1 Commentaries

Tuomas Pöysti

Legality oversight exercised by the Chancellor of Justice in reconciling national security and the rule of law

Europe is currently a harsh place. Ukraine is under a massive attack by Russia. In December 2023, the European Council condemned hybrid operations at the external borders of the European Union and the President of the European Commission, Ursula von der Leyen, explicitly stated that Finland is being impacted by hybrid activities at its eastern border.1In his address to the opening session of the Finnish Parliament on 7 February 2024, President of the Republic Sauli Niinistö aptly summed up the problem posed to the rule of law in Finland by the activities of our neighbouring country Russia: ‘’Laws have served as the sword and shield of Finnish people for centuries. Now, attempts are being made to turn this sword against us. Russia uses people as an instrument in its efforts to weaken Finland’s border security, undermine our internal national order and generate discord... However, the challenge is tough and twofold: how to have recourse to laws and how to protect them. It may be that exceptional times require exceptional thinking. At the same time, we must safeguard the core of the legitimate order.”2The Chancellor of Justice has been called upon to consider such safeguards several times during and after the reporting period.

Supreme guardians of the law as guarantors of the democratic rule of law

Under the Finnish concept of constitutional identity, independent legality oversight by supreme guardians of law, together with independent courts of law, serve as a guarantee of the democratic rule of law. This topic was addressed by my colleague Petri Jääskeläinen in his capacity as the supreme guardian of the law in the Parliamentary Ombudsman’s Report of 2020.[3]The supreme guardians of the law and courts are mutually complementary in their mission to secure the rule of law and human rights. Aside from the independence of courts of law, that of the supreme guardians of the law is equally important. Another important real guarantee of the rule of law is that those who exercise government powers and social actors are committed to respecting the independence of the courts and the supreme guardians of the law, as well as the special constitutional role of the Constitutional Law Committee, as laid down in Article 74 of the Constitution, above and beyond day-to-day politics and the government-opposition juxtaposition.

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[1]Conclusions of the European Council 14 and 15 December 2023, Council Document EUCO 20/23 CO EUR 16 CONCL 6, Article 30. Available at https://www.consilium.europa.eu/media/68994/europeancouncilconclusions-14-15-12-2023-fi.pdf. See Letter by the President of European Commission, to Members of the European Council, 13 December 2023, available at https://www.tweedekamer.nl/downloads/document?id=2024D00156 (sited visited on 5 March 2024).

[2]See Speech by President of the Republic of Finland Sauli Niinistö at the opening of Parliament on 7 February 2024,https://www.presidentti.fi/niinisto/en/speeches/speech-by-president-of-the-republic-of-finland-sauli-niinisto-at-the-opening-of-parliament-on-7-february-2024/

[3] K 8/2021 vp, pp. 21 – 27.

Government action and powers are highlighted when national security is threatened. Section 108(1) and sections 111 and 112(2) of the Finnish Constitution impose special obligations on the Chancellor of Justice in the exercise of judicial oversight. The special legislation conferring extraordinary emergency powers to the Government serves to underline the importance of the judicial oversight exercised by the Chancellor of Justice in securing the rule of law and protecting fundamental rights. A case in point in this context is the application of section 16 of the Border Guard Act.[4]The Act on Decision-Making on International Assistance, Cooperation or Other International Activities sets forth, *inter alia*, a key body of procedures for decision-making on participation in the operations launched by the North Atlantic Treaty Organisation NATO, both in times of peace and war.[5] Partly under this Act and partly under the State Budget Act, the Government made in 2022 and 2023 decisions on aid packages to Ukraine. The Government has also taken decisions on participation in NATO operations under the same Act. The 2022 Act on the Executive Assistance to be Provided by the Defence Forces to the Police includes fundamentally important provisions on not only the means of coercion and personal weaponry of military personnel but also on executive assistance requiring more powerful armament. Decisions on the provision of extended executive assistance are made by the Government according to the criteria laid down by law. The Chancellor of Justice is called upon to protect the rule of law and public order as well as ensure a balanced realisation of fundamental and human rights in relation to the management of national security for which the Government is responsible.[6]

Up-to-date legislation is the primary tool for reconciling fundamental rights with national security needs

According to the constitutional principle of the rule of law, the exercise of public power must be based on law and all public activities must strictly comply with the law. Traditionally, underlying the Nordic and Finnish legal order is profound respect for the role of Parliament. Finns are a nation that believes in law. We take legislation seriously. The central position enjoyed by the acts passed by Parliament may have made it necessary to include in law and related reasoning interpretations that are hard to reconcile with the established interpretations of Union law or fundamental and human rights.

In European constitutionalism, enactment of laws by Parliament is not the only source of legal order. Instead, western constitutionalism underlines the importance of the fundamental rights of individuals and efficient safeguards for the same.7

Generally, fundamental rights are not absolute.[8]A number of fundamental rights are expressed in the Finnish

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[4]Section 16 of the Border Guard Act was revised at the same time as a specific amendment defining serious hybrid threats was included in the Emergency Powers Act by way of derogation from the Constitution. For the legal reform related to preparedness for hybrid threats as defined in the Emergency Powers Act, see Opinion of the Defence Committee PuVM 2/2022 vp – Government Proposal HE 67/2015 vp HE 63/2022 vp and the Opinion of the Constitutional Law Committee PeVL 29/2022 vp on developing a constitutional doctrine regarding emergency conditions and legislation under the current Constitution.

[5] For the legal amendments, see Government Proposal HE 193/2022 vp and Opinion of the Foreign Affairs Committee UaVM 12/2022 vp and the Opinion of the Constitutional Law Committee PeVL 75/2022 vp. When the amendments were made, due consideration was given to the experiences gained in practice as well as the observations made by the Chancellor of Justice in the course of judicial oversight regarding, *inter alia*, the Afghan evacuation operation. The importance of this Act to decision-making on participation in NATO operations is described in chapter 4.1, pp. 26–28, of the Government Proposal for the Adoption and Bringing into Force of the North Atlantic Treaty and the Agreement on the Status of Missions and Representatives of Third States to the North Atlantic Treaty Organisation, Government Proposal HE 315/2022 vp.

[6]Many of the examples cited here are related to the utilisation of intelligence information. The Chancellor of Justice oversees the activities of the Government authorities and ministries in the direction, control, monitoring and use of intelligence; see the report of the Opinion of Intelligence Oversight CommitteeTiVM 1/2024 vp, which provides a detailed description of the intelligence oversight system as well as an up-to-date explanation of the Chancellor of Justice's role in this (page 11 of the Opinion).

[7]See Government Proposal HE 1/1998 vp, p. 17.

[8] Government Proposal HE 309/1993 vp, p. 29/II.

Constitution and the EU Charter of Fundamental Rights in the form of absolute prohibitions. According to the working documents prepared in anticipation of the fundamental rights reform, the absolute prohibitions are based on the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) regarding human rights, which may not be derogated from even in a national emergency.[9]However, the provisions of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces were adopted following the procedure laid down for the enactment of constitutional legislation, even though they do not legally fully exclude the possibility that a court of an allied country could in principle sentence a person subject to its military jurisdiction to a death penalty on Finnish territory when applying its own law, even though the death penalty is strictly prohibited by the Constitution, the Additional Protocol to the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. Of course, such an allied court is not subject to Finnish jurisdiction, nor does it exercise Finnish jurisdiction. Due to the different legal and political arrangements relating to the status of NATO forces, a death sentence handed down on Finnish territory is highly unlikely.[10]Fundamental rights expressed in the form of absolute prohibitions can only be amended or restricted following the constitutional legislative procedure or, if the restriction is based on an international convention, by following the simplified constitutional legislative procedure referred to in section 95(2) of the Constitution.

The Constitution does not preclude amendments. According to the prevailing doctrine, which emphasises the powers of Parliament and respect for the procedure of constitutional enactment, even absolute prohibitions laid down in the Constitution could be amended or derogated from at least by amending the Constitution and, to a highly limited extent and for substantial reasons, by passing an exceptional law.11The nature of an exceptional law as a limited departure from the Constitution was included in the wording of section 73 in connection with the amendment to the Constitution. The preamble to the section and related legal praxis underline the principle of refraining from passing exceptional laws.[12]Neither the application of the constitutional procedure for enactment, nor the national Constitution for that matter, provide any basis for derogating from human rights obligations under international law, or from EU legislation under Union law.

As part of regular legality oversight, the Chancellor of Justice has required, when Government Proposals weigh the relationship between national security and fundamental rights, that the grounds – especially in the section addressing the relationship with the Constitution and the legislative procedure – clearly state, in sufficient detail and with legally sound arguments, why new interpretations are sought. Hence, any new interpretations and restrictions to fundamental rights need to be substantiated and legally feasible, at least in principle. Moreover, they need to rely on existing laws and previous legal praxis.

A Government enjoying the confidence of Parliament is entitled to submit to Parliament even controversial proposals that may entail changes to previous interpretations of the Constitution and even amendments to the same.13Hence, even unpleasant and complicated issues are addressed in the course of the legislative process.

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[9]See Government Proposal HE 309/1993 vp, p. 27, particularly Opinion of the Constitutional Law Committee PeVM 25/1994 vp, pp. 4-5.

[10] See the Opinion of the Constitutional Law Committee PeVL 2/2024 vp. A similar problem had to be tackled in the context of the NATO Partnership for Peace, when similar provisions between the North Atlantic Treaty Organisation and other states participating in the Partnership for Peace, PfP Sofa, were adopted and put into force using a simplified constitutional legislative procedure; see Opinion of the Defence Committee PeVL 6/1997 vp.

[11]When the constitutional amendment was prepared, a prohibition to apply the extraordinary legislative procedure to fundamental rights was considered but rejected; see Opinion of the Defence Committee PeVM 25/1994 vp, p. 4.

[12]See Government Proposal HE 1/1998 vp, pp. 124 – 125 and related Opinion of the Defence CommitteePeVM 10/1998 vp, pp. 22 - 23.

[13] An up-to-date description of the Chancellor of Justice's action threshold in the constitutionality oversight of the legislative process is provided in my Chancellor's commentary published in report K 19/2022 vp, pp. 12-21, which is also available online. See 'Action threshold in the judicial oversight of the legislative process', https://oikeuskansleri.fi/-/oikeuskansleri-tuomas-poysti-toimenpidepidekynnys-lainvalmistelun-laillisuusvalvonnassa My commentary is part of the Chancellor of Justice's guidelines for the oversight of

Consequently, the exercise of public power, including the use of force by the Government, is not arbitrary but based on democratically drafted legislation and deliberations. This means that the exercise of power and the legal system always rest on a democratic foundation and legally appropriate forms.

National security at the eastern border and absolute fundamental and human rights obligations

In order to legally combat the hybrid operation at the eastern border, in which Russia is instrumentalising asylum seekers, the Chancellor of Justice has examined the content of the right to seek asylum and non-refoulement, both fundamental human rights, in relation to national security. These deliberations have concerned the application of section 16 of the Border Guard Act as well as the possibilities and limits for passing new legislation to complement it. Non-refoulement and the prohibition of inhuman treatment are formulated in absolute terms. They must be honoured even in national emergencies, including wartime conditions.[14] According to the case law of the Court of Justice of the European Union, national security or national emergency as such does not justify a derogation from the provisions of European Union law on the right to seek asylum and on non-refoulement.[15]

Non-refoulement prevents the return of a person to a country where the returnee faces a serious and real risk of inhuman treatment or the death penalty.[16]The case law of the European Court of Human Rights has also assessed the security of transit countries and the protection of the applicant from arbitrary direct or indirect return to a country where there are substantial grounds for believing that there is a real risk that he or she would be condemned to death or subjected to torture or inhuman or degrading treatment or punishment. A sufficiently thorough assessment of these risks must be carried out by the expelling country.[17]Abstract and concrete issues need to be kept apart, both in the law and in its application. Similarly, a distinction needs to be made between general and specific limited exceptions. The prohibition of inhuman treatment or the death penalty must not be violated in actual cases affecting real individuals. A sufficiently concrete and individual investigation has been considered a necessary procedural requirement under Article 3 of the European Convention on Human Rights[18].

As regards the interpretation of the right to seek asylum and non-refoulement, the general rule of international law saying that no one enjoys a universal right to settle in another State is irrelevant.[19] States have the right to make decisions regarding the entry into the country, residence permits and the expulsion of foreigners.[20]When action is taken in response to instrumentalised migration, it is important to note that States

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legislative drafting. Example 5 of my presentation describes a limited derogation from the Constitution or a Government Proposal for revising the established interpretation.

[14] See Judgement of the European Court of Human Rights in the case of K.I. v. France, 5560/19,15.4.2021, ECLI:CE:ECHR:2021:0415JUD000556019; Selmouni v. France [G], 25803/94, 28.7.1999, ECLI:CE:ECHR:1999:0728JUD002580394 § 95, and J.K. and Others v. Sweden [G], 59166/12,23.8.2016, ECLI:CE:ECHR:2016:0823JUD005916612, § 77.

[15] Judgement of the European Court of Human Rights in the case C-72/22 PPU, ECLI:EU:C:2022:505, paragraph 70; Judgement of the European Court of Human Rights in the case C-808/18, Commission v. Hungary, EU:C:2020:1029, paragraph 214.

[16]According to the formulation used in Article 19(2) of the Charter of Fundamental Rights, no one may be removed, expelled or extradited *to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment*. See Judgement of the European Court of Human Rights in the case of F.G. v. Sweden [G], 43611/11, 23.3.2016, ECLI:CE:ECHR:2014:0116JUD004361111, § 111; A.M. v. French, 12148/18, 29.4.2019, ECLI:CE:ECHR:2019:0429JUD001214818, § 113, ja K.I. v. French, § 117.

[17] *M.S.S. v. Belgium and Greece* , 30696/09, 21.1.2011, ECLI:CE:ECHR:2011:0121JUD003069609, § 286; *Saadi v. Italy,* [GC], 37201/06, 28.2.2008, ECLI:CE:ECHR:2008:0228JUD003720106, §§ 125-126; *Ilias and Ahmed v. Hungary*, 47287/15, 14.3.2017, ECLI:CE:ECHR:2017:0314JUD004728715, § 148, 163; *F.G. v. Sweden*, 43611/11, 23.3.2016, § 113. *M.A. and Others v. Lithuania*, 59793/17, 11.12.2018, ECLI:CE:ECHR:2018:1211JUD005979317, § 104.

[18] As in the case of K.I. v. France, § 144 – 145.

[19] Opinion of the Constitutional Law Committee PeVL 37/2022 vp, paragraph 4; and the preamble to the fundamental rights reform, see Government Proposal HE 309/1993 vp, p. 52.

[20] Judgement of the European Court of Human Rights in the case of K.I. v. France, § 117.

have the right to secure their external borders and decide who has access to its territory.[21]

The EU Court of Justice and the European Court of Human Rights require a fair opportunity to seek asylum. The ECtHR has allowed the use of reasonable and proportionate force to prevent entry in a mass influx situation, as long as there were sufficient routes for legal entry and a real possibility to apply for international protection.[22]No case law on manifestly state-sponsored hybrid activities has yet been established by the European Court of Human Rights. The judgments regarding the incidents on the Polish-Belorussian border, however, relate to similar developments.[23]

National security is an important and acceptable legal interest.[24]National security is not a fundamental right. One of the universal and fundamental duties of any State is to guarantee national security for its citizens and residents. According to Article 4 of the Treaty on European Union, the Union shall respect the essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security.

In the face of serious threats, national security may have indirect implications for several fundamental rights. The most direct and obvious link is the right of each individual to life, personal liberty, integrity and security, guaranteed by section 7 of the Constitution of Finland.[25]According to section 22 of the Constitution, the public authorities must ensure the realisation of fundamental rights and human rights, including the right to personal security. The right guaranteed under section 7 of the Constitution is not a collective but subjective right. Large-scale hostile influencing by a foreign State through instrumentalised migration is a violation of international law. If serious enough, it may also violate the external and even internal sovereignty of the State of Finland. In extreme situations and in cases of extensive influencing, this may undermine a range of fundamental rights, including the rights to participation set out in section 2(2) and section 14 of the Constitution. Hostile influencing is disruptive to the day-to-day life of the target country.

Key considerations in the legality oversight of government decision-making

The first question to be addressed when seeking to ensure a balanced reconciliation of national security and fundamental rights is whether the measures contemplated by the Government are sufficiently and objectively justified. It is about the obligation to justify the actions on valid legal grounds and to meet the standards of proof set out in law in respect of the then-current circumstances. Legality oversight focuses on the legal adequacy and objectivity of the information used as a basis for decision-making and compliance with the roles and procedural steps of the various parties involved in the legislative process.

In matters of national security, new legislation is to be based on an impartial and objective situation picture developed by the security authorities under liability for acts in office. Also, it is up to the political decision-makers to ensure the adequacy of the situation picture and the diversity of approaches by posing questions and making critical comments. Hence, the role of the political leadership is not limited to just ‘signing off’ the situation picture presented by the civil service and determining actual policies and making the necessary

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[21] Opinion of the Constitutional Law Committee PeVL 16/2022 vp, paragraph 7; see Opinion of the Constitutional Law Committee PeVL 15/2022 vp.
[22] Judgement of the European Court of Human Rights in the case of N.D. and N. v. Spain; Castilian (G), 8675/15 and 8697/15, 13.2.2020, ECLI:CE:ECHR:2020:0213JUD000867515.
[23] See judgment in the case of D.A. and Others v. Poland, 51246/17, 8.7.2021, ECLI:CE:ECHR:2021:0708JUD005124617, anhd M.K. and Others v. Poland, 40503/17, 23.7.2020, ECLI:CE:ECHR:2020:0723JUD004050317.
[24]Opinion of the Constitutional Law Committee PeVL 2/2023 vp, paragraph 5; Opinion of the Constitutional Law Committee PeVL 37/2022 vp, paragraph 8; Opinion of the Constitutional Law Committee PeVL 16/2022 vp, paragraph 5.
[25] Opinion of the Constitutional Law CommitteePeVL 2/2023 vp, paragraph 5; Opinion of the Constitutional Law Committee PeVL 16/2022 vp, paragraph 5; Opinion of the Constitutional Law Committee PeVL 5/1999 vp, p. 2/II; Opinion of the Constitutional Law Committee PeVL 36/2020 vp, p. 3, Opinion of the Constitutional Law Committee PeVL 73/2018 vp, p. 3, Opinion of the Constitutional Law Committee PeVL 15/2018 vp, p. 8.

decisions. However, the preparations made by politicians, e.g. by ministerial staff or committees or by the Office of the President of the Republic, cannot replace preparations by public officials carried out under liability for acts in office; nor may politicians determine the contents of, say, intelligence reports or military advice or assessments made by the Defence Forces. With regard to matters that fall within the remit of the Government or a minister accountable to Parliament or the President of the Republic, it is up to the President to formulate conclusions in consultation with the Government, particularly in cases that require a careful assessment of the implications for society as a whole.

Another key task is to ensure compliance with the principles of objectivity and appropriate purpose while securing that the objective of a Government decision or action is acceptable under constitutional law. In ex-ante legality oversight, an assessment is made in the light of the information available at the time when the decision is made.

A third, highly essential question is the necessity and proportionality of the restrictions affecting fundamental rights. Responsibility for justifying the actions rests with the ministry proposing the measure, and meeting this obligation is an essential element of the liability of the presenting official. The Government members participating in decision-making bear not only political responsibility but also legal liability in their capacity as ministers.

The assessment of necessity and proportionality is specific to each situation and case. When more information is accumulated, different solutions may emerge. After all, the principles of necessity and proportionality require that the option chosen on the basis of the information available presupposes minimum restrictions to fundamental rights while being reasonable effective. The interpretation to be made in this situation is concrete and, as such, different to the more general assessment on a higher level of abstraction to be made in connection with the oversight of constitutionality within the meaning of section 74 of the Constitution. The reports and opinions of the Constitutional Law Committee are the key sources of law on the basis of which the Chancellor of Justice assesses the actual situation at hand. Also, compliance with the obligation to justify decisions and the principles of necessity and proportionality is often the thorniest question to be assessed by the Chancellor of Justice in the course of legality oversight. In practice, Governments are usually urged by the Chancellor to revise the arguments to improve the standard of quality.

When necessity and proportionality are assessed, privileged and security-classified intelligence and situational awareness information have played an important role in addressing national security matters, such as in the application of section 16 of the Border Guard Act. One of the strengths of the Finnish rule of law and judicial oversight is that the exercise of supreme governmental powers is already subject to ex-ante legality review and, under section 111 of the Constitution, the supreme guardians of the law have the same level of access as the decision-makers to the confidential and classified information on which their decisions are based.

On the procedures employed by the Chancellor of Justice in judicial oversight, particularly in matters of national security

Chancellor of Justice of the Government is a constitutional institution and authority, not an individual. In practice, matters are decided by the Chancellor of Justice or Deputy Chancellor of Justice in response to a proposal by a rapporteur. Each case related to judicial oversight is assessed by two jurists or several legal officers serving as experts and rapporteurs. In practice, the measures required in response to the situation at the eastern border have been assessed by a group consisting of three referendaries and the team of the Chancellor of Justice or Deputy Chancellor serving as the decision-maker. The Chancellor of Justice and Deputy Chancellor have taken their decisions in response to a proposal presented by a lawyer acting as rapporteur. This approach is employed to ensure de facto collegial assessment and the consistency of decisions irrespective of whether the decision related to judicial oversight is made by the Chancellor of Justice or Deputy Chancellor of Justice. Naturally, the decisions made by the guardians of the law are affected by the gravity of the situation at hand.

The Chancellor of Justice participates in the workings of the Government's statutory ministerial committees only to the extent necessary for constitutional oversight and the provision of ex ante comments on the legality and related legal information on the correct interpretation of the law. For the purposes of judicial oversight of Government decision-making prepared by ministerial committees, the notice and agenda of the customary and statutory meetings of the ministerial committees are sent to the Chancellor of Justice in advance, if necessary following the procedure set out for security clearance. The Chancellor of Justice does not serve as an general or case-related expert or legal adviser on ministerial committees.

In the current security situation, legal issues and policies relevant to the Chancellor of Justice's judicial oversight have been repeatedly discussed by the Ministerial Committee on Foreign and Security Policy (UTVA) and its joint meeting with the President of the Republic (TP-UTVA). The Ministerial Committee on Foreign and Security Policy is, in principle, an important forum for inter-Government and top-level security management and related preparations in society. The Chancellor of Justice has issued a written statement clarifying when it is appropriate for the Chancellor of Justice to attend TP-UTVA and UTVA meetings under his constitutional mandate (Chancellor of Justice's statement OKV/357/24/2024). As a rule, attendance to the extent necessary for adequate oversight means that the Chancellor of Justice participates in meetings when the matter being addressed requires a constitutionally substantiated legal opinion. Examples of such situations in recent years include the recognition of a state of emergency; procedures for accession to NATO; the need for an important and fundamentally significant legal opinion or interpretation when making decisions on Finland's participation in the provision of or request for international assistance or inter-country cooperation; or the exercise of emergency powers restricting fundamental rights in response to an atypical security situation (introduction of restrictive measures and concentration of applications for international protection under section 16 of the Border Guard Act). Particularly in matters concerning the recognition of emergency circumstances and the exercise of emergency powers by the Government, the presentation of a prior legal assessment in the UTVA and TP-UTVA meetings is justified and advisable in terms of confidentiality and the protection of the de facto authority of the relevant forum for preparation and cooperation. By doing so, it is possible to avoid a situation where a matter is referred back to the Committee from the Presidential Session or the Government Plenary Session because of legal flaws. While policies proposed by TP-UTVA or UTVA are not – and should not – be legally binding on the Chancellor of Justice in the course of decision-making, it is highly advisable that such policies are carefully considered from a legal point of view.

The position and duties of the Chancellor of Justice, as defined in the Constitution, impose a number of requirements as to how the Chancellor's role is reflected in the meeting records of ministerial committees. The Chancellor of Justice is not entered as a general or case-related expert or adviser in the minutes, as the duty and responsibility to act as an expert assisting the committee lies with the invited civil service experts and is an integral part of the responsibility of the ministry proposing the measure. For this reason, the attendance of the Chancellor of Justice is recognised in the agenda and minutes of the ministerial committees by the following entry: ''Additionally, the Government Chancellor of Justice participates in the discussion of item X in his capacity as the guardian of the law and provider of legal information".

The essence of legality?

What, then, is the essence of the legality that the Chancellor of Justice, even in the harshest of circumstances, seeks to safeguard as the supreme guardian of the law? No attempt may be made, even by passing new legislation, to overturn or undermine the fundamental principles underlying the system of government as defined in chapter 1 of the Constitution and, consequently, the legal order. Among these principles are the position of Parliament as the supreme governing body, the doctrine of separation of powers and the rule of law. Aside from Parliament's status as the supreme organ of state, other inviolable principles include the independence of the judicial system from the legislative, administrative and executive powers. Legislators may not seek to derogate from European Union law to any substantial degree. If they wish to do so, a democratic state based on the rule of law can free itself from the Union law by exiting from the European Union by following a constitutionally acceptable procedure.

In my view, the heart of legality lies in the principle of the rule of law expressed in section 2(3) of the

Constitution, combined with the principle of democracy as defined in the same section as well as equality before the law and the prohibition of arbitrariness set out in section 6 of the Constitution. Arbitrariness is forbidden. All exercise of power must have a democratic basis in a law enacted by Parliament. The exercise of public power must be based on an act of Parliament that is adequate, precise, accurate, comprehensible and otherwise predictable in its application. The law must be strictly complied with in all public activities. This also means that any supranational or foreign emergency legislation is prohibited. Hence, all fundamental decisions regarding the defence of national security must be made by an act of Parliament.

The third essential aspect of legality is, in my view, the constitutional requirement to guarantee the inviolability of human dignity mentioned in section 1 of the Constitution. This inviolability also means that the fundamental rights system as a whole is an important foundation of the legal order. The fourth essence of constitutional order is the principle of legality in criminal law.

The essence of legality is to be safeguarded even in difficult times. This is where the strength of our country, and of the European Union as a whole, lies in the face of various forms of hostile subversion.