faults faster. The problem is, above all, that compliance with the requirements of legislation requires more money than the network operator receives from the network fee.

Power outages were mostly caused by damage to power lines through storm winds or heavy snowfall, but preparedness to quickly eliminate failures was absent, as the faults occurred in many places at the same time. It can be argued that if the power grid were more weatherproof and if the line corridors of power lines were maintained so that trees growing in or near the line corridor would not threaten the lines, then fewer power outages would occur and the lines could be restored faster. It is necessary to invest in construction and maintenance of a more weather-resistant network and in the ability to repair faults.

Maintenance of the electricity network and development of a network service that meets the needs of consumers are financed from the network fee. The network fee can be increased only with permission of the Competition Authority.