

Profile of Partner Equality Body

Name:

Chancellor of Justice

Address:

Office of the Chancellor of Justice
8 Kohtu Street
15193 Tallinn
ESTONIA

Phone: +372 693 8404

Fax: +372 693 8401

e-mail: info@oiguskantsler.ee

www.oiguskantsler.ee

Date established:

The institution of the Chancellor of Justice was established by the Constitution, which came into effect in 1938, and recreated after the occupation of Estonia by the Soviet Union under the Constitution adopted at the referendum of 1992.

Mode of establishment:

By Constitution

Status:

Independent officer of the state, appointed by the Parliament (Riigikogu) at the proposal of the President of the Republic for a term of seven years.

Mandate/objectives:

The objectives of the Chancellor of Justice are stated in the Constitution and Chancellor of Justice Act (Annexes 1 and 2).

The Chancellor of Justice was created for the implementation of the general right of petition and its main task is to find a legal solution to problems that have come to the Chancellor's attention through petitions by individuals. The output of the activities of the Chancellor may be a memorandum or even a proposal to change administrative practice, interpretation of a legal provision or a legal provision itself. The latter occurs if the Chancellor finds that the unfairness of a particular case is not a problem of application of the law but a problem of the law itself. If the Chancellor of Justice finds that an applicable legal act is not in conformity with the Constitution or other laws, he is entitled to file an application to the Constitutional Review Chamber of the Supreme Court requesting the act be deemed unconstitutional and repealed. Thus, the functions of the general petition body and the reviewer of constitutionality are combined in the Chancellor of Justice. Such combined competence is unique in international terms.

Grounds of Discrimination covered:

Sex, race, ethnic origin, colour, language, origin, religion or religious beliefs, political or other opinion, property or social status, age, disability, sexual orientation, and other grounds specified by law.

Competences and responsibilities:

According to the Constitution, the Chancellor of Justice is an official who acts independently to review legislation passed by the legislative and executive powers and by local governments for conformity with the Constitution and other laws, which are in force. If such legislation is found by the Chancellor of Justice to be in conflict with the Constitution or a law of a higher level, he shall propose to the body that passed the legislation (Riigikogu etc) that it bring the legislation into line with applicable law. If that body does not follow the proposal, the Chancellor of Justice can file an application to the Constitutional Review Chamber of the Supreme Court to strike down the legislation. During his more than ten years of tenure, the Chancellor of Justice has made more than 400 proposals for bringing different legislative acts of general application into conformity with the Constitution. In the vast majority of cases the proposals have been taken into account. The Chancellor of Justice has filed a total of 18 applications with the Supreme Court, of which 16 were granted.

The second important constitutional duty of the Chancellor of Justice is to fulfil the functions of an ombudsman according to the Chancellor of Justice Act of 1999, namely to verify that government agencies observe the fundamental rights and freedoms of individuals and good administrative practice. The Parliament (Riigikogu) further extended the functions of the Chancellor of Justice with the amendment to the Act which came into effect on 1 January 2004, bringing local governments, legal persons governed by public law and persons governed by private law who perform public duties under the jurisdiction of the Chancellor of Justice.

Anyone who feels that he or she has been treated unlawfully or unfairly – contrary to good administrative practice – has the right of recourse to the Chancellor of Justice. Upon receiving the petition, the Chancellor of Justice conducts an efficient and objective investigation, in the course of which it has the power to gather information and documents related to the matter. The Chancellor of Justice concludes the procedure by issuing an opinion in which he can make recommendations to the offending agency to eliminate the violation. Although such recommendations are not legally binding, the memoranda of the Chancellor of Justice are almost always observed.

The Chancellor of Justice also has the right to initiate procedures if he regards it necessary in order to ensure the protection of the rights of individuals or to guarantee constitutional order. The Chancellor of Justice has raised important issues of concern to many, such as the protection of children's rights, closing of small schools and adequacy of the subsistence benefit.

The Chancellor of Justice fulfils other functions provided for by law. The most important of them are providing an opinion on constitutional review proceedings in the Supreme

Court, initiating disciplinary proceedings against judges and conducting conciliation proceedings in discrimination disputes.

Everyone has the right of recourse to the Chancellor of Justice for a conciliation procedure if he or she finds that a natural person or a legal person in private law has discriminated against him or her on the basis of the grounds listed above. No court judgment shall have been handed down that relates to the matter of the petition and, at the time of the filing of the petition, the matter shall not be subject to judicial proceedings or mandatory pre-trial mediation proceedings.

Main activities:

The Chancellor of Justice exercises supervision over the activities of natural persons and legal persons in private law and conducts conciliatory proceedings based on petitions filed by persons who find that they are discriminated against on the basis of the grounds listed above.

Petitions concerning the activities of natural persons or legal persons in private law do not fall within the competence of the Chancellor of Justice if they concern: 1) professing and practising of faith or working as a minister of a religion in religious associations with registered articles of association; 2) relations in family or private life; 3) performance of rights of succession.

If an agreement is reached between the parties to the conciliation proceedings and approved by the Chancellor of Justice, performance is mandatory. If conciliation proceedings are terminated or the Chancellor of Justice has stated failure to reach an agreement, the petitioner has the right of recourse to a court or to an authority conducting pre-trial proceedings as provided by law for the protection of his or her rights. An agreement approved by the Chancellor of Justice shall be final and can not be contested in court, except if the Chancellor of Justice has materially violated a provision of conciliation procedure and such violation affects or may affect the content of the agreement.

In addition to the conciliation role, the Chancellor of Justice shall perform the following duties for application of the principles of equality and equal treatment:

- 1) analyse the effect of the implementation of legislation on members of society;
- 2) inform the Riigikogu, the Government of the Republic, governmental agencies, local government agencies and bodies, other interested persons and the public of application of the principles of equality and equal treatment;
- 3) make proposals for amending legislation to the Riigikogu, the Government of the Republic, governmental agencies, local government agencies, local government bodies and employers;
- 4) promote, in the interests of adherence to the principles of equality and equal treatment, the development of national and international co-operation between individuals, legal persons and agencies;
- 5) promote, in co-operation with other persons, the principles of equality and equal treatment.

Publications:

Once a year, the Chancellor of Justice submits a report of his activities to the Parliament. He also writes articles for newspapers and presentations for conferences/seminars (available on the homepage).

Management:

The head of the Office is the Chancellor of Justice. The Chancellor has two deputies. The Director of the Office manages general organisational matters. In addition to the General Department, there are three separate departments that cover different areas of government/ministerial activity: 1) all matters which according to law fall under the area of government of the Ministry of Social Affairs, the Ministry of Education and Research and the Ministry of Culture; 2) all matters which according to law fall under the Ministry of Economic Affairs and Communications, the Ministry of Agriculture, the Ministry of Finance, the Ministry of the Environment; as well as issues within the competence of the Bank of Estonia, the Financial Supervision Authority and the State Audit Office; 3) all matters which according to law fall under the Ministry of Internal Affairs, the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Justice; as well as issues within the competence of the Prime Minister, Ministers without portfolio and the State Chancellery; initiating of disciplinary proceedings with regard to judges and cases which do not belong in the area of activity of the first or the second department.

Nomination of senior staff and board:

The Chancellor of Justice is appointed by the Parliament at the proposal of the President of the Republic for a term of seven years (renewable). The Chancellor of Justice may only be removed from office by a court ruling. The deputies of the Chancellor are also appointed by the Parliament at the proposal of the Chancellor, but for an indefinite period. Other officials of the Office are appointed by the Chancellor for indefinite periods.

Number of Staff:

43

Budget:

For 2005 the budget of the Office is 17, 484, 232 EEK (€ 1, 117, 446). The State Budget Act, which includes the budget of the Office of the Chancellor of Justice, is adopted by the Parliament.

Accountability:

Annual report to Parliament from the Chancellor of Justice.

Project contact person:

Ms Kertti Päeva, Head of General Department
Office of the Chancellor of Justice, 8 Kohtu Street, 15193 Tallinn, ESTONIA
Phone: +372 693 8434; Fax: +372 693 8401; e-mail: kertti.paeva@oiguskantsler.ee
www.oiguskantsler.ee