

REPORT
OF THE FINNISH
CHANCELLOR OF JUSTICE
2003

SUMMARY



HELSINKI 2004

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ISSN 1456-4998

EDITA PRIMA OY, HELSINKI 2004

Foreword

This is a summary of the Annual Report 2003 of the Finnish Chancellor of Justice. It follows the basic structure of the official report. In addition, short sections have been included in the summary so as to introduce the foreign reader to the Finnish system of governance and the history of the institution of the Chancellor of Justice, as well as to present some further clarifications. These sections do not appear in the official report, which was presented to the Parliament and to the Government on September 7th, 2004.

According to the Constitution, the Chancellor of Justice shall ensure that civil servants and other persons performing a public task obey the law and fulfil their obligations. This means that matters concerning the activities of public authorities and officials fall under his supervision. The Chancellor of Justice is also entrusted with the task of supervising the legality of the actions of the Government, as well as advocates (members of the Bar). The Chancellor of Justice shall, upon request, provide the President of the Republic, the Government and the Ministries with information and opinions on legal issues. The Chancellor of Justice and the Parliamentary Ombudsman, as an arrival from the 1920s to Finnish supervision of legality, have largely parallel functions and authority as supervisors of legality.

During the year under review, the number of complaints received held quite steady when compared to the previous year. The percentage of actions taken rose, and the number of matters that were decided was at a relatively high level. More statistics and other current information appear below in this summary.

The Chancellor of Justice during the year under review was Mr Paavo Nikula, Doctor of Laws (h.c.). The Deputy Chancellor of Justice was Mr Jaakko Jonkka, Doctor of Laws. Mr Nils Wirtanen, Master of Laws, served as the Secretary General and Substitute of the Deputy Chancellor of Justice.

We hope that this summary serves the reader as a presentation of the basic duties of the Chancellor of Justice, as well as provides the reader with a view of the activities that the Office of the Chancellor of Justice performed during the year under review.

Helsinki, November 29th, 2004


Paavo Nikula
Chancellor of Justice


Nils Wirtanen
Secretary General

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1 Overview of the activities of the Office of the Chancellor of Justice

1.1 Main duties

The Constitution Act of Finland guarantees the Chancellor of Justice's independent position as an overseer of governmental legality. It is the Chancellor's duty to supervise and monitor the legality of the actions of the Government, the President of the Republic and public officials. This duty encompasses the oversight of the legality of the actions of courts of law. The Chancellor of Justice also monitors the implementation of fundamental and human rights.

Legality supervision includes monitoring the legality of the actions of the Government and the President of the Republic, as well as issuing opinions to the President, the Government, and the ministries. A fundamental part of legality supervision is the investigating of complaints lodged by citizens against public authorities. Reviewing procedures by courts of law is yet another of the Chancellor's duties. The Chancellor of Justice can also launch investigations on his own initiative. News reports in the media or alleged incidents of unlawfulness, for example, may give rise to an investigation. On the basis of the Advocates Act, the Chancellor of Justice also oversees the activities of advocates.

In response to a complaint, the Chancellor of Justice can issue a reprimand to an official or body. In many cases he issues instructions on proper procedure, for future reference. In more serious cases, he can order charges to be brought against the official in question. The Chancellor has no jurisdiction to alter the decisions of officials on the basis of complaints, or to award damages. He can, however, submit a proposal for a judgement or decision to be annulled. The Chancellor's rulings are not subject to appeal.

Where authorities or officials are accused of misconduct in office, the Chancellor acts as a special prosecutor. The other functions of the highest prosecuting authority rest with the Prosecutor General.

The Chancellor of Justice is appointed by the President of the Republic. In the performance of his duties the Chancellor is assisted by the Deputy Chancellor of Justice, who also deputises for the Chancellor when necessary. The Deputy Chancellor of Justice, in turn, has a substitute to stand in for him in his absence. The division of duties between the Chancellor of Justice and the Deputy Chancellor of Justice is laid out in the Act on the Chancellor of Justice and the

Rules of Procedure established for the Office of the Chancellor of Justice. The Chancellor acts as the head of Office and decides on cases concerning the supervision of the Government and matters of general importance. The Deputy Chancellor investigates complaints not dealt with by the Chancellor and matters concerning the reviewing of sentences imposed by courts of law.

The duties and responsibilities of the Chancellor of Justice are prescribed in the Constitution of Finland, particularly chapter 10 section 108 thereof (see Appendix 1), and in the Act on the Chancellor of Justice of the Government.

1.2 Supervision of the Government

The Chancellor of Justice attends Government plenary sessions and Presidential sessions, where matters are put forward to the President of the Republic. The Chancellor attends these sessions in order to supervise the observance of correct legal procedure and current legal provisions. However, his presence at the sessions is not a juridical precondition for decision-making by the Government or the President of the Republic. In practice, the Chancellor of Justice or the Deputy Chancellor (or his substitute) is always present at the sessions.

Supervision of the Government is largely preventive in nature: the Chancellor of Justice reviews Government Bills, other proposed resolutions, and related appendices before they are presented to the Government and the President of the Republic. The Chancellor also reviews the memoranda submitted by the Government to the Parliament in matters related to the European Union.

The Department for Government Affairs is the unit responsible for the revision of matters that will be dealt with by the Government.

1.3 Issuing opinions

Issuing opinions is an integral part of supervising the actions of the Government. According to the Constitution, the Chancellor of Justice must supply information on legal issues and provide the President of the Republic and the Government with information and opinions. Because the Government represents not only the collegiate body of the Cabinet but also the individual ministries, it is usually the ministries responsible for the preparation of any given proposal that request the Chancellor for an opinion.

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

1.4 Supervision of fundamental and human rights

It is the Chancellor of Justice's duty to ensure that fundamental and human rights are observed. This duty is fulfilled through the supervision of Government actions and the handling of complaints, and by initiating investigations. The grounds for decisions on complaints embody, when pertinent, references to the specific sections of the Constitution that concern fundamental rights and liberties.

International human rights conventions binding on Finland must also be taken into account when investigating matters that fall under the Chancellor's purview. The United Nations' International Covenant on Civil and Political Rights and the European Convention on Human Rights are two examples of such binding conventions. Finland has ratified some forty international human rights conventions. Attention must also be paid to the regulations of the Charter of Fundamental rights of the European Union.

1.5 Investigation of complaints

Anyone who feels that an authority, public official or body has acted in a manner that violates his rights, or that an advocate has neglected his responsibilities, may lodge a complaint with the Chancellor of Justice (see Appendices 2 and 3).

There are no restrictions on who can lodge complaints with the Chancellor of Justice. The complainant may be an individual person, a corporation, or an organisation irrespective of nationality. The complainant need not have a legal standing in the matter. The lodging of a complaint is free of charge to the complainant. Complaints should generally be lodged in one of Finland's official languages, that is Finnish or Swedish, but complaints written in other languages may also be considered, within the limits of the Office's resources.

Complaints will be investigated if they concern the activities of persons or bodies subject to the Chancellor's supervisory authority. There must also be justifiable grounds to suspect illegal action or other misconduct. During the investigation the Chancellor of Justice is entitled to approach any authority for information and documents, including material classified as secret.

If unlawful action or other misconduct is found to have taken place, the Chancellor will take appropriate action. Depending on the case, this action may consist of issuing a reprimand or bringing charges for misconduct in office. If the misconduct is minor in nature or some controversy has been detected, the Chancellor may issue an authoritative statement on what is considered proper conduct according to law or the principles of good governance. If public

interest so requires, the Chancellor of Justice must, where necessary, take steps to ensure that the incorrect decision or action is rectified.

As a rule, decisions on complaints are given in an official document written in Finnish or Swedish. In 2003 the Chancellor of Justice received 1,454 complaints from private citizens. The development in the number of complaints received and decided during the past decade is illustrated in figure 1 below.

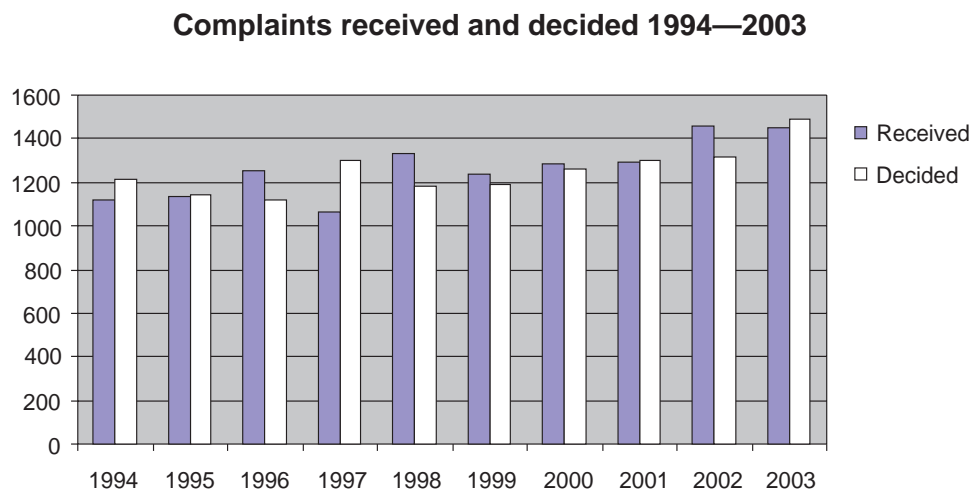


Figure 1

The Chancellor of Justice will not investigate a complaint lodged more than five years after an alleged infringement has taken place, unless there are special grounds for doing so. This time limit is, however, not absolute, which makes it possible to investigate a case of exceptional gravity or importance irrespective of the time that has elapsed between the infringement and the lodging of the complaint. In 2003 the Chancellor dismissed 28 complaints on the basis of the time limitation.

The Office of the Chancellor of Justice also receives numerous telephone and E-mail enquiries from private citizens on a variety of matters that either concern them personally or have sparked wider public interest. Information is provided on the scope of the Chancellor's authority, on the formalities related to the filing and processing of complaints, or if the matter falls outside the Chancellor's purview, the correct authority or instance to approach. The Chancellor of Justice does not offer advice or assistance on points of law or provide other substantive legal information.

1.6 Review of sentences

According to the Act on the Chancellor of Justice, the Office of the Chancellor of Justice has the right to review sentences imposed by courts of law. For this purpose, the Office receives documents concerning decisions on sentences and their enforcement. Actions taken on the basis of these documents are described in the Chancellor of Justice's annual report. Any relevant errors detected in the sentences are referred to the courts for rectification. A total of 6,672 notifications on sentences were submitted for review during year 2003 and an investigation was initiated on 135 of these.

1.7 Supervision of the Bar

The Chancellor of Justice's duty to supervise the actions of advocates is based on the Advocates Act. While it is the duty of the Finnish Bar Association to take any necessary disciplinary action against its members, the Chancellor of Justice is responsible for checking a) the decisions made by the Board of the Bar Association concerning the supervision of its members and b) the decisions on disciplinary action made by the Bar Association's Disciplinary Board. The Chancellor also decides whether to exercise the right to have a decision on a disciplinary matter examined in a court of law. The Chancellor of Justice investigates complaints on the actions of advocates, inclusive of public legal aid counsels, and may refer these matters to the Bar Association.

1.8 Information and communication services

The Office has a statutory Information Plan, which is approved by the Chancellor of Justice. The Plan defines the general principles, goals and practical means of interactive communication with the media and the public.

According to the Plan, the focus concerning information services is on openness, reliability and quality of service. Information seekers have to be served equally and effectively. Adequate information has to be available also in Swedish and Sami, which are the languages of the main two linguistic minorities of the country.

Queries about the Office are responded to and more general information is given on the Office's website (www.chancellorofjustice.fi). The website also contains a complaint form and instructions on how to lodge a complaint as well as press releases, which are distributed every year to a large segment of media, NGOs and the general public.

According to the Constitution, the Chancellor of Justice must submit an annual report to the Parliament and the Government on his activities concerning

legality supervision. The report includes descriptions of opinions and proposals issued and brief descriptions of cases that have led to action by the Office. It also contains general reviews of the complaints received by the Chancellor of Justice, statistical data, and information on measures of general significance that the Chancellor of Justice has undertaken during the year under review.

The report is published in Finnish and Swedish. It is presented yearly to the Parliament and the Government when the Parliament opens its autumn term, usually in early September. An English summary of the report - that the reader is having in his or her hands now - is also published and made available to the public. The reports can be found on the Office's website.

Accounts of major decisions taken in the Office are sent monthly to Finlex, the comprehensive Internet database of Finnish legislation (www.finlex.fi). This is maintained by the Finnish Ministry of Justice and also includes a database of descriptions of decisions by the Chancellor of Justice. The database is primarily in Finnish and Swedish, but also includes translations of Finnish legislation into other languages. The database is open to all and free of charge. The Office also produces information for several web portals that gather information on public services.

In addition to the above co-operation at the national level, the Office also co-operates with the European Ombudsman in the provision of information over the Internet.

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

Finnish public officials are not only supervised by the Chancellor of Justice but also by the Parliamentary Ombudsman. The duties of the two authorities differ mainly in that the activities of the Government and the advocates fall under the Chancellor of Justice's supervisory authority, while the Defence Forces, prisons, and other closed institutions belong to the Ombudsman's supervisory field.

The division of duties between the Chancellor of Justice and the Parliamentary Ombudsman is laid out in the Act on the Division of Duties Between the Chancellor of Justice and the Parliamentary Ombudsman. The Act contains a list of matters to be referred to the Parliamentary Ombudsman, unless the Chancellor deems that there is some specific reason for investigating the matter at the Office of the Chancellor of Justice.

Generally the Chancellor of Justice refers the following types of matters to the Parliamentary Ombudsman: 1) Cases concerning the Defence Forces and those employed by the army or the Frontier Guard; 2) Cases related to apprehension,

arrest, imprisonment on remand, or a travel ban related to a criminal investigation, as well as cases involving putting a person under custody or other such deprivation of liberty; and 3) Cases related to prisons or other institutions to which a person has been committed against his will. Complaints lodged by prisoners or other people in confinement are also usually referred to the Parliamentary Ombudsman.

On the basis of the aforementioned Act, the two authorities may agree for a particular case to be referred to either one or the other in order to secure speedier processing of the matter at hand, or for some other special reason.

In 2003 the Parliamentary Ombudsman received 41 complaints by referral from the Office of the Chancellor of Justice. The Ombudsman in turn referred 11 complaints to the Chancellor of Justice.

If both authorities have received the same complaint, only one of them will put the matter under investigation.

In addition to the Chancellor and the Ombudsman, there are a number of specialised authorities in Finland who perform more limited tasks in the field of legality supervision. These include the Ombudsman for Equality, the Consumer Ombudsman, the Data Protection Ombudsman, the Ombudsman for Minorities, and the Bankruptcy Supervisor.

1.10 The Office of the Chancellor of Justice

The Office of the Chancellor of Justice comprises three departments: the Department for Government Affairs, the Department for Legal Supervision, and the Administrative Unit. The Secretary General of the Office heads the Administrative Unit, while the other two departments are both headed by a Referendary Counsellor. The Department for Government Affairs deals with matters concerning the supervision of the Government and prepares opinions related to this function. This department is also responsible for the supervision of the Bar and public legal aid counsels, as well as for international matters and issues related to the preparation of EU affairs at the national level. The Department for Legal Supervision is responsible for the investigation of complaints, the supervision of courts of law, and other legality supervision. The Administrative Unit deals with internal administration, financial affairs, training, information services, and international co-operation.

At the end of the year under review, the Office had a staff of 35 officials, eighteen of whom (in addition to the Chancellor of Justice and the Deputy Chancellor of Justice) were Masters of Laws, as required by their duties.

In the State budget, the Office was allocated a sum of 2,575 000 EUR.

1.11 On-site inspections

The Chancellor or Justice is authorised to inspect authorities, government agencies, and other instances that fall within his supervisory jurisdiction. Consequently, legality supervision often takes the form of visits to central and local government offices to inspect the offices' activities. These visits also offer the authorities a chance to inform the Chancellor about the conditions under which they perform their functions and/or any matters they may find problematic.

During the reporting year, the Chancellor of Justice carried out on-site inspections at the Insurance Supervisory Authority, the Arts Council of Finland, the Finnish Road Administration, the Office of the Bankruptcy Ombudsman, and the Financial Supervision Authority. At the Insurance Supervisory Authority, the inspection included an examination of the operations and organisation of the Authority, which was established in 1999, as well as a discussion of topical issues in insurance supervision. The inspection of the Arts Council covered its main operations, organisation, modes of sponsorship, and resources, as well as the legislation pertaining to the Council. Representatives of the Road Administration presented the administrative reform of road construction and maintenance, as well as the new organisation of the Administration. The main topic of the discussions at the Office of the Bankruptcy Ombudsman was the effect that the new Bankruptcy Act, whose entry into force was imminent at the time, would have on the operations of the Office. At the Financial Supervision Authority, the Chancellor of Justice was presented with topical information and certain practical problems relating to the supervision carried out by the Authority, to its competencies under the new legislation, and to its decision-making procedures.

The Chancellor of Justice also gave during the year several speeches and presentations in seminars or events arranged by various organisations or public authorities. The topics covered by the Chancellor ranged from the realisation of basic rights to other issues of justice within the scope of his supervision of legality.

The Deputy Chancellor of Justice carried out on-site inspections at many agencies within the State district administration. The Helsinki Criminal Police, the Mikkeli District Police, the Kouvola District Police and the Hamina District Police were among those inspected. These inspections covered the quality and promptness of criminal investigations, the trends in public order and security within the relevant district, the crime situation and clear-up rates, the monitoring that the heads of pre-trial investigation carry out as regards individual cases, the co-operation of the police with various stakeholder groups, as well as the availability of police services in different parts of the district.

He visited also the District Courts of Kouvola and Forssa, as well as the Courts of Appeal of Kouvola and Eastern Finland (in Kuopio). The discussions with the courts of first instance pertained to civil and criminal procedure and to the use of coercive measures. The visits to the Courts of Appeal concentrated on the supervision of the courts of first instance by the appellate courts, caseloads, and the preparation of cases and the problems encountered therein. In addition, one of the inspection themes of the Deputy Chancellor of Justice was to examine the operations and workload of a number of regional Administrative Courts.

On-site inspections were carried out at the Legal Register Centre, the Ministry of the Interior's Supervision Unit of the Private Security Sector, as well as the Eastern Customs District.

The Deputy Chancellor of Justice carried out inspections at the local authorities of the Town of Imatra and the Municipality of Tammela. The central theme of the inspection carried out at the State Provincial Office of Eastern Finland was to examine the supervision of legality that the Office carries out in various sectors in relation to the State district authorities, as well as the observations made in this context. In addition, the Deputy Chancellor of Justice visited the Public Legal Aid Office of Forssa.

1.12 International and other connections

Visits abroad

Co-operation with the Office of the Chancellor of Justice of Estonia continued in the reporting year. Mr Paavo Nikula, Chancellor of Justice, Mr Nils Wirtanen, Secretary General, and Mr Jorma Snellman, Referendary Counselor, visited Estonia on 8-10 September 2003 on the invitation of Mr Allar Jõks, Chancellor of Justice of Estonia. The two Chancellors and their entourages met with Mr Arnold Rüütel, President of Estonia, and with Mr Villu Reiljan, Minister of the Environment. The discussion between the Chancellors pertained to the operations of their offices, as well as to the effects of EU membership on the work of the offices. The Finnish experiences of membership and the challenges of the possible future membership of Estonia were discussed. Environmental issues were an important topic of conversation.

On 11-12 June 2003 the Chancellor of Justice and a number of staff from his office participated in a Conference of the Nordic and Baltic Ombudsmen and Chancellors of Justice. The theme of the first conference day was the role of the Ombudsman/Chancellor in the supervision of the police. Chancellor Nikula spoke on *Supervision of legality, a guideline to law enforcement - international aspect*. The theme of the second day was the role of the Ombudsman/Chancellor on the realisation of the rights of the child. The Finnish remarks on this

theme were presented by Ms Riitta-Leena Paunio, Parliamentary Ombudsman.

Chancellor Nikula attended the inauguration of the Mr Nikiforos Diamandouros as the European Ombudsman on 31 March 2003 in Luxembourg.

On 24-25 November 2003, Chancellor Nikula participated in a seminar trip to Stockholm with the Consultative Committee of State Employment and Personnel Policies.

Ms Jaana Hemminki, Legal Advisor, represented the Office at a Conference arranged by the Committee of Ministers of the Council of Europe on the topic "Fundamental Rights in a Pluralist Society" in The Hague on 20-21 November 2003.

Visitors to the Office of the Chancellor of Justice

- 1) A South Korean television crew interviewed Chancellor Nikula on 9 April 2003 with questions on the low level of corruption in Finland.
- 2) Members of the Association of Finnish Crime and Court Journalists visited the Office of the Chancellor of Justice on 10 April 2003. The representatives of the Office presented topical issues in the supervision of legality, followed by a discussion and exchange of opinions.
- 3) The Petitions Committee of the Saxony State Parliament visited the Office of the Chancellor of Justice on 27 May 2003. The visitors were provided with information on the operations of the Office in general and on the procedure relating to complaints in particular.
- 4) The Guatemalan Human Rights Ombudsman, Mr Sergio Morales, visited the Office of the Chancellor of Justice on 2 June 2003.
- 5) Mr Göran Lambertz, the Swedish Chancellor of Justice, with Messrs Håkan Rustand and Daniel Kjellgren, Heads of Section, and Ms Kirsi Laakso Utvik, Associate Judge of Appeal, visited the Office of the Chancellor of Justice on 3 June 2003. The discussions touched on the competencies and working practices of the two Offices and on the possible avenues of cooperation with the Baltic states.
- 6) On 19 August 2003, the former Foreign and Justice Minister of Peru, Dr Diego Garcia-Saya, met with the Chancellor of Justice at the Office.
- 7) Mr P. Nikiforos Diamandouros, the European Ombudsman, visited the Office of the Chancellor of Justice on 8 September 2003 and gave a talk about his work and duties to the Office staff.
- 8) During its visit to Finland, the Council of Europe Anti-Torture Committee (CPT) heard representatives of the Office on 9 September 2003.
- 9) On 16 October 2003, a group of Macedonian lawyers were given a presentation on the principles of good governance and the Finnish legislation on

access to information and on the disqualification of officials. The meeting took place in the context of a training programme for the prevention of corruption in the Western Balkans.

2 The Chancellor of Justice and the Government

2.1 General

The Chancellor of Justice's other main responsibility in addition to the handling of complaints is to supervise the legality of decision-making by the President of the Republic and the Government. Supervision of the Government requires the Chancellor to examine in advance the presentation agendas of Bills and proposals to be submitted to plenary sessions and presidential sessions. Examining these proposals and their grounds often requires talks with officials at various ministries and the issuing of opinions on the legal issues involved. This examination deals solely with legal questions and not with the expediency or political aspects of the proposals.

In 2003, 63 plenary sessions of the Government (72 in 2002) handled 1,588 (1,730) matters and the President of the Republic made 688 (832) decisions at 40 (43) presidential sessions. Supervising the actions of the Government thus claimed a large share of the weekly workload of the Chancellor of Justice and his assistants. Figure 2 shows the number of Government Bills and EU issues handled during the past three years.

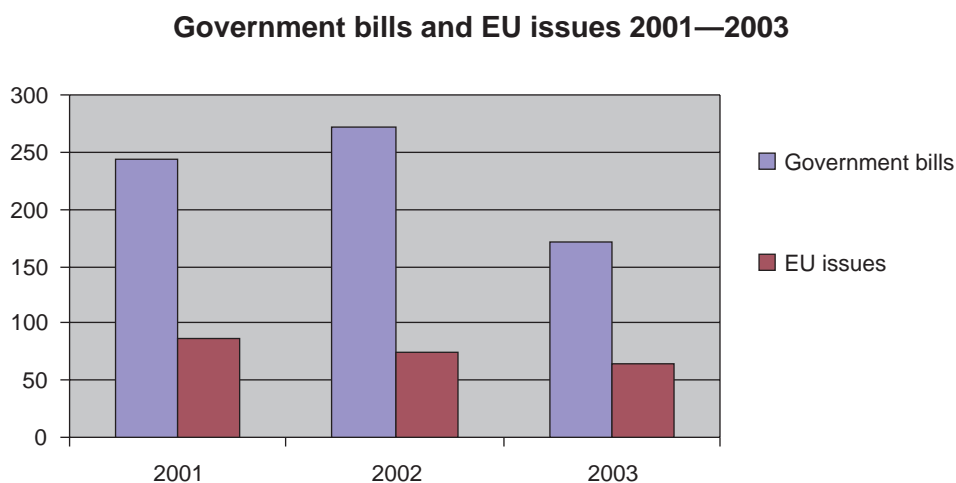


Figure 2

Among matters presented to the Government for decision are the Government's notices, accounts and reports to Parliament, legislative decisions of the Government and certain official appointments. Among matters presented to the President of the Republic for decision are Government Bills to Parliament,

ratification of Acts of Parliament, issuance of Executive Decrees, the most important appointments to public office, matters relating to international co-operation and decisions concerning pardons.

In the event that the Government as a whole or a member of the Government violate the law in the course of performing their duties, the Chancellor of Justice is obliged to call attention to this and to specify the nature of the violation. If his observation is ignored, he must have it recorded in the Government records.

A criminal investigation into the legality of an official act by a member of the Government can be initiated by the Constitutional Law Committee of Parliament, for example in response to a comment by the Chancellor of Justice. The decision to indict a member of the Government in the High Court of Impeachment is taken by Parliament. Indictments are prosecuted by the Prosecutor General.

2.2 Supervision of the legality of Government actions

The fundamental provision on the Chancellor's duties is section 108 of the Constitution, according to which it is the responsibility of the Chancellor of Justice to oversee the lawfulness of the official acts of the Government and the President of the Republic.

The constitutional provisions governing decision-making by the President of the Republic and the Government also have implications for the Chancellor of Justice's work in supervising the legality of the Government's actions. The President takes decisions at meetings of the Government, but apart from a few exceptions always on the basis of a proposal presented by the Government. The President is required to co-operate with the Government, but not necessarily to share its opinion. If the President does not decide in accordance with the Government's proposal, the matter is returned to the Government for further preparation. The idea is that this will lead either to a joint decision or to one or other of the parties deferring to the position of the other party. If agreement cannot be reached, the President may decide the matter however she considers most appropriate within the limits of her discretionary powers, irrespective of the Government's proposed solution. During the year under review there were no such situations where the President would not have made decision according to the proposed solution.

The recent constitutional reform has increased the parliamentary element in presidential decision-making by strengthening the role of the Government, responsible as it is to Parliament, in the procedure for presidential decision-making. Similar to this in its basic aims is the provision governing authority in international relations and international affairs, according to which foreign

policy is directed by the President of the Republic in co-operation with the Government. The tying of decision-making by the President to co-operation with the Government also has implications for the supervision of the legality of Government decision-making.

The President, the Government and the ministries can issue decrees only under authority specifically provided in the Constitution or in some other Act of Parliament. The authority to issue decrees is also limited by the principle that the fundamental principles of an individual's rights and duties can only be laid down by Act of Parliament.

2.3 Reviewing presentation agendas

The aim of checking the presentation agendas submitted by the Government is to eliminate any factual or formal errors and deficiencies. For this reason, rapporteurs from the various ministries may have to be contacted several times a week. Government presentation agendas are being sent to the Chancellor of Justice for advance comment before their presentation.

In the case of Government Bills to be submitted to Parliament, the Chancellor of Justice focuses on the order of enactment, typically where the Bills concern the Constitution or constitutional rights. In some cases, the Chancellor has supplemented a Government Bill with a recommendation that the Government request an opinion from the Constitutional Law Committee of Parliament. Implementing provisions, and problems relating to the retroactive effect of new laws have also drawn the attention of the Chancellor of Justice.

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

The Chancellor of Justice also checks the lists of Parliament's replies to Government Bills to ensure that these have been submitted to the Government within the prescribed time and that they include Parliament's orders on specific action to be taken by the Government once the Bills passed by Parliament are ratified and published as laws.

The purpose of advance checks on draft decrees is to ensure that the new provisions will not conflict with existing laws. In the case of draft decrees or Government decisions, the Chancellor of Justice also pays close attention to the provisions concerning delegation.

When examining appointments to higher governmental posts, the Chancellor checks the credentials of all the applicants in order to ensure that they have been

presented on similar grounds and that the process of finding the most competent applicant has been conducted in the proper manner. Comparison of merit is based on the official competence requirements of an office or other official position and on the job description, and is carried out by establishing the level of education and work experience the candidate must have in order to manage the duties of the office.

According to the State Civil Servants Act, potential appointees to certain high positions are required to enter a declaration of any commitments that may be of significance for an assessment of their qualifications for performing the duties concerned. The Chancellor of Justice requires that notification of such commitments and an affirmation that they do not affect the candidate's suitability for the position be attached to the presentation report. In some cases, the Chancellor may require candidates to relinquish their commitments if they could endanger impartiality.

According to the Act on Equality Between Women and Men, the minimum percentages of men and women on government committees, advisory boards and other corresponding bodies must be 40, unless special reasons require otherwise. Observance of this principle of quotas is a constantly topical issue, and in most cases an increase in the percentage of women on committees and other bodies is ordered.

Another matter requiring an opinion from the Chancellor of Justice has often been the disqualification of a minister from involvement in the making of a specific decision on the grounds of potential partiality.

2.4 Matters related to EU membership

Matters related to the European Union often concern the relationship between the Government and Parliament and safeguarding Parliament's influence on legislation. All proposals for Community regulations and treaties must be duly submitted to Parliament without delay, and any memorandums accompanying these proposals must be clear, unambiguous and state the effects of the proposed provisions on Finnish legislation. Memorandums must also include the Government's opinions on the proposals.

In the case of EU treaties, a memorandum must state whether the ratification of a treaty requires the approval of Parliament. If it does, the memorandum must also state that the treaty will be brought before Parliament in the same manner as all other international treaties.

In the case of certain national legislative proposals, their relationship to Community law was investigated. In some cases, the Chancellor of Justice

demanded the inclusion of more precise information on this aspect in the memorandums accompanying the proposals.

2.5 Written opinions and proposals

In 2003, the Chancellor of Justice and the Deputy Chancellor of Justice issued opinions and proposals on the following:

- 1) Presentation procedure in the procurement of the consent of the Åland Parliament
- 2) Company directorship of a Counsellor of Legislation at the Ministry of Justice
- 3) Appointment of additional expert members to the Market Court
- 4) Reform of the provisions governing membership in Polytechnic student unions
- 5) Competence of a Minister in a caretaker government in the AGM of a State-controlled enterprise
- 6) Decision-making procedure relating to the ownership and control arrangements in the petrochemicals business of Fortum Plc.
- 7) Disqualification of the Minister of Health and Social Services from the allocation of lottery surplus funds
- 8) Appointment of the Director of the Social Insurance Institution on a temporary basis
- 9) Decree of the Ministry of Social Affairs and Health on the substitution of generic pharmaceuticals
- 10) Proposal for new instructions for the drafting of Government bills
- 11) Government resolution on the safeguarding of the interests vital to society
- 12) The competency of the Ministry of Finance to issue administrative orders on the IT administration of State authorities on the basis of the general competency of the Government and the provisions on the sector and tasks of the Ministry of Finance
- 13) Renewal of the Government Decision Support System (PTJ)
- 14) Authentic languages of signature of international treaties within the competence of the autonomous Åland Islands
- 15) The draft for an amendment of the Constitution of Finland and certain related legislation
- 16) Appointment of the Director of the Southwest Finland Prison
- 17) Assessment of the applicants for the position of Director-General of the National Board of Education
- 18) Jurisdictional arrangements between the Occupational Safety Offices within the Occupational Safety Districts in certain cases
- 19) Declaration of outside interests by the director of an Occupational Safety District

3 Fundamental rights and human rights

3.1 *The constitutional bill of rights*

In the Finnish context, the term ‘fundamental rights’ refers to constitutional rights, or the equal rights of everyone as provided in the Constitution. In the legal hierarchy, the provisions on fundamental rights are superior to ordinary legislation. The aim of fundamental rights is, among other things, to safeguard the implementation of civil freedoms and legal protection.

The Constitution contains the following rights and freedoms:

- Equality
- The right to life, personal liberty and integrity
- The principle of legality in criminal cases
- Freedom of movement
- The right to privacy
- Freedom of religion and conscience
- Freedom of expression and the right of access to information
- Freedom of assembly and association
- Electoral and participation rights
- Property rights
- The right to education
- Linguistic (concerning Finnish and Swedish languages) and cultural rights
- The right to gainful employment and the right to pursue a business
- The right to social security
- Responsibility for the environment
- Legal safeguards
- Basic rights safeguards
- Basic rights in situations of emergency

The Constitution provides that the State and other public authorities must ensure the implementation of fundamental and human rights.

In connection with the last reform of the Constitution the provisions of the Constitution Act which define the Chancellor of Justice’s functions were amended to specifically include the duty to supervise the implementation of fundamental and human rights. The amendment does not extend the Chancellor of Justice’s supervisory functions, but emphasizes the importance of fundamental and human rights supervision as an integral element in this function. The same supervisory function was assigned to the Parliamentary Ombudsman.

In its report on the reform of fundamental rights, the Constitutional Law Committee of the Finnish Parliament took the view that it would be in accordance with the spirit of the reform that the highest guardians of the law should include specific sections on the implementation of fundamental and human rights in their annual reports.

3.2 Fundamental and human rights in the context of supervision

3.2.1 Introduction

Issues of fundamental rights and human rights arise in the work of the Chancellor of Justice both in the context of the general supervision of the legality of official action and in the specific supervision of the Government.

The Finnish system of fundamental rights has been organised in a manner compatible with Finland's international human rights obligations. As a result, issues of fundamental rights and human rights are intertwined in the Chancellor's supervision of legality. Hence, the supervision takes heed of how human rights issues have been dealt with and decided in the international arena. The most significant sources of law in this respect are the rulings of the European Court of Human Rights on the application of the provisions in the European Convention on Human Rights and Fundamental Freedoms (ECHR); the observance and consideration of these rulings put certain requirements both to the administration in general and to the supervision of legality.

One significant step taken in the European Union was the signature in Nice on 7 December 2000 of the European Charter of Fundamental Rights, a compilation of the civil, political, economic and social rights of EU citizens and others residing within the territory of the Union. With the failure of the negotiations for an EU constitution in the autumn of 2003, the precise legal status of the Charter remained during 2003 as of yet unsettled. Likewise, there have been no cases in the Chancellor's supervision of legality where there would have been a need to look at the relationship of national fundamental rights and the rights under the Charter.

3.2.2 Fundamental rights and human rights in the supervision of the Government

As regards the supervision of the Government, the same issues of fundamental rights and human rights arose during the reporting year as has been the case also earlier. Such issues include the selection of the correct level of norm, the existence and content of provisions on delegated powers, appeal prohibitions,

the retroactivity of legal provisions, the principle of legality in criminal law, equality, and the protection of property rights. It can be assumed that these same issues will be arising also in the future.

In practice, the issue of fundamental rights and human rights usually becomes evident when proposed legislation is being checked. There is a need to evaluate how the content and requirements of the fundamental rights laid down in the Constitution and the human rights obligations under international treaties have been taken into account in the drafting work.

In the scrutiny of the presentation agendas for the general session of the Government (or for the President of the Republic), attention has been paid on the sufficiency of detail in the description of the draft legislation's relationship to fundamental rights and human rights. If any doubt has arisen of the full and complete harmony of the proposal with the fundamental rights and human rights norms, it has normally been required that the proposal be supplemented with a statement to the effect that an opinion should be obtained also from the Constitutional Law Committee of the Parliament. The reason for this procedure is that the scrutiny of the presentation agendas for an entire session will normally have to be completed in just a few days, and there consequently will be no time to prepare a comprehensive report on the constitutionality of a proposed statute, which sometimes can be quite extensive.

The scrutiny of the agendas takes place virtually every week, and offers a fine opportunity to examine issues of practice and discretion relating to the enactment procedure. The general observation has been that Government bills for new legislation have as a rule contained a section on enactment procedure, where one has been necessary. With some exceptions, the various considerations relating to the choice of enactment procedure have been discussed in the bills in an appropriate manner.

In the scrutiny of draft Decrees of the Government or of the President of the Republic, the focus has been on the establishment of proper delegated powers under section 80 of the Constitution and on the prohibition to issue provisions by Decree in so far as these pertain to fundamental aspects of individual rights or obligations.

Another issue arising in the supervision of the Government is the realisation and safeguarding of fundamental rights in the decision-making processes pertaining to the preparation and adoption of EC legislation. The officials representing Finland in EC drafting work must remain aware also of the requirements of the Constitution of Finland. In the national implementation of EC law, not only the objectives of the EC norm, but also the safeguarding of fundamental rights and human rights must be taken appropriately into ac-

count. The supervision focuses on the requirements of EC law, the Finnish legal system and the legal protection of the individual.

3.2.3 Fundamental rights and human rights in the supervision of other authorities

In the supervision of public authorities and officials and others performing a public task, issues relating to the realisation of fundamental rights and human rights will normally arise in the context of complaints. The following section contains a number of the Chancellor of Justice's decisions, divided into categories, indicating positions taken e.g. on the fundamental rights issues of equality, fair trial, and good governance.

The fundamental rights and human rights cases show clearly that similar questions will arise time and again over the years. However, a fair number of different fundamental rights provisions have been involved. The conclusion that can be drawn from this is that the significance of fundamental rights provisions in political and societal decision-making - and not merely in the supervision of legality - will increase.

As before, the question of what constitutes good governance arose again in the reporting year. Complaints continue to be lodged for reason of cases being delayed in the authorities. The Chancellor's inspection visits have incorporated also an element of own-initiative research on case delays, conducted by way of spot checks.

Investigation rarely indicates the cause to be neglect on the part of the official concerned; most commonly it is simply a case of a pile up of business waiting to be attended to. This may be due to unnecessarily complicated processing arrangements or insufficient staffing levels at the authority in question.

The new Administrative Procedure Act, which entered into force in the beginning of 2004, was adopted during the reporting year. The objective of the Act is to achieve and promote good governance and access to justice in administrative matters. It is further the objective of the Act to promote the quality and effectiveness of administrative services.

3.3 Fundamental and human rights cases

This section contains short accounts of some decisions given in cases concerning or related to fundamental and human rights.

*Equality before the law***Railway passenger services and accessibility**

The complaint arose from the refusal of VR, the railway company, to let a wheelchair-bound person board a train, because the train lacked a so-called handicapped space.

As to jurisdiction, the Deputy Chancellor of Justice noted that VR Ltd, which is a company providing railway transport and related passenger services, was a private corporation. Under the Constitution, the supervisory authority of the Chancellor of Justice does not cover the supervision of private corporations. However, also such corporations can be entrusted with public tasks by statute.

It was noted in the decision that the Finnish Rail Administration, as the competent public authority in the sector, was empowered to issue instructions relating to the approval and use of rolling stock. The Administration was also deemed to be empowered to enforce these instructions. As regards the duties of the Chancellor of Justice, it was therefore justifiable, under the circumstances, to focus the supervision on whether this official task has been performed in an appropriate manner. Hence, the decision on the complaint turned on the evaluation of the activities and the duties of the Finnish Rail Administration.

In the decision, the Deputy Chancellor of Justice drew the attention of the Finnish Rail Administration to fundamental rights issues. It is important that the Administration monitor the compatibility of the facilities in the passenger cars operated by VR to the instructions in force, including the requirement that, as far as possible, handicapped passengers should be offered service equivalent to that offered to other passengers.

*Personal freedom and the right to privacy***Publication of CCTV pictures by the police**

The Office of the Chancellor of Justice began an own-initiative inquiry into a case where, according to the newspapers, a police district had opened an Internet website containing CCTV pictures of young persons suspected of criminal offences. The deputy chief of the police district had had the pictures removed from the web as soon as he became aware of them.

In the opinion of the Deputy Chancellor of Justice, the publication of such pictures was to be assessed in the light of Article 8 of the ECHR and of the right to privacy, as enshrined in section 10 of the Constitution. The Deputy Chancellor emphasised that the investigative measure was too drastic and that the

police had taken insufficient note of the principles of least harm, proportionality and sensitivity in a pre-trial investigation.

The Deputy Chancellor of Justice held that the conduct of the police had been ill-advised, but not outright illegal.

Due process in the courts and good governance

Hearing the public prosecutor in a trial based on a private prosecution

The Court of Appeal had dismissed a charge brought by a private individual against a public official as manifestly ill-founded; the public prosecutor had not been heard. The Deputy Chancellor of Justice noted in his decision that this procedure violated the basic principles of criminal proceedings in Finland. Under the legal system, the public prosecutor is the guardian of the interest of the society in that criminal liability be properly realised. The procedure adopted by the Court of Appeal deprived the public prosecutor, and hence the society at large, of the opportunity to comment on the conduct that was the subject-matter of the private prosecution. In this way, the public prosecutor was “sidelined” for good from the criminal proceedings in question. The Deputy Chancellor of Justice proposed to the Ministry of Justice that the legislation be clarified as regards the hearing of the public prosecutor in cases where the victim exercises his or her priority right to bring a private prosecution.

Search of premises in a law firm and seizure of property

In a decision on a complaint relating to a search of premises carried out in a law firm and to a seizure of property from the firm, the Deputy Chancellor of Justice noted that the interrelationship of the provisions on lawyer-client privilege in the Coercive Measures Act, the Code of Judicial Procedure and the Advocates Act was not altogether clear. The Deputy Chancellor considered this to be a difficult situation, as the purpose of lawyer-client privilege was to accord due respect to the confidential relationship between a legal counsel and his or her client. The Deputy Chancellor held further that the provisions of the Coercive Measures Act relating to a search of premises in a law firm did not meet the precision requirements of the ECHR.

Fair trial

The Deputy Chancellor of Justice carried out an inquiry into the regional Administrative Courts, as there had been some indications of case backlogs building up. As regards the protection under the law, the Deputy Chancellor considered it especially worrying that throughput times could be very long even

in such urgent types of matter as family and child protection measures, livelihood support and immigration.

The inquiry showed that throughput times were relatively high in certain Administrative Courts. It was also evident that different Administrative Courts had some variance in their work processes in both casework and case management.

Language used by the authorities

A complaint was filed on inappropriate language used by a police immigration officer in an e-mail sent to a colleague.

The Deputy Chancellor of Justice noted that the provisions in the Police Act and the State Civil Servants Act on proper conduct by officials set requirements also on the use of language; choice of words is a part of appropriate behaviour. Demeaning expressions have no place in official speech. It is also important that officials do not by their use of language send misleading signals that could compromise their credibility or impartiality.

The Deputy Chancellor of Justice considered that the statement made by the official was patronising and, expressed as it had been by an official with daily involvement in immigration matters, also inappropriate. It gave also rise to reasonable suspicions that the official would not treat the person mentioned in the statement in an impartial manner.

Frisking

A person participating in a motorcycle club's festive event had been frisked for security purposes. The police officer who carried out the measure justified it mainly by reference to occupational safety.

According to section 22 of the Finnish Police Act, a police officer is entitled to frisk a person and to inspect his or her possessions in the context of apprehension, arrest, detention or preventive custody. In addition, the police have the same right as against persons attending a public event so as to ensure the safety of other attendees.

In his decision, the Deputy Chancellor of Justice noted that the exercise of all public authority must be based on legislation. A frisking carried out under section 22 of the Police Act is an intervention in important fundamental rights, namely personal liberty and integrity. The prerequisites of such a measure must be taken into the most careful of consideration before carrying it out, so as not to render the fundamental rights provisions mere empty letters.

4 General supervision of legality

The field of supervision covers both general and special courts. Supervision also covers other officials in judicial administration, such as prosecutors, police and the enforcement authorities, and other authorities in various sectors of central and local government.

The general supervision of legality cannot normally be based on advance checks or personal intervention before a potentially illegal decision, as is possible when supervising the acts of the Government. Instead, supervision is largely based on the investigation of complaints by private citizens. Supervision may also involve investigating notices or proposals submitted by authorities and examining court judgments and records of the enforcement of punishment. The Chancellor can also take a matter up for consideration on his own initiative.

In handling complaints, the Office of the Chancellor of Justice follows the same procedure irrespective of what authority the complaint refers to. After an initial look at the complaint a decision is taken on the need for an investigation to pass the matter on for intermediate action, and if necessary, the defendant asked for a response to the claim(s). An account is required from the authority/official concerned in cases where the initial investigation does not rule out the possibility that he has acted inappropriately. If the account is inadequate, further clarification or additional documents can be demanded. The complainant is then given an opportunity to be heard, unless this is clearly unnecessary. If the repertoire of responses available in the supervision of legality are seen as sufficient, or if the investigation does not give cause for any action, the matter can be resolved on the basis of written material. However, under the present legislation on criminal procedure, the bringing of charges against a public official generally requires a pre-trial investigation, which is normally conducted by the National Bureau of Investigation.

4.1 Courts of law

During 2003, the Chancellor of Justice received 220 complaints that were either completely or partially to do with procedure in the general law courts. Administrative court procedure gave rise to 53 complaints, and the special courts 24. The total number of complaints concerning all the different types of court were slightly up on the previous year.

According to the Constitution, judicial authority in Finland is exercised by independent courts of law. For this reason, supervision of the administration of justice is in practice not as broad as the supervision directed towards public administration in general. In supervising the administration of justice, the

Chancellor of Justice can in general only concern himself with procedural errors and acts in breach of fundamental and human rights. If any general defects are noted in the administration of justice, a legislative proposal will be made to put them right.

With respect to the judiciary, the Chancellor of Justice will intervene in procedural problems that compromise the people's protection under the law. Delays in the process are a typical example of such problems. A need for measures by the Chancellor has arisen also from other procedural issues, such as the provision of reasons, disqualification and openness. The complaints lodged with the Chancellor of Justice on matters in this section have pertained mainly to the substantive content of court judgments and to procedure. Complainants often entertain excessive expectations about the nature of the supervision of legality exercised by the Chancellor. The Chancellor cannot influence a pending process nor alter or revoke judgments. Moreover, the Chancellor cannot re-evaluate the evidence presented in a case in court.

Civil procedure in Finland was adjusted by a legislative amendment which entered into force on 1 January 2003. The objective of the reform was to increase the efficiency of proceedings in the first instance. The process was intended to become less onerous and more uniform. A civil trial was intended to be a more clearly consistent and steadily progressing whole, where all measures carried out at the earlier stages can be utilised at later ones.

Appellate procedure was reformed as of 1 October 2003, with the introduction of a casework separation system, or a "sifting" process, in the Courts of Appeal. With the reform now in effect, some of the cases will be decided in a simplified procedure. Other new elements are the strengthening of the Court of Appeal's own case preparation work and the opening of the possibility to lodge a counter-appeal against the appeal of the opposing party.

A Commission appointed by the Government to inquire into the development trends of the court system in Finland reported on 16 December 2003. In the report, the Commission considers how the court system can cope with all manner of new and increasing demands that it has encountered and is likely to encounter in the future.

Figure 3 shows the number of complaints concerning courts of law in 2001-2003.

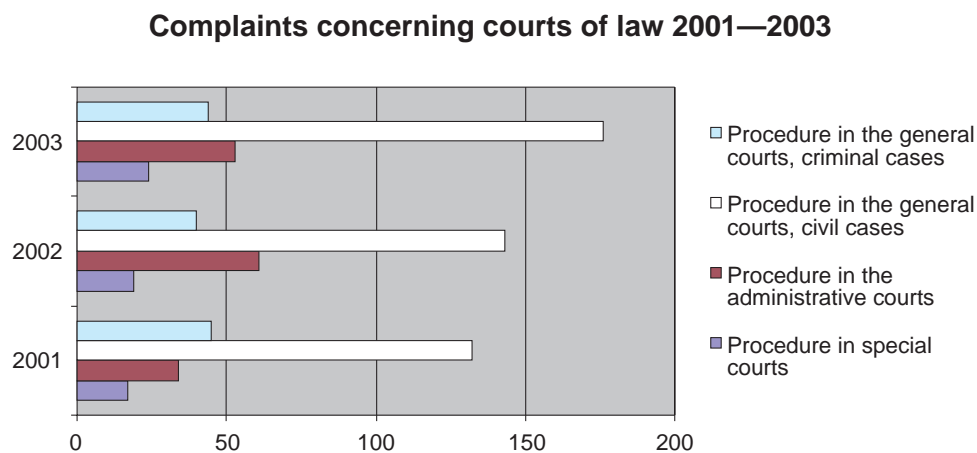


Figure 3

The Chancellor of Justice carried out legality supervision of the law courts on his own initiative by examining their judgements in criminal cases. Every month, the Legal Registers Centre forwards for examination copies of the notifications on sentences lodged with it in line with instructions issued by the Chancellor of Justice.

In 2003, 6,672 notifications on sentences relating to prison sentences were forwarded to the Office of the Chancellor of Justice for examination. Identified errors led to the issuing of reprimands and statements or instructions. Two reprimands were issued for limitation of prosecution; one reprimand for carelessness to a court chairman, five of whose judgments had been found to contain errors; two reprimands relating to the length of the periods of probation attached to suspended prison sentences; one reprimand for the imposition of a sentence below the statutory minimum provided for the criminal act in question; and one reprimand for an error in the imposition of a joint sentence of imprisonment.

The Courts of Appeal forward to the Chancellor of Justice the reports prepared by their lower court inspectors and also communicate any circumstances that have come to their notice and could lead to the indictment of an official in the Court of Appeal. The Courts of Appeal play a very important role in monitoring and supervising the lower courts. During the year under review they sent the Chancellor reports on their reviews of the district courts in 2002.

In his responses, the Deputy Chancellor noted that there is reason for the inspectors to continue to pay attention to the application of fundamental rights and human rights in the courts' work, as well as to the application of recent legislation. Attention should likewise be paid to debt adjustment proceedings and to the principles governing the assignment of cases to District Judges, Trainee Judges and Junior Judges, as well as to the principles applied in the holding of court hearings.

The Deputy Chancellor of Justice conducted on-site inspection visits to the Courts of Appeal of Kouvola and Eastern Finland (in Kuopio), the District Court of Kouvola and the Administrative Courts of Hämeenlinna, Kouvola and Kuopio. Two referendaries of the Office of the Chancellor of Justice visited the Administrative Court of Helsinki so as to discuss issues pertaining to workload and work processes. In addition, the Deputy Chancellor visited the District Court of Forssa so as to familiarise himself with the reformed criminal procedure. The Deputy Chancellor visited also the Legal Register Centre, which is located in Hämeenlinna. The Centre is charged with e.g. the enforcement of fines, confiscatory sanctions and public charges, as well as with the maintenance of various legal registers.

One of the themes of the Deputy Chancellor of Justice's on-site inspection schedule was to inspect the activities and workload of the regional Administrative Courts. On the basis of the visits, as well as the workload statistics prepared by the Ministry of Justice, it was evident that, year-on-year, the number of pending cases (backlog) has been constantly increasing. As regards the protection under the law, the Deputy Chancellor considered it especially worrying that throughput times could be very long even in such urgent types of matter as family and child protection measures, livelihood support and immigration. For this reason, the Deputy Chancellor decided to look more closely into the Administrative Courts' caseloads and reasons for delay, as well as their work processes and case management practices that could have an effect on the promptness of the proceedings; in addition, he decided to procure more detailed information on the process in certain case types with special significance to the protection under the law. In his report, which was completed on 12 December 2003, the Deputy Chancellor of Justice noted that the results obtained indicate that the debate on the development needs of the administrative judicial procedure should continue - both with a view to the renewal of internal working processes within the bounds of the current legislation, and to the discovery and correction of more general shortcomings in the legislation itself.

4.2 The prosecuting, police and enforcement authorities

In the broader sense, the administration of justice encompasses not only the courts, but also the prosecutors, the police and the enforcement authorities.

Also the measures carried out by these public authorities will arise, time and again, in the matters under investigation by the Office of the Chancellor of Justice.

Certain complaints pertaining to the administration of justice will as a rule be transferred to be dealt with by the Parliamentary Ombudsman, in accordance with the Act on the Division of Duties between the Chancellor of Justice of the Government and the Parliamentary Ombudsman.

Under the said Act, the Chancellor of Justice has been relieved of the duty to deal with some complaints unless he finds special reason to do so. These include complaints lodged by prison inmates or complaints relating to apprehension, arrest, detention or travel ban under the Coercive Measures Act, protective custody or other deprivation of personal liberty. The Chancellor of Justice has likewise been relieved of the duty to deal with matters within the competency of the Ombudsman that have been lodged by persons deprived of personal liberty by detention, arrest or other measures.

With the transfer of the duties of supreme prosecutor to the Prosecutor General, the role of the Chancellor of Justice in the supervision of the prosecutors has diminished. Prosecutor supervision has been assigned to the Prosecutor General by statute. Persons discontent with the conduct of a prosecutor normally address their complaints directly to the Prosecutor General. Even though also the Chancellor of Justice is still competent to supervise the prosecutors, complaints addressed to the Chancellor and pertaining to the activities of local prosecutors have at times been reassigned to the Prosecutor General. Especially the complaints that concern the evaluation of charges for some other act than an offence in office can sensibly be reassigned to the Prosecutor General, as he can both examine the legality of the prosecutor's conduct and take the matter up for a new evaluation of charges. In contrast, the Chancellor of Justice can re-evaluate the charges only in matters within his prosecutorial competency, that is, alleged offences in office. The reassignment of a complaint can under such circumstances be considered to be in the best interests of the complainant, as well. The Prosecutor General will send his decision to the Chancellor of Justice for information, and a person discontent with the decision of the Prosecutor General may lodge a further complaint against that decision with the Chancellor of Justice.

During the reporting year, the Office of the Chancellor of Justice received 62 complaints (67 in 2002) concerning a *prosecutor's* conduct. Seven of these (15 in 2002) were reassigned to the Prosecutor General.

For the organisational structure of the prosecution service, the most significant change during the reporting year was the formation of 16 inter-unit co-

operation areas for the service as of the beginning of 2003. Almost the entire country is served by these areas. The reform was based on the changes in the work and operating environment of the prosecutors occurring these past few years. All of the local prosecution units are directly subordinate to the Office of the Prosecutor General. It has been deemed that such a change is necessary for the consistency of leadership. Moreover, the role of the prosecutor in the realisation of criminal liability has increased with the changes in criminal procedure. The opportunity to balance workloads within the areas has been considered a crucial supporting element for this new role of the prosecutors.

During the reporting year, quite critical public comments were made on several occasions on the prosecutors' exercise of discretion and their role in criminal proceedings; the comments related e.g. on the rise of the prosecution threshold almost to the level of the conviction threshold and on the use of sanctionary non-prosecution decisions even in the context of fairly serious violent crime. The Deputy Chancellor of Justice participated in the debate e.g. with his remarks presented to the convocation of leading prosecutors and with articles published in two scholarly journals.

A large number of complaints pertaining to law enforcement were directed against the conduct of the *police*. During the reporting year, 193 such complaints were lodged (197 in 2002). The volume of complaints no doubt arises mainly from the line of work police officers are engaged in. On one hand, they are supposed to protect the values that have been enshrined as fundamental rights, but on the other hand they must interfere with these rights e.g. so as to clear up suspected criminal offences. Another possible reason for the volume of complaints is that many decisions made by the police, e.g. in the context of a pre-trial investigation, are not open to any form of regular appeal. Accordingly, a complaint, lodged within the police organisation (e.g. with the Police Department of the State Provincial Office) or with a high supervisor of legality, may be the only possible means to have the conduct of a police officer properly investigated. And indeed, most of the complaints that have been lodged have pertained to the conduct of the police in their role as a pre-trial investigation authority involved in the investigation of a suspected criminal offence. Some complaints pertain also to police behaviour or to the measures taken by the police in their role as a permit authority.

It is probably the case that persons discontent with the police will not in the most serious situations be satisfied with a complaint, but instead report the officer for a criminal offence. Under section 14(2) of the Pre-Trial Investigations Act, a prosecutor serves as the head of investigation in relation to offences suspected to have been committed by police officers, with the exception of less serious cases dealt with in summary penal fee or penal order proceedings. The Prosecutor General has assigned a number of prosecutors and established their

jurisdictions for this type of activity. The purpose of the arrangement is to ensure that a criminal investigation is carried out without regard to the status of the subject and that the public trust in the process is maintained. It has been stressed in the instructions issued by the Prosecutor General that in situations that are not clear the procedure under section 14 (2) is to be applied. The police must notify the local prosecution unit at once, so as to have a head of investigation designated for a police offence.

A significant reform in respect to the task of the police to maintain public order and security entered into force on 1 October 2003; this was the Public Order Act. With the entry into force of the Act, the provisions governing the maintenance of order are now the same throughout the country. In the past, municipal ordinances were used for this purpose.

Complaints about the *enforcement authorities* were lodged on 48 occasions during the reporting year (56 in 2002). In the main, these concerned procedure in the distraint of assets or garnishment of wages.

Figure 4 shows the number of complaints about the prosecuting, police and enforcement authorities in 2001-2003.

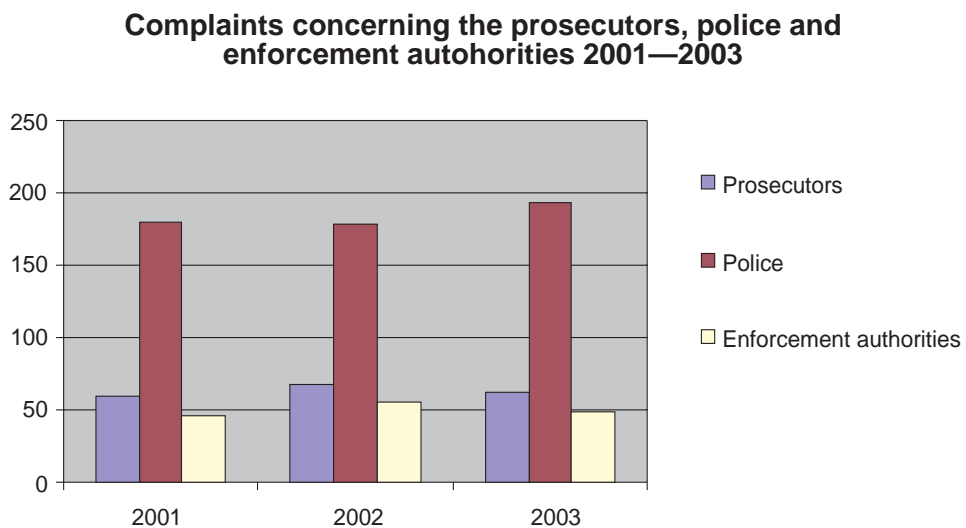


Figure 4

4.3 Central government

The present section deals with the supervision of legality over state administrative bodies other than the administrators of justice referred to above. It is the

duty of the Chancellor of Justice to supervise the legality of the activities of all state authorities and officials, including state institutions, executive boards, boards and consultative committees. In addition, the Chancellor supervises that also others comply with the law and discharge their duties when performing a public task, in the exceptional event that a public task has been entrusted to someone else than a public authority. The limits of the authority of the high supervisors of legality are not clear-cut in all such cases. Hence, case-by-case discretion and argumentation are required. For instance, state enterprises are private entities by nature and generally fall outside of the scope of legality supervision. The greater part of education, social welfare, health and environmental administration is municipal by nature. The supervision of legality pertaining to these areas is described in section 4.4.

In line with the previous years, the complaints relating to state administration that were lodged during the reporting year covered all the central aspects of state administration. Their distribution has also been relatively well established. Most complaints were directed against the *social welfare, medical and health care authorities*. Also *employment authorities, education authorities and tax authorities* were subject to numerous complaints.

As a supervisor of legality, the Chancellor keeps an eye on the realisation of fundamental rights and human rights. The most significant cases have been separately accounted for in section 3. For the rest of the complaints relating to state administration, accounted for here, the recurring issue has been the realisation of the fundamental right to good governance. Delays in process and delays in the delivery of decisions have often been cited as shortcomings. Attention has been paid also to the defectiveness of the reasons supplied for official decisions. In addition, the Chancellor has observed faults in responding to queries addressed to the authorities and in the discharge of the duty to provide advice. In 2003, matters of good governance were still considered in the light of the old Administrative Procedure Act. During the reporting year, however, a new Administrative Procedure Act was enacted; this Act, which entered into force on 1 January 2004, will have an immense effect on how administrative matters are processed from now on. It contains clearer provisions on the lodging of an administrative matter, on procedure and on the service of the decision in the matter. Some of the objectives of the new Act are to emphasise the viewpoint of the customer, to clarify the legal status of the parties to the matter, to expand the scope of application of the legislation, to reform the provisions on disqualification, to expand the duty to serve notices, and to make the rectification of errors easier.

Figure 5 indicates the numbers of complaints directed against the state administration in 2001-2003, divided by administrative sector. The bars titled "complaints against authorities" indicate the number of complaints directed against authorities other than the Ministries.

Complaints concerning state administration by administrative sector 2001—2003

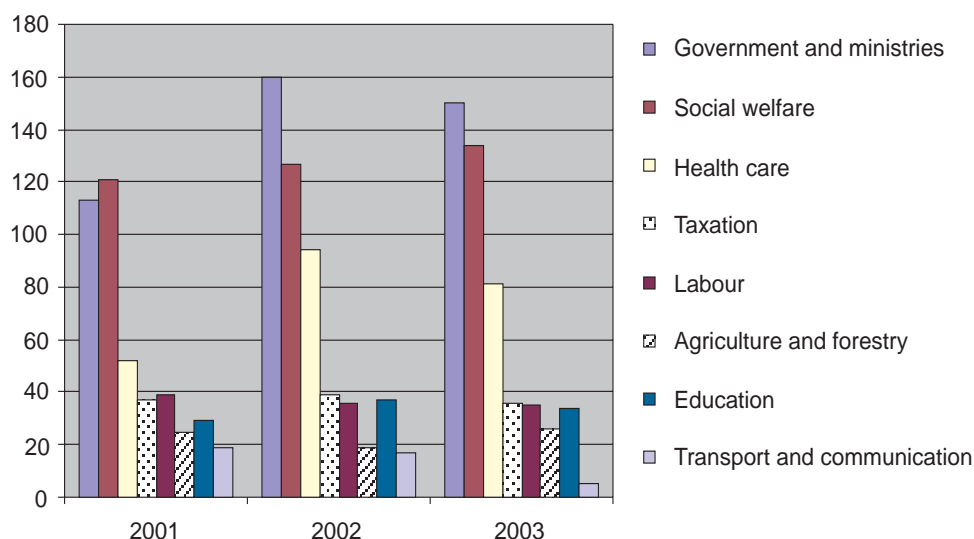


Figure 5

4.4 Other government

In addition to the supervision of state authorities, the Chancellor of Justice is also charged with the supervision of the activities of various autonomous entities. Hence, the subjects of this supervision are the municipalities (local authorities), the religious communities and the administrative bodies of the autonomous Åland Islands. The supervision is concerned with the legality of process; in contrast, the Chancellor has no competency to examine the expediency of measures taken by these authorities.

During the reporting year, the greater part of the supervision of legality relating to the autonomous entities was based on complaints on various aspects of and decision-making in, the municipal administration. By volume, there was a slight decrease in the complaints lodged against the conduct of *municipal authorities*. During the reporting year, 97 complaints were lodged concerning general municipal administration or administrative procedure in the municipalities (111 in 2002).

Figure 6 shows the number of complaints about the municipal and ecclesiastical authorities in 1999-2003.

Complaints concerning municipal and ecclesiastical authorities 1999—2003

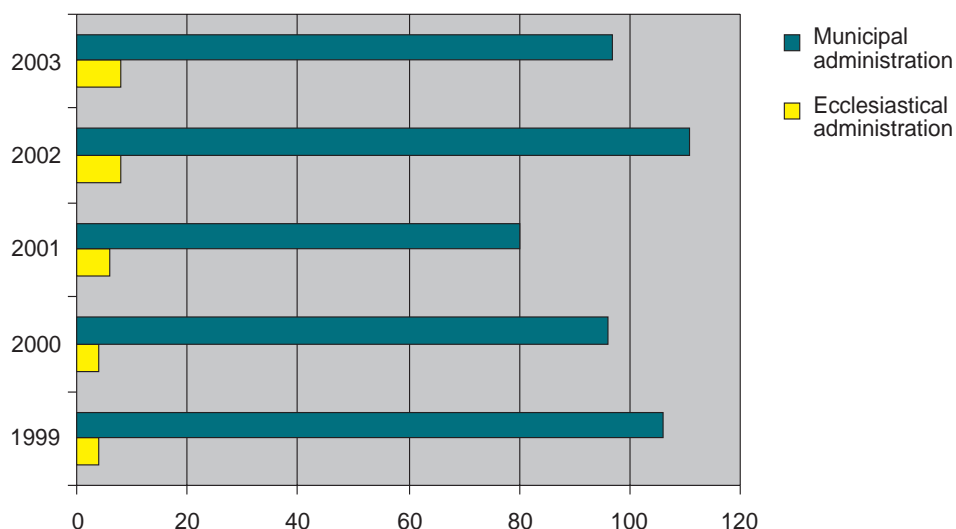


Figure 6

Among the various aspects of municipal administration, *social welfare* remains on the top of the list when the numbers of complaints received by the Chancellor of Justice are being considered. During the reporting year, the proportion of this type of complaints continued to grow. In all, the number of complaints relating to social welfare administration - including thus both the municipal social welfare authorities and the state social welfare authorities - was 133 (127 in 2002).

Municipal *medical and health care services* were also subject to numerous complaints lodged with the Chancellor of Justice. During the reporting year, the number of complaints lodged against authorities in this sector was 81 (94 in 2002). Note, though, that these numbers include also a few complaints directed against state medical and health care authorities.

Most of the *environmental* complaints lodged during the reporting year concerned land use and construction, real estate formation and environmental protection. The measures taken by the supervisors of legality have in the main involved matters of environmental protection and land use and construction.

Complaints relating to the administration of *the autonomous religious communities* numbered 7 during the reporting year (8 in 2002). Five of the six complaints decided during the reporting year concerned the Evangelical Lu-

theran Church. Four of these concerned solely or mainly the conduct of an individual parish or a parish union, while one concerned the reform of the diocese structure. Another complaint concerned the conduct of the board of the Greek Orthodox Church of Finland. No measures ensued from these complaints.

A few matters pertaining to the administration of *the autonomous Åland Islands* were also dealt with during the reporting year. The number of such complaints remains relatively small. Only one of the complaints received by the Chancellor of Justice during the reporting year pertained to the conduct of the Government of Åland.

In addition, during the reporting year the Chancellor of Justice issued an opinion to the Ministry of Justice on an initiative by the Government of Åland relating to the designation “Province of Åland” which is contrary to the provisions in the Act on the Autonomy of Åland.

5 Supervision of the Bar

5.1 Advocates

Under Finnish court procedure, legal counsel is not mandatory for the presentation of cases in court. However, the use of lawyers with court experience is often necessary in practice. The duties of counsel are most often performed by an advocate, a public legal aid counsel or another lawyer. However, only members of the Finnish Bar Association are entitled to use the professional title of advocate.

According to law, the term advocate refers to a person registered in the Roll of Advocates as a member of the Finnish Bar Association, which acts as the national association of advocates. A lawyer with practical experience and skill in addition to adequate legal training must be accepted as a member of the Bar Association. In addition, the rules of the Bar Association require that the applicant must pass an advocate's examination.

5.2 Public legal aid counsels

A new system of state-funded legal aid was created in Finland by an Act of 1998 on public legal aid and related legislation. Public legal aid is primarily intended for persons of limited financial means, for whom the aid is free or partially free. An amendment to the Legal Aid Act (257/2002) replaced public legal aid and cost-free trial with a new uniform legal aid system which also expanded the sphere of those entitled to legal aid.

Public legal aid consists of legal counsel services intended to meet the standards of an advocate's practice. Public legal aid counsels are also required to comply with the professional ethics of the Bar in all their activities, and in this respect they are subject to supervision by the Finnish Bar Association and the Chancellor of Justice. In fact, as municipal officials, public legal aid counsels had also previously come within the sphere of the overall supervision of legality conducted by the Chancellor of Justice. Under the new legislation, however, public legal aid counsels are central government civil servants and thereby come within the overall supervision of legality by the Chancellor of Justice under that heading.

5.3 Professional ethics of the Bar

Under the Advocates Act, advocates must carry out the assignments entrusted to them honestly and prudently and in all their activities comply with the professional ethics of the Bar. Such a definition of the general duties of an advocate takes into account both the client's and the public interest. The public

interest is considered to require advocates, as far as possible, to strive to promote good judicial practice in their activities.

The professional ethics of the Bar have been defined further in the code of professional ethics approved by the Bar Association. This contains stipulations concerning an advocate's work, law firms and their organisation, acceptance and rejection of and withdrawal from an assignment as counsel, issues concerning the relationship between advocate and client, and the advocate's relationship with the opposite side, the courts and other authorities.

5.4 Supervision of advocates

The primary responsibility for the supervision of advocates rests with the organs of the Finnish Bar Association. In addition to the Board of the Association, the Disciplinary Board also performs supervisory duties, and its members include both advocates and two persons from outside the Bar. The Chancellor of Justice plays an important role in supervision as the guardian of the public interest. Under the Advocates Act, his supervisory authority applies to advocates. Any member of the public can bring a complaint before either the Bar Association or the Chancellor of Justice if he considers that an advocate has neglected his duties or acted contrary to the professional ethics of the Bar.

Supervision of advocates by the Chancellor of Justice is carried out both as part of the overall supervision of legality and in the specific context of monitoring the implementation of disciplinary supervision. Supervision also covers public legal aid counsels who serve simultaneously as both private advocates and civil servants.

The supervision of advocates in the context of the overall supervision of legality by the Chancellor of Justice takes place mainly on the basis of complaints. The written complaints from private citizens members of the public received by the Chancellor of Justice and the disciplinary and supervisory decisions of the Bar Association submitted to the Office provide a good picture of the content and implementation of the professional ethics of the Bar. In 2003, the Chancellor of Justice received a total of 100 (105 in 2002) complaints concerning the conduct of an advocate or public legal aid counsel. Disciplinary proceedings were initiated in seventeen cases by submitting complaints received by the Office to the Bar Association.

Figure 7 shows how the number of these complaints has developed over the past three years.

Complaints concerning advocates and legal aid councils handled by the Chancellor of Justice 2001—2003

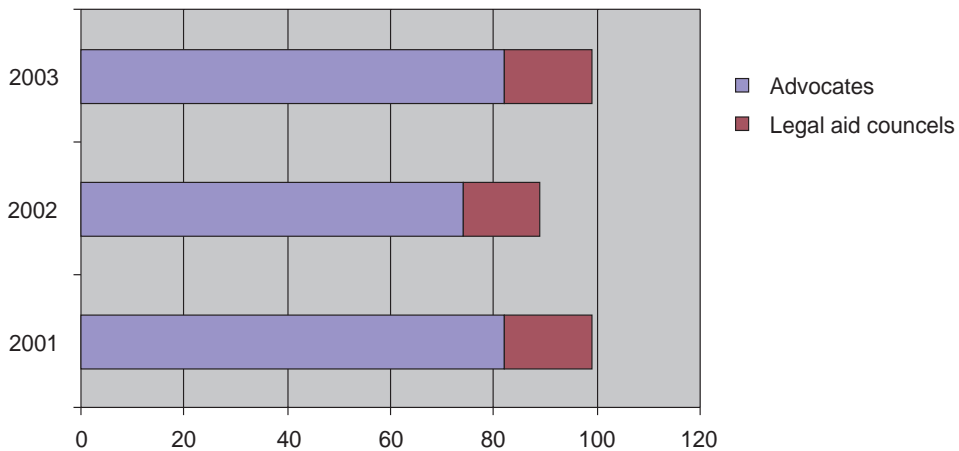


Figure 7

The range of complaints sent to the Chancellor of Justice represents the areas of advocates' activities that people consider the most problematic. For example, many bankrupts file complaints on prolonged bankruptcy proceedings and other actions by trustees of the bankrupt's estate. Other typical complaints concern delays in winding up and distributing the estate in probate proceedings; in such cases, the origins of the complaint often lie in disagreement between the parties to the estate over its administration or realisation. An increasing number of claims are being brought forward concerning potential disqualification of an advocate. A client's disappointment with a court decision is often found to lie behind complaints concerning trial counsels and attorneys. Such complaints usually concern civil cases.

As the freedom and autonomy of the Bar is an important element of Finnish law, members of the Bar must have the right to protect their clients' rights and interests free from outside influence and in compliance with the law and code of conduct of the Bar. Primary responsibility for supervising advocates' activities therefore lies with the Board and the Disciplinary Board of the Finnish Bar Association itself.

The autonomy of advocates restricts supervision by the Chancellor of Justice. The Chancellor must ensure that advocates comply with their professional duties, but he cannot intervene in an advocate's work or impose a disciplinary measure. Nevertheless, the Chancellor is considered to have the right to express an opinion when complaints on the way an advocate has carried out an

assignment are resolved. By drawing the advocate's attention to the proper conduct, the Chancellor contributes to defining the code of conduct of the Bar as a whole.

In practice, the Finnish Bar Association's primary responsibility for supervision is expressed through the handling of complaints where there is reasonable cause to suspect misconduct and which are not directly decided by the Chancellor of Justice. The Chancellor has the power to initiate disciplinary proceedings and to deal with matters concerning membership of the Bar. Any matters referred to the Bar by the Chancellor of Justice are handled by the Disciplinary Board.

If the Disciplinary Board finds that an advocate has acted contrary to his duties, it imposes a disciplinary sanction. Such sanctions are defined in the Advocates Act as an admonishment, a caution, a public caution and disbarment. In minor cases, the Disciplinary Board will draw the advocate's attention to the proper conduct.

The Chancellor of Justice receives copies of all decisions on disciplinary measures taken by the Bar Association. The decisions are also communicated to the complainants or other persons who have notified the Bar of the advocate's misconduct. If they consider that the Disciplinary Board has not handled the case properly or have other reason to be dissatisfied with the decision, they may turn to the Chancellor of Justice, who will take their views into account in considering a possible appeal of the decision.

The Chancellor of Justice has an unrestricted right of appeal to a Court of Appeal in respect of any decisions concerning Bar Association membership or disciplinary measures. An advocate on whom a disciplinary measure is imposed may only appeal decisions concerning a public warning or disbarment from the Bar Association.

In August 2003, the Chancellor of Justice lodged an appeal with the Court of Appeal of Helsinki against a decision by the Disciplinary Board of the Finnish Bar Association. In the letter of appeal, the Chancellor requested that the Court of Appeal overturn the decision of the Board in so far as it concerned the right to appeal, and sanction the advocate in question with a reprimand. The appeal concerned the professional rules of advocates, section 34 (1), which require that an advocate, prior to taking legal action, notify the opposing party of the demands of the client and reserve the opposing party a reasonable consideration period and an opportunity to settle out of court. After having held an oral main hearing in the case, the Court of Appeal issued its ruling in May 2005. The Court of Appeal held that the advocate had violated section 34 (1) of the rules and reprimanded the advocate as a disciplinary sanction.

Figure 8 illustrates the action taken in 2002 in the case of complaints received on advocates and legal aid counsels.

Actions taken in 2003 in respons to complaints received on advocates and legal aid counsels

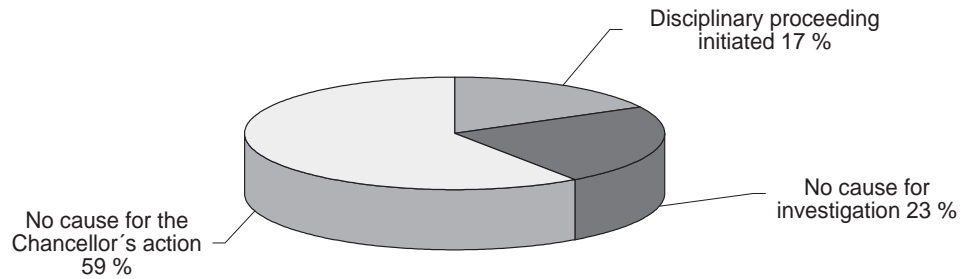


Figure 8

6 General statistics

The following provides some statistics on the activities of the Office of the Chancellor of Justice in 2003, with corresponding figures for 2002 given in parentheses.

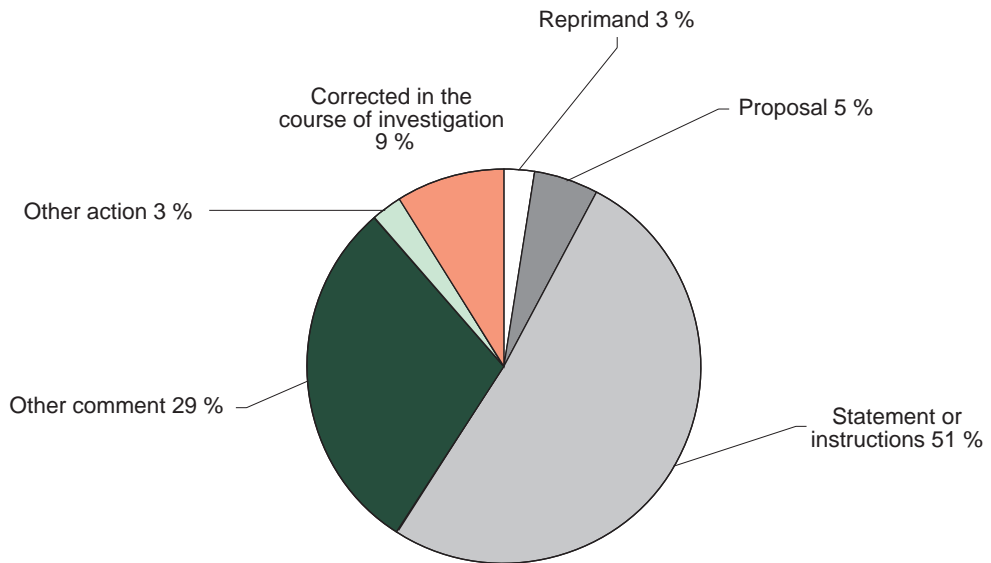
The Office of the Chancellor of Justice received (1454) complaints, and decisions were taken on (1492) complaints. The Chancellor of Justice investigated (14) cases on his own initiative.

Complaints received in 2003 by target group

Courts of law	297
Police	193
Government or Ministry	150
Social welfare authorities	134
Advocates and legal aid counsels	102
Municipal authorities	97
Health care authorities	81
Prosecutors	62
Enforcement authorities	48
Provincial and other Interior administration	36
Other complaints	254
Total	1,454

Complaints led to decisions on action in (157) cases, which made up (17) per cent of all cases under investigation. In calculating the number of actions and their relative shares, each case in which an official act gave rise to numerous complaints that resulted in identical actions has only one of the actions been taken in account. The proportions of different decisions on action are illustrated in the following figure:

Actions in 2003 in response to complaints received



According to a study conducted in 2004, the median length of time for decisions in 2003 on complaints was about 15 weeks, the average being about 30 weeks.

The Chancellor of Justice provided the President of the Republic, the Government or the ministries with (28) written opinions.

7 Finnish governance and the history of the institution of the Chancellor of Justice

7.1 *The structure of governance*

Finland is an independent republic of 5.2 million people. Political decision-making is based on representative democracy. The most important political organs are situated in the capital, Helsinki, and include Parliament, the President and the Government, which has also traditionally been referred to as the Council of State. The term Council of State has also been applied to the whole formed by the Government and the ministries. The constitutional legislation of Finnish governance is laid down in the Constitution of Finland.

Parliament exercises supreme authority in Finland. As the Constitution states: “The powers of the State in Finland are vested in the people, who are represented by the Parliament.” Parliament is a unicameral body consisting of 200 members elected by direct, secret ballot on the basis of equal and universal suffrage and the principle of proportional representation. Members of Parliament are elected for a four-year term. Candidates are selected by party referenda or electoral organisations. The powers of Parliament include the passing of legislation and the annual State budget, ratification of international treaties and participation in the national preparation of matters to be decided by the European Union.

The *President of the Republic* is elected for a six-year term by direct popular vote. Only a native-born citizen of Finland can serve as President. The same person may be elected to a maximum of two consecutive terms. The existing President, Mrs Tarja Halonen was elected in spring 2000. The President’s important decisions are made on the presentation of and in the presence of the Government. These decisions include the presentation of Government Bills and budget proposals to Parliament and the ratification of Acts of Parliament, important Executive Decrees and the most important official appointments. The President also cooperates with the Government in determining Finland’s relations with other sovereign states and deciding upon Finnish actions in international organizations and at international conferences.

The *Government* (Council of State) consists of the Ministers, most of whom normally heads his or her own ministry. The Prime Minister, however, heads a separate Prime Minister’s Office. According to the Constitution, the Government consists of a Prime Minister and the necessary number of other ministers. In addition to the Prime Minister there may be up to 17 other ministers. At the moment Finland has 13 ministries, including the Prime Minister’s Office. The total number of ministers is currently 18. The ministers are appointed by the President and must enjoy the confidence of Parliament. A considerable propor-

tion of important political and administrative decisions are made by the Government sitting as a collegiate body under the chairmanship of the Prime Minister, but the individual ministries also have independent decision-making powers. The governing coalition formed in June 2003 is headed by Prime Minister, Mr Matti Vanhanen, from the Centre Party. The coalition consisted during the year under review of the Centre Party, the Social Democratic Party and the Swedish People's Party.

The Constitution Act provides for an *independent judiciary*. This judicial independence has a long history, and is firmly rooted in Finnish society. The general court system consists of the lower District Courts, the six Courts of Appeal and the Supreme Court. There is also an administrative court system, starting with the various lower administrative bodies and progressing via the Administrative Courts to the Supreme Administrative Court.

7.2 The Chancellor of Justice in Finnish history

The office of Chancellor of Justice dates back to the 18th century, when Finland was part of the Kingdom of Sweden. The duties of the Chancellor of Justice in Finland have since remained much the same. His duties as head of the prosecuting service were transferred in December 1997 to the office of Prosecutor-General, which was established at that time.

When Finland was annexed by the Russian Empire in 1809 as an autonomous Grand Duchy, the legal system continued to be based on the constitutional provisions and other legislation dating from the period of Swedish rule. The duties of the Chancellor of Justice were entrusted to the new office of Procurator, who was to assist the Governor-General in supervising compliance with the law. The autonomous Grand Duchy of Finland's first Procurator was the renowned professor and lawyer, Mathias Calonius.

When Finland declared its independence in 1917, the title of Procurator was changed to that of Chancellor of Justice and the Deputy Procurator correspondingly became the Deputy Chancellor of Justice. The basic provisions concerning the Chancellor of Justice and the new Parliamentary Ombudsman were included in the 1919 Constitution Act of Finland. The first Chancellor of Justice appointed after the declaration of independence was Mr. Pehr Evind Svinhufvud, who had served, among other things, as Speaker of Parliament and was later to become the third President of Finland.

The first Parliamentary Ombudsman was chosen to his post at the beginning of 1920. The model for the office was taken from the corresponding office previously introduced in Sweden. To facilitate the practical division of work between the offices of the Chancellor of Justice and the Parliamentary Om-

budsman, legislation passed in 1933 provided that the Chancellor of Justice could transfer matters concerning the military, the prisons and other closed institutions for consideration by the Parliamentary Ombudsman. This legislation was updated in 1990.

The present incumbent, Mr Paavo Nikula, is the 16th Chancellor of Justice in independent Finland.

The Constitution of Finland**(June 11, 1999/731)****Sections 69, 108, 110-115, and 117****Chapter 5 — The President of the Republic and the Government***Section 69 — The Chancellor of Justice of the Government*

Attached to the Government, there is a Chancellor of Justice and a Deputy Chancellor of Justice, who are appointed by the President of the Republic, and who shall have outstanding knowledge of law. In addition, the President appoints a substitute for the Deputy Chancellor of Justice for a term of office not exceeding five years. When the Deputy Chancellor of Justice is prevented from performing his or her duties, the substitute shall take responsibility for them.

The provisions on the Chancellor of Justice apply, in so far as appropriate, to the Deputy Chancellor of Justice and the substitute.

Chapter 10 — Supervision of legality*Section 108 — Duties of the Chancellor of Justice of the Government*

The Chancellor of Justice shall oversee the lawfulness of the official acts of the Government and the President of the Republic. The Chancellor of Justice shall also ensure that the courts of law, the other authorities and the civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Chancellor of Justice monitors the implementation of basic rights and liberties and human rights.

The Chancellor of Justice shall, upon request, provide the President, the Government and the Ministries with information and opinions on legal issues. The Chancellor of Justice submits an annual report to the Parliament and the Government on his or her activities and observations on how the law has been obeyed.

Section 110 — The right of the Chancellor of Justice and the Ombudsman to bring charges and the division of responsibilities between them

A decision to bring charges against a judge for unlawful conduct in office is made by the Chancellor of Justice or the Ombudsman. The Chancellor of Justice and the Ombudsman may prosecute or order that charges be brought also in other matters falling within the purview of their supervision of legality. Provisions on the division of responsibilities between the Chancellor of Justice and the Ombudsman may be laid down by an Act, without, however, restricting the competence of either of them in the supervision of legality.

Section 111 — The right of the Chancellor of Justice and Ombudsman to receive information

The Chancellor of Justice and the Ombudsman have the right to receive from public authorities or others performing public duties the information needed for their supervision of legality.

The Chancellor of Justice shall be present at meetings of the Government and when matters are presented to the President of the Republic in a presidential meeting of the Government. The Ombudsman has the right to attend these meetings and presentations.

Section 112 — Supervision of the lawfulness of the official acts of the Government and the President of the Republic

If the Chancellor of Justice becomes aware that the lawfulness of a decision or measure taken by the Government, a Minister or the President of the Republic gives rise to a comment, the Chancellor shall present the comment, with reasons, on the aforesaid decision or measure. If the comment is ignored, the Chancellor of Justice shall have the comment entered in the minutes of the Government and, where necessary, undertake other measures. The Ombudsman has the corresponding right to make a comment and to undertake measures.

If a decision made by the President is unlawful, the Government shall, after having obtained a statement from the Chancellor of Justice, notify the President that the decision cannot be implemented, and propose to the President that the decision be amended or revoked.

Section 113 — Criminal liability of the President of the Republic

If the Chancellor of Justice, the Ombudsman or the Government deem that the President of the Republic is guilty of treason or high treason, or a crime against

humanity, the matter shall be communicated to the Parliament. In this event, if the Parliament, by three fourths of the votes cast, decides that charges are to be brought, the Prosecutor-General shall prosecute the President in the High Court of Impeachment and the President shall abstain from office for the duration of the proceedings. In other cases, no charges shall be brought for the official acts of the President.

Section 114 — Prosecution of Ministers

A charge against a Member of the Government for unlawful conduct in office is heard by the High Court of Impeachment, as provided in more detail by an Act.

The decision to bring a charge is made by the Parliament, after having obtained an opinion from the Constitutional Law Committee concerning the unlawfulness of the actions of the Minister. Before the Parliament decides to bring charges or not it shall allow the Minister an opportunity to give an explanation. When considering a matter of this kind the Committee shall have a quorum when all of its members are present.

A Member of the Government is prosecuted by the Prosecutor-General.

Section 115 — Initiation of a matter concerning the legal responsibility of a Minister

An inquiry into the lawfulness of the official acts of a Minister may be initiated in the Constitutional Law Committee on the basis of:

- (1) A notification submitted to the Constitutional Law Committee by the Chancellor of Justice or the Ombudsman;
- (2) A petition signed by at least ten Representatives; or
- (3) A request for an inquiry addressed to the Constitutional Law Committee by another Committee of the Parliament.

The Constitutional Law Committee may open an inquiry into the lawfulness of the official acts of a Minister also on its own initiative.

Section 117 — Legal responsibility of the Chancellor of Justice and the Ombudsman

The provisions in sections 114 and 115 concerning a member of the Government apply to an inquiry into the lawfulness of the official acts of the Chancellor of Justice and the Ombudsman, the bringing of charges against them for unlawful conduct in office and the procedure for the hearing of such charges.

Procedure for filing a complaint

In practice, the supervision of legality primarily takes the form of ruling on a citizen's complaint filed with the Chancellor of Justice concerning the actions of an authority or public official.

What kinds of complaints are filed with the Chancellor of Justice?

All citizens are entitled to apply to the Chancellor of Justice in matters that directly concern them, or in any other matter, should the complainant believe that an authority, public official or public body has acted in a manner that violates his or her rights, or that a member of the Bar has neglected his or her responsibilities. All citizens may also apply to the Chancellor of Justice if they believe that a constitutional or human right guaranteed under the Constitution has not been observed.

How is a complaint filed?

Complaints are made in writing. The following points should be mentioned:

- the identity of the public official, authority or public corporation that is the subject of the complaint;
- a description of the action that the complainant regards as illegal; and
- the name, address and signature of the complainant.

Any relevant documents may be appended to the complaint. These documents will be returned when the matter is resolved, or even earlier if so requested.

The Chancellor of Justice will not investigate a complaint if five years or more have elapsed since the alleged violation, unless warranted by some special reason.

How are complaints dealt with?

Legally trained personnel process complaints and obtain any necessary supplementary documentation. The Chancellor of Justice is entitled to approach any authority for information and documents, including material classified as secret. If necessary, the Chancellor of Justice may ask the police to carry out an investigation.

Complainants are usually given an opportunity to file a rejoinder before the matter is resolved, and they will receive a written response by mail.

How are complaints resolved?

The Chancellor of Justice may

- issue a reprimand to an official or body;
- issue instructions on the proper procedure for future reference;
- or, in more serious cases, order charges to be brought against the official.

The Chancellor of Justice is not authorized to annul or amend a decision taken by an authority, nor can he order payment of damages. If a clear error is noted, the Chancellor of Justice will strive to have it corrected.

The Chancellor of Justice has the power, if he deems it necessary, to recommend the amendment of provisions or regulations, and to initiate proceedings to annul a court ruling or for some other extraordinary appeal.

The Chancellor of Justice is empowered to initiate disciplinary proceedings against a member of the Bar and has the right to appeal decisions of the Board of the Finnish Bar Association on disciplinary matters.

An investigation carried out by the Chancellor of Justice may in itself result in the authority or public official correcting an error.

The services of the Office of the Chancellor of Justice are free of charge to the complainant.

COMPLAINT TO THE CHANCELLOR OF JUSTICE

Complainant's name and address: Telephone (during office hours):

Subject of the complaint (authority, official or other person or institution):

Procedure, action or decision considered illegal by the applicant:

Brief description of the course of events and the dates:

Unlawful aspects of the procedure, action or decision:

Recommended action by the Chancellor of Justice:

Time and place

Signature

If necessary, please continue on the other side of this form or on another sheet.

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