# Tuomas Pöysti: Chancellor of Justice increases preliminary reviews of new statutes

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My first commentary for an annual report focuses on developments relating to the Chancellor of Justice's preliminary reviews of new statutes. Performing preliminary reviews on new statutes is one of the priorities for the supervision of legality carried out by the Chancellor of Justice in 2018, and it is also one of the Chancellor of Justice's areas of specialist constitutional expertise in the context of the supervision of legality.

My commentary follows on from the commentary written by my predecessor, Jaakko Jonkka, for last year's annual report, which discussed the role of the Chancellor of Justice in supervising the legislative process (Chancellor of Justice / Annual Report 2016, K 13/2017 vp). From the perspective of new statutes, my commentary is also a response to the commentary written by Petri Jääskeläinen for the 2016 annual report of the Parliamentary Ombudsman (K 8/2017 vp), which discussed the division of responsibilities between the Parliamentary Ombudsman and the Chancellor of Justice.

## The division of responsibilities between the Chancellor of Justice and the Parliamentary Ombudsman can be developed on the basis of their respective strengths

The development of the division of responsibilities and cooperation between the supreme guardians of the law is a hot topic at the moment. The Constitutional Law Committee of the Parliament of Finland has called attention to the issue and also its urgency in several statements, most recently in its opinions on the 2016 annual reports of the Parliamentary Ombudsman and the Chancellor of Justice of the Government (PeVM 1/2017 vp and PeVM 2/2017 vp).

The roles of the Chancellor of Justice and the Parliamentary Ombudsman in the supervision of legality have grown more specialised over the years, and the division of responsibilities has changed both due to legislative reforms and new practices. This creates possibilities for development based on the strengths of each guardian of the law. One way to do this is for the Chancellor of Justice to start carrying out more preliminary reviews of new statutes.

The basic principles of the division of responsibilities are laid down in Sections 108 and 111 of our relatively recently revised and, in my opinion, up-to-date Constitution. According to the Constitution, the first duty of the Chancellor of Justice is to oversee the lawfulness of the official acts of the Government and the President of the Republic. The Chancellor of Justice must be present at meetings of the Government and when matters are presented to the President in presidential sessions of the

Government. The ability to oversee the lawfulness of the official acts of the Government and the President in a timely and efficient manner is one of the tangible, legal strengths of the Chancellor of Justice. With this comes the possibility to provide guidance and advice and proactively protect fundamental freedoms, human rights and legal rights in general. Preliminary reviews of new statutes are becoming increasingly important in this context. Increasing preliminary reviews of new statutes and thereby ensuring the constitutionality of government bills and the observance of good legislative practice are also international trends.

The priorities and strengths of the legality controls carried out by the Chancellor of Justice also include, among others, having supreme oversight of the legality of the court system on the whole. This can be broken down to, among other things, the supervision of advocates and licensed legal counsels and reviews of sentences for criminal offences, which are among the statutory duties of the Chancellor of Justice. The Parliamentary Ombudsman has his own priorities and areas of expertise.

## Calls for independent legal advice

The work of the supreme guardians of the law has evolved from retrospective legality controls towards more and more proactive and timely protection of the rights of individuals over the years. This has also been the legislators' aim. (See endnote 1) Preliminary reviews of new statutes are an extremely important part of the work of the Chancellor of Justice, as the practice promotes the rights of individuals and protects fundamental freedoms and human rights.

Section 108(2) of the Constitution obligates the Chancellor of Justice to provide the President, the Government and the Ministries with information and opinions on legal issues. This advisory role of the Chancellor of Justice refers to the provision of independent legal advice, and it enables him to supervise legality in real time and steer the work of the Government, which is integral to modern supervision. The fact that the Chancellor of Justice's statements and opinions are legally independent and non-discriminatory and inherently related to the supervision of legality is what separates them from the general consultation and statement procedure associated with the legislative process.

Independent legal assessments in the context of the legislative process and the provision of independent legal advice in the context of the actions of the highest executive organs are not an exclusively Finnish feature. Each European country has arranged the role in accordance with their respective constitutional laws and administrative structures. In France, for example, the non-judicial departments of the Council of State (Conseil d'État), which also acts as the supreme court for administrative justice, issue statements in a manner that is very similar to the preliminary reviews carried out by the Chancellor of Justice in Finland. The consultative role of the French Constitutional Council (Conseil constitutionnel) also features these elements, although the Constitutional Council has more similarities with the Constitutional Law Committee in Finland. It is therefore not exclusively a constitutional court. (See endnote 2) The institutional solution adopted in the Netherlands is largely

similar to that of France: the Dutch Council of State (Raad van State) provides consultancy and issues statements, and it also acts as the supreme court in administrative matters. Its consultative role is organisationally separate from its role as an administrative court, and emphasis is given to the independence of the consultancy provided by the Council of State. (See endnote 3) In Sweden, the duty to pronounce on the legal validity of legislative proposals lies with the Council of Legislation (Lagrådet). The procedure involves the Council of Legislation examining similar issues to those covered by the preliminary reviews of new statutes carried out by the Finnish Chancellor of Justice. (See endnote 4) The Swedish Chancellor of Justice is responsible for producing reports for the Government upon request and for issuing statements in the course of the legislative process, but performing preliminary reviews on new statutes is not among her principal tasks. (See endnote 5)

These concise examples show that there is need for independent legal advice. The need also seems to be growing. Various kinds of organisational solutions have been explored for the provision of legal advice in different European countries, and the institutions in each country are a product of national needs and history. New needs have been responded to by solutions based on tradition. This would also be a wise approach in Finland.

## The quality of the legislative process and respecting fundamental freedoms and human rights are crucial from the perspective of the rule of law

The rule of law no longer constitutes just formal legality. Today, all public policies are based on democracy. Fundamental freedoms and human rights form the basis of legislation and the application of laws and guide the actions of legislators and the entire state sector. In other words, the rule of law is founded on the observation of fundamental freedoms and human rights. Individuals and organisations have extensive opportunities to take part and have a say, even on the actions of legislators and the highest executive organs. Laws are based on democracy and formulated through a transparent, accountable, interactive and inclusive process. The rule of law therefore has a strong substantive dimension.

The Council of Europe and the laws and entire concept of the rule of law in the member states of the European Union are deeply international. The contents of applicable laws are a product of interaction between national and international norms and sources. A report produced by the Venice Commission of the Council of Europe in 2013 and its Rule of Law Checklist from 2016 expertly summarise the six elements of the modern rule of law:

1. Legality, including a transparent, accountable and democratic process for enacting law;
2. Legal certainty;
3. Prohibition of arbitrariness;
4. Access to justice before independent and impartial courts, including judicial review of administrative acts;

5. Respect for human rights; and
6. Non-discrimination and equality before the law. (See endnote 6)

The case law of the European Court of Human Rights has laid down further important criteria for laws and legality as well as legal certainty, which give more content to the rule of law. Law must be accessible, clear and intelligible, and judicial decisions based on the law must be predictable.

Traditionally, the rule of law has dictated that the exercise of public powers is tied to predictable and universal laws and control by independent courts. Later developments have given more emphasis to the links between the highest executive organs and the law and more extensively good governance as well as the qualitative requirements set for laws and the legislative process and the principles of respecting human rights and fundamental freedoms. (See endnote 7)

## Assessment procedures promote expedient and knowledge-based legislation

The Constitution of Finland that entered into force in 2000 creates a system of preliminary and retrospective reviews of statutes, establishes procedural roles and identifies the regulations subject to supervision. Statutes are universally applicable legal norms that are primarily enacted as acts approved by the Parliament or decreed by the President, the Government or Ministries on the basis of powers enshrined in the Constitution or the law. Pursuant to Section 80 of the Constitution of Finland, other bodies than Ministries can also be authorised by an act to lay down legal rules on given matters, if there is a special reason pertinent to the subject matter. The scope of such an authorisation must be precisely circumscribed. The aim is to limit the power to issue important universal legal doctrines to the Parliament, the Government and the Ministries, which enjoy the trust of the Parliament, or the President, who is democratically elected. The constitutional provision promotes democracy and the predictability of justice. However, the picture provided by the Constitution of legal norms and statutes is not comprehensive, as international developments have given a stronger role to contractual regulatory systems based on private law and partially new forms of standardisation and international rules in different areas of the law.

Reviews of new statutes refer to checks on the constitutionality of universal legal norms laid down by means of the legislative process and other legality controls. Supervision of the expediency of statutes and good legislative process is based on assessment procedures focusing on ensuring that laws are effective and knowledge-based and that their objectives are achieved. (See endnote 8) The most legally important of these are assessments focusing on economic policy and more specifically financial policy. (See endnote 9) The justice system and the economy are pillars of society, and they need to be examined together from a broad perspective that takes into account fundamental freedoms and human rights in order to efficiently protect legal rights.

From the perspective of new statutes, the most important evaluation practices are those of the Legislation Assessment Council, which are based on a political commitment given by the Government in the Government Programme and a government decree. The Legislation Assessment Council evaluates impact assessments in the course of the legislative process, which has exposed impact assessments to public criticism. The Legislation Assessment Council has set relatively systematic and well-founded economic requirements on impact assessments. The Chancellor of the Justice monitors how the recommendations of the Legislation Assessment Council are taken into account in the legislative process. The work of the Legislation Assessment Council nevertheless focuses on the latter stages of the legislative process, which is why the opportunities for incorporating any suggested improvements into government proposals are limited. (See endnote 10)

## Constitutionality is ensured by numerous procedures

Section 74 of the Constitution of Finland gives responsibility for the proactive supervision of constitutionality to the Constitutional Law Committee of the Parliament of Finland. Pursuant to Section 106 of the Constitution, courts have the final say on the applicability of individual provisions in practice, but they are not responsible for the general supervision of constitutionality. Despite the special role of the Constitutional Law Committee, responsibility for ensuring the constitutionality of laws and protecting fundamental freedoms and human rights is shared by multiple organisations. This is natural in an advanced culture of fundamental freedoms and human rights.

The supervision of the legality of new statutes includes the right of the President to request statements from the Supreme Court and the Supreme Administrative Court on acts submitted to him for confirmation pursuant to Section 77 of the Constitution. The Chancellor of Justice monitors the conditions for the President’s right to request statements by ensuring that any acts adopted by the Parliament are submitted to the President for confirmation sufficiently early. In connection with confirming an act, the President can also issue a statement calling attention to the protection of fundamental freedoms, for example, in the implementation of the act. This is what the President did in connection with the reform of the Health Care Act in 2016. The statement concerned the relationship between the centralisation of specialist medical care and language-related rights, and it focused on the use of the authority to issue decrees laid down in the act. (See endnote 11)

Procedures relating to preliminary reviews of new statutes pursuant to Section 118 of the Constitution also include the accountability of governmental rapporteurs for decisions made on the basis of their presentations and the associated responsibility to ensure that the Government has the prerequisites to make decisions on the basis of the Constitution and the law. Rapporteurs are responsible for legality and for carrying out sufficient investigations to support decision-making and not for whether their presentations serve a purpose. According to the rules of procedure of the Government, Permanent

Secretaries are responsible for ensuring the quality of the legislative process within their respective Ministries.

## The Chancellor of Justice's reviews of statutes promote an efficient decision-making process and create a foundation for trust

Preliminary reviews of new statutes are part of the Chancellor of Justice's obligation to supervise the official acts of the Government and the President laid down in Sections 108, 111 and 112 of the Constitution and the associated duty to provide information and opinions, i.e. to act as an independent legal expert. The Chancellor of Justice does not, and should not in a democratic country, have the power to decide, for example, on whether a government proposal should be presented to the Parliament. The body that has the final say in the assessment of the constitutionality of government bills is the Constitutional Law Committee of the Parliament of Finland.

The supervision of legality carried out by the Chancellor of Justice reinforces the efficiency of the Government's internal controls and ensures the legality of the Government's plans and decision and compliance with legal prerequisites. It also supports the supervision carried out by the Constitutional Law Committee of the Parliament by ensuring its prerequisites. The Chancellor of Justice also protects human rights and fundamental freedoms as well as other rights and ensures good governance in general in connection with planning.

The Chancellor of Justice's proactive and timely supervision of legality and the associated provision of independent expert advice help to increase the efficiency of the Government's and the Parliament's decision-making process. They also build trust in the decisions of the highest state institutions. The efficiency of the decision-making process and the trust it enjoys are extremely important assets for society and crucial for success. Maintaining trust is a relatively topical and important issue in Finland, as, according to surveys conducted by the OECD, trust in the government in Finland has decreased by approximately 27 percentage points since 2007. (See endnote 12)

## The Chancellor of Justice oversees the drawing up and issuing of government proposals in many ways

The constitutional provisions concerning the legality control duties of the Chancellor of Justice form the legal basis for the preliminary reviews of new statutes carried out by the Chancellor of Justice. The details of supervision are largely based on practical experience. (See endnote 13) The Office of the Chancellor of Justice is currently working hard to revise these practices.

The following are examples of preliminary controls applied to government proposals:

**(1) Issuing statements on government bills in connection with the consultation procedure. The Chancellor of Justice can also evaluate government bills separately from the actual consultation procedure**, if the President, the Government or a Ministry requests a statement or consultation pursuant to Section 108(2) of the Constitution. Requests for these kinds of statements and consultation have been made, for example, in connection with legislative initiatives that are challenging from the perspective of the Constitution and especially fundamental rights or otherwise legally complex. In practice, the Chancellor of Justice has been asked and has given statements in the context of the consultation procedure on a case-by-case basis. (See endnote 14) The Chancellor of Justice urges the Ministries to request statements on any legislative initiatives that are important from the perspective of fundamental freedoms and human rights or the rule or law and good governance. Similarly, statements should be requested on any legislative initiatives that have significance in terms of the consistency of legislation and the application of the law. Examples include initiatives that require a special assessment on the harmonisation of international and European obligations with national law or an evaluation of the exercise of national discretion in the context or international or Community norms.

The Office of the Chancellor of Justice has tried to create a system for identifying these kinds of initiatives and issuing statements on them in a more systematic manner. The aim is to make systematic use of lessons learnt from the processing of complaints and other legality controls. The statement procedure provides the Chancellor of Justice with the best opportunity to call attention to issues relating to government bills and good legislative practice. The Chancellor of Justice acts as an independent legal advisor and therefore a guardian of the law and a promoter of fundamental freedoms, human rights and other rights of individuals in the context of the statement procedure as well.

**(2) Providing verbal and other informal advice to the Government and the Ministries** on the correct application of the law during the legislative process. In this context, the correct application of the law refers, above all, to the consistency and applicability of the law on the whole as well as a legal assessment of how the Constitution and fundamental rights as well as international obligations can be taken into account in a balanced manner. Consultations are usually initiated by a Ministry or a Minister. The presence of the Chancellor of Justice in government negotiations provides an opportunity to advise on legal considerations in a timely and flexible manner also in cases where the final social policy alternatives and political priorities have not yet been chosen. Most government proposals are drawn up by ministerial working groups these days, and political priorities are chosen not at informal meetings but at the government's strategy planning sessions, which are not, as a rule, attended by the Chancellor of Justice. The consultative and advisory role of the Chancellor of Justice therefore requires more and more proactiveness from the Ministry in charge of a bill or proactive monitoring by the Office of the Chancellor of Justice.

The provision of advice does not constitute acting as an agent or counsel for the Government. It involves giving legal advice that adds value through independence, impartiality and expertise in the legal system as a whole. The Chancellor of Justice does not contribute to the Ministries' operative

content planning or decisions on the contents of laws taken in the course of the legislative process. However, the Chancellor of Justice calls attention to issues that are important from the perspective of making these decisions and legal assessments in the course of planning and the Government's decision-making process. He can suggest alternatives that are better from the perspective of the Constitution or the rule of law.

**(3) Carrying out systematic preliminary reviews of government proposals** (new procedure). Preliminary reviews have been introduced in response to a statement of the Constitutional Law Committee of the Parliament (PeVL 19/2016 vp) concerning the Chancellor of Justice's proactiveness in the supervision of government proposals and the legislative process. The procedure also provides an opportunity to trial an operating model aimed at supporting the Government's legislative process more efficiently than before. The Ministries have also submitted, and the Chancellor of Justice has requested, legally challenging or complex government proposals for review well in advance of government sessions before this procedure was adopted. The procedure was revised as of the beginning of 2018 by urging the Ministries to request preliminary reviews of any government proposals that are important from the perspective of fundamental freedoms, human rights and the rule of law or from the perspective of their impacts or the effectiveness and cohesiveness of legislation on the whole. The Office of the Chancellor of Justice has also been proactive in requesting these kinds of proposals for preliminary review on the basis of the Government's legislative plan.

Government proposals are chosen for preliminary review on the basis of the following criteria:

a) Importance of the proposed provisions from the perspective of fundamental freedoms, human rights and good governance as well as the efficient application of the democratic rule of law;
b) Important issues relating to the application and interpretation of the Constitution;
c) Important social impacts combined with the consistency of the law on the whole; in these cases, the criteria include, among others, a special need for assessment identified by the Legislation Assessment Council or themes relating to the application of laws identified by the Office of the Chancellor of Justice in connection with legality controls; and
d) Extremely long or complex proposals that are difficult to review within the normal schedule of the Government's presentation agendas (government proposals consisting of more than 100 provisions or more than 250 pages).

In the future, it will also be possible to identify proposals in the context of which a preliminary review is justified on the basis of consultations. For proposals that are submitted to the Legislation Assessment Council, preliminary reviews are carried out simultaneously with the Legislation Assessment Council's process. In the case of other proposals, the preliminary review takes place at a relatively late stage of the legislative process but while it is still possible to introduce tangible improvements. Systematic preliminary reviews are still experimental at the moment, and the procedure is being developed on the basis of lessons learnt and feedback received.

Contrary to reviews of presentation agendas which are carried out for all government proposals, preliminary reviews are not comprehensive. Limited resources mean that preliminary reviews can only be carried out on the most important proposals from the perspective of the objective of the procedure. It is not even possible to carry out preliminary reviews on all the proposals that are submitted to the Constitutional Law Committee.

**(4) Reviews of the Government's presentation agendas** and the presence of the Chancellor of Justice at the Government's plenary sessions and any comments made by the Chancellor of Justice in those contexts pursuant to Section 112 of the Constitution of Finland. Reviews of presentation agendas are, in practice, the most official form of legality control carried out by the Chancellor of Justice. They ensure that conditions are in place for constitutional and legal decision-making. Reviews of presentation agendas aim to ensure that proposals give the Parliament enough information to identify proposals that require an assessment by the Constitutional Law Committee and enough information for the Constitutional Law Committee to be able to assess their constitutionality.

The role of the Chancellor of Justice in reviewing presentation agendas is to ensure that there are no weaknesses in proposals that would require intervention by the Chancellor of Justice. Based on legal literature, the Chancellor of Justice has never entered a comment concerning the legality of a government proposal in the Government's minutes. Doing so is possible but would be an extremely forceful measure the threshold for which is justifiably high. Only government proposals that are clearly unconstitutional and flawed and that do not involve the Government, which is accountable to the Parliament, exercising its discretion in the field of social policy and its right to present new interpretations transparently can, in practice, lead to the entry of a comment in the Government's minutes. The procedure is therefore formally possible but unlikely to be used in practice. (See endnote 15)

The advantages of reviews of presentation agendas include their comprehensiveness and the possibility of preventing mistakes. Their weaknesses relate to the extremely tight schedule and their inevitable focus on formalities and ensuring minimum standards.

## Preliminary reviews ensure that sufficient grounds exist for decision-making

The overall objective of the preliminary reviews carried out by the Chancellor of Justice is to promote good legislation and good legislative practice and ensure the legal prerequisites of government proposals. It is important from the perspective of efficient decision-making by the Parliament and the Government that proposals are formally solid and flawless and that the Parliament has enough sufficiently reliable information for making decisions. This includes the ability to apply the Constitution of Finland, Community law and international obligations correctly and to express interpretations openly and comprehensively in government proposals. The rationales given in government proposals are

important in this respect, and special attention is given to them in the Chancellor of Justice's inspections.

Preliminary reviews aim to establish whether a proposal correctly identifies key issues from the perspective of the Constitution of Finland and international human rights obligations and addresses them to a sufficient degree. Another aim is to check whether the rationale for a proposal explains the relevant constitutional interpretations and transparently addresses any interpretative issues and potential critical issues identified. The review covers the sufficiency and appropriateness of the justifications given for the solutions proposed for critical issues and the overall legal integrity and consistency of the bill and its rationale.

Constitutional issues relate to the protection of fundamental freedoms and human rights. The Chancellor of Justice has adopted a new practice of recommending that the European Convention on Human Rights and the associated interpretative practice as well as the case law of the Court of Justice of the European Union are taken into account and analysed whenever there is a legal reason to do so in order to evaluate the constitutionality of a proposal. Preliminary reviews also address the appropriateness of the legislative process and whether interested parties have been appropriately consulted. The requirements laid down in legislative guidelines should be observed as diligently as possible.

Where possible, preliminary reviews aim to ensure that legislation is logical, consistent and works well as a whole. This requires examining the mutual compatibility of national statutes and the intelligibility and predictability of regulatory frameworks from the perspective of the parties governed by the laws and those who apply them. Reviews also address whether the relationship between general and special laws is clear and logical. The general doctrines (principles, concepts, philosophies) of different areas of law also need to be taken into account. Logical and effective laws also need to implement international and European obligations effectively and in a manner that preserves as much of the consistency of the national legal system and the predictability of legal positions as possible. Where possible, preliminary reviews aim to ensure that the national leeway left by European and international norms is used appropriately.

Preliminary reviews carried out by the Chancellor of Justice do not limit the right of the Government to propose new kinds of solutions to the Parliament or to look for new interpretations in the Constitution. However, the Government has a duty to provide the Parliament with reliable and sufficient information to enable the processing and evaluation of proposals. Preliminary reviews are designed to ensure that any constitutional ambiguities are disclosed transparently in proposals and their rationales and that proposals provide an appropriate basis for decision-making by the Parliament otherwise as well.

Ensuring legal correctness is the responsibility of the Ministry drawing up the proposal, and controls on legal correctness are carried out by legal experts of the Ministry of Justice and are therefore not the

Chancellor of Justice's responsibility. The Ministry of Justice plays an important role in assisting other Ministries and providing them with legal advice, and the division of responsibilities between the Ministry of Justice and the Chancellor of Justice could be made clearer. The issue of how responsibilities and resources should be divided should be investigated and new practices developed, as ensuring an efficient legislative process requires a stronger shared legal knowledge base and more effective pooling of expertise that serves the Government and all Ministries.

## Preliminary reviews of new decrees still rely on the proactiveness of Ministries

The Constitutional Law Committee of the Parliament does not usually directly supervise government decrees. One exception are government decrees that temporarily limit fundamental rights in exceptional circumstances, which are submitted to the Parliament for consideration pursuant to Section 23 of the Constitution.

In theory, the legality controls carried out by the Chancellor of Justice therefore play a more important role legally in the case of decrees than in the context of government proposals. However, this power is significantly weakened by Section 107 of the Constitution, which prohibits the application of decreed provisions that are in conflict with the Constitution or an act. In order for the public to be able to trust in the predictability and permanence of statutes, the constitutionality and legality of decrees cannot be left to be decided on a case-by-case basis. Preliminary reviews by the Chancellor of Justice are therefore also required in the context of decrees.

The Constitutional Law Committee and the Chancellor of Justice supervise the constitutionality of decrees indirectly by ensuring that the powers to issue decrees are stipulated sufficiently clearly and in enough detail and that decrees do not address issues that, according to the Constitution, need to be governed by an act. The most important means by which the Chancellor of Justice supervises government decrees is by reviewing presentation agendas.

Preliminary reviews instigated by the Chancellor of Justice are not an established practice in the context of government decrees at the moment. The need to adopt such a practice will nevertheless be investigated once experiences have accumulated of preliminary reviews of government proposals. The Ministries have also been urged to take advantage of the possibility of preliminary reviews by the Chancellor of Justice.

With the exception of Ministries' requests for statements, ministerial decrees are not systematically subject to preliminary reviews by the Chancellor of Justice. They are, however, subject to the Chancellor of Justice's retrospective legality controls.

## The Chancellor of Justice has multiple strengths in the preliminary review of new statutes

In the context of preliminary reviews and the consultation procedure that precedes them, the strengths of the Chancellor of Justice include promptness and timeliness, efficiency, independence and impartiality, expertise in the application of the law, fundamental freedoms and human rights on the whole as well as trust and confidentiality.

The Chancellor of Justice works side by side with the Government with a clear mandate based on the Constitution. Legality controls therefore progress simultaneously with planning and decision-making. The Chancellor of Justice's supervision and consultation services are readily available to the Government, which makes the decision-making process run more smoothly. Legal perspectives and considerations relating to the protection of fundamental freedoms and human rights can be factored into planning and decision-making efficiently and directly. The Chancellor of Justice's ties to the Government and his attendance at plenary sessions and governmental meetings provide good opportunities for accessing information and especially for separating important facts from the vast pool of information available.

The Constitution also makes the Chancellor of Justice independent and impartial in relation to the Ministries. The Chancellor of Justice can bring a perspective to the evaluation of new statutes that is independent of the interests of individual government departments and political priorities and that does not emphasise individual areas of law. This impartiality combined with the supervision of compliance with fundamental freedoms and human rights allows the Chancellor of Justice to ensure that the perspective of legality in general is observed. These factors separate the Chancellor of Justice from government agents who simply promote the interests of individual clients according to their instructions. The Chancellor of Justice ensures legality and the rule of law in the exercise of the country's highest executive powers. International examples also show that independent supervision and the associated provision of impartial legal advice can be coordinated in a natural manner.

The expertise of the Chancellor of Justice stems from an understanding of rights and the legal system as a whole. When it comes to the substance of individual areas of law, the best experts within the Government are the Ministries. The expertise of the Chancellor of Justice and the Office of the Chancellor of Justice relates more to general aspects of legal regulation and the legally justified coordination of different perspectives. This expertise is significantly reinforced by the ability of the Chancellor of Justice to incorporate the picture given by complaints and other legality controls of the concerns and problems of individuals into the supervision of the legislative process and structural issues. What ultimately makes the role of the Chancellor of Justice unique is his ability to see the legal system as a whole, from the tangible protection of individuals' rights to the supervision of the constitutionality of statutes and the associated protection of rights on a more general level.

Modern constitutional philosophy sees the individual but also looks further in order to identify risks and structures that could threaten the individual's rights. Identifying and calling attention to structural problems is one of the strengths of the legality controls carried out by the Chancellor of Justice and the associated provision of advice.

The Chancellor of Justice's extremely extensive rights to information and his attendance at the Government's plenary sessions and presidential presentations also create a foundation for confidentiality. The Chancellor of Justice is in a position to carry out a fair and impartial legal assessment even in the context of politically contentious issues. The procedure helps to avoid mistakes and save time, and prevents damage to trust resulting from flawed decisions.

The supreme guardians of the law work in the interests of society and its members in order to ensure fairness. Preliminary reviews are one of the Chancellor of Justice's current priorities in the development of legality controls. The aim is to improve operating models and revise criteria as experience and feedback accumulate. Developing the procedures of the supreme guardians of the law and respecting our valuable constitutional tradition is our most important duty.

## Endnotes:

1. See rationale for the Act on the Division of Responsibilities between the Chancellor of Justice of the Government and the Parliamentary Ombudsman (1224/1990) in HE 72/1990 vp. Rationale, Section 1.1, Objectives.
2. See http://www.conseil-etat.fr (visited on 20 February 2018) and Article 39 of the Constitution of France, as well as Organic Law No 99–209 of 19 March 1999 on the consultation procedure and the right to request statements. The provisions were revised in connection with France's partial constitutional reform in 2008. Regarding the Constitutional Council, see http://www.conseil-constitutionnel.fr (visited on 20 February 2018).
3. See website of the Dutch Council of State at https://www.raadvanstate.nl/the-council-of-state.html (visited on 20 February 2018).
4. See Chapter 8 of the Swedish Instrument of Government and the Swedish Act on the Council of Legislation (No 2003:33 in the Swedish Code of Statutes) as well as the Council of Legislation's website at http://www.lagradet.se (visited on 20 February 2018).
5. See brief presentation on the Swedish Chancellor of Justice at https://www.jk.se/om-oss/#1328 (visited on 20 February 2018).
6. Council of Europe, European Commission for Democracy Through Law (Venice Commission): Rule of Law Checklist, CDL-AD(2016)007, p. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e (visited on 18 February 2018).

7. Council of Europe, European Commission for Democracy Through Law (Venice Commission): Report on the Rule of Law, CDL-AD(2011)003rev. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e (visited on 18 February 2018).
8. Mikael Hidén's The Legal Control of Statutes in Finland, Volume I, Acts of Parliament (Finnish Lawyers' Association, Helsinki 1974) provides a systematic overview of the supervision of the legislative process. The greatest changes since Hidén's analysis of 1974 relate to the addition of content to the rule of law and the increased influence of international interaction as well as the growing importance of fundamental freedoms and human rights. This becomes clear when Hidén's analysis is compared against Juha Lavapuro's 2010 doctoral dissertation on the development of the Constitutional Law Committee, which is important from the perspective of new statutes (see Juha Lavapuro: New Constitutional Controls (Finnish Lawyers' Association, Helsinki 2010)).
9. On a national level, the so-called Finance Policy Act (869/2012) and the Act on the National Audit Office of Finland (676/2000) mandate the National Audit Office of Finland to carry out independent supervision of finance policy, which is a requirement laid down in the Fiscal Compact of the Economic and Monetary Union of the European Union and Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States as well as other Community laws relating to the Stability and Growth Pact. Independent expert evaluation of finance policy instruments and objectives is the responsibility of the Economic Policy Council. The duties of the Economic Policy Council are laid down in the Government Decree on the Economic Policy Council (61/2014). The evaluations focus on economic and financial policy measures, but the Economic Policy Council also often carries out detailed evaluations of legislative initiatives and statutory reforms. The European Commission, the OECD and the IMF all carry out international evaluation of governmental finance policy and some other areas of social policy and therefore also legislation.
10. For information about the Legislation Assessment Council, see Government Decree on the Legislation Assessment Council (1735/2015) and the website of the Legislation Assessment Council at http://vnk.fi/arviointineuvosto (visited on 19 February 2018).
11. Decisions pursuant to a presidential presentation of 29 December 2016, http://valtioneuvosto.fi/artikkeli/-/asset_publisher/10616/tasavallan-presidentin-esittely-29-12-2016.
12. OECD Governments at a Glance 2017, Government at a Glance 2017 Country Fact Sheet Finland, http://www.oecd.org/gov/gov-at-a-glance-2017-finland.pdf.
13. Chancellor of Justice Jaakko Jonkka's commentary for the 2016 annual report (K 13/2017 vp; pp. 12–23) provides a comprehensive overview of the supervisory procedures of the Chancellor of Justice in practice. See also Jaakko Jonkka: Chancellor of Justice as a supervisor of the

Government, Special edition by Mikael Hidén, Finnish Lawyers' Association, Helsinki 2009, pp. 99–118.

14. This is also stated in legal literature (see Ilkka Saraviita: Constitution of Finland, Talentum, Helsinki 2011, p. 930).
15. See Saraviita 2011. Conditions for entering comments given pursuant to Section 112 of the Constitution in minutes have been debated in the context of the Government's administrative decisions; see Report of the Constitutional Law Committee on a comment made by Chancellor of Justice Paavo Nikula based on an inquiry into the lawfulness of official acts pursuant to Section 115 of the Constitution (PeVM 9/2005 vp). The report emphasises the heavy nature of the procedure in question. Issues relating to the division of powers and the principle of democracy also underline the exceptional nature of the procedure in the context of the supervision of government bills.