



CHANCELLOR OF JUSTICE

## CHANCELLOR OF JUSTICE OF THE REPUBLIC OF ESTONIA

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Guardian of constitutionality  
Protector of fundamental rights and freedoms  
Settler of discrimination disputes



## DEAR READER,

You are holding a booklet with information about the functions and the institution of the Chancellor of Justice.

I would like to explain to you which problems you can bring to my attention, and how I can assist you.

This booklet explains the main tasks of the Chancellor of Justice and contains guidelines for the submission of applications to me. I will describe to you how I, in my capacity as the Chancellor of Justice, can process your applications and ensure that authorities comply with their duties. It also contains a brief overview of the Estonian model of the Chancellor of Justice, which is unique in the international context.

I would like you to be better informed of your rights, be familiar with the Estonian Constitution and know how to use it to protect yourself. I will try to help you understand the ways in which your fundamental rights could be violated.

The Chancellor of Justice as an independent constitutional institution can deal with your problems objectively and impartially. My aim is to protect you from the arbitrary exercise of the state authority. I will process your applications as fairly and speedily as possible.

I hope this small booklet will be of help to you in protecting your rights!

Allar Jõks  
Chancellor of Justice of the Republic of Estonia

## FUNCTIONS OF THE CHANCELLOR OF JUSTICE

### **Guardian of constitutionality**

The Chancellor of Justice exercises supervision over the constitutionality and legality of legislation passed by the legislative and executive powers and by local governments.

In doing this, the Chancellor of Justice verifies that laws and regulations are in conformity with the Constitution and other laws.

The Chancellor of Justice supervises the constitutionality and legality of the following types of legislation:

- acts of the Riigikogu
- decrees of the President of the Republic
- regulations of the Government of the Republic
- regulations of Ministers
- regulations of local government councils and of rural municipality and city governments
- legislative acts of legal persons in public law

The Chancellor of Justice verifies the constitutionality or legality of an Act or other legislation on his own initiative or following an application submitted by an individual.

### **Protector of fundamental rights and freedoms – the function of the ombudsman**

The Chancellor of Justice ensures that agencies and officials who perform public functions comply with your constitutional rights and freedoms, laws and other legislation and the principles of good governance. The Chancellor of Justice protects you against the arbitrary exercise of the state authority and cases of maladministration. In this function the Chancellor of Justice serves as an ombudsman.

The Chancellor of Justice supervises the activities of the following agencies:

- ministries
- government agencies (e.g. boards and inspectorates and their local offices, county governments, the State Chancellery, the Prosecutor's Office)

- local governments and their agencies and offices
- institutions under the administration of the state and local governments (e.g. municipal schools, libraries)
- legal persons in public law (e.g. the Bank of Estonia, universities)
- natural persons performing public functions (e.g. notaries, bailiffs) or legal persons performing public functions (e.g. public limited companies that organise parking or provide an ambulance service)

You can complain to the Chancellor of Justice about the following types of violations of your rights by agencies or public servants:

- violation of an Act or other legislation, i.e. action that directly qualifies as illegal
- insufficient, defective, or irregular administration
- injustice
- discrimination
- abuse of power
- bias or partiality
- failure to reply
- refusal to disclose information
- provision of false information
- unjustified delay
- negligence or impoliteness in performing one's official duties

The Chancellor of Justice verifies the activities of public servants and agencies in ensuring the fundamental rights and freedoms of persons either on the basis of individual applications or on his own initiative. The Chancellor carries out verification visits to institutions where the opportunities of persons to defend their rights could be restricted – e.g. child care institutions, welfare and health institutions, penal institutions, units of the defence forces.

### **Settler of discrimination disputes**

The Chancellor of Justice resolves discrimination disputes between natural persons and legal persons in private law. To do this, the Chancellor conducts conciliation proceedings between the parties.

The Chancellor of Justice can initiate conciliation proceedings only on the basis of an individual's complaint. He cannot open conciliation proceedings on his own initiative.

Discrimination proceedings can be initiated if a natural person or a legal person in private law (e.g. employer) discriminated against you on the following grounds:

- sex
- race
- nationality (ethnic origin)
- colour
- language
- origin
- religion or religious beliefs
- political or other opinion
- property or social status
- age
- disability
- sexual orientation
- other grounds of discrimination specified by law

#### **Other functions**

The Chancellor of Justice also performs other functions that have been entrusted to him by law.

The most important of these are:

- the submission of his opinion to the Supreme Court in constitutional review proceedings
- the initiation of disciplinary proceedings against judges
- promoting of equality and equal treatment
- responding to inquiries submitted by the Members of the Riigikogu
- making a proposal to the Riigikogu to bring criminal charges against a member of the Riigikogu, the President of the Republic, a member of the Government of the Republic, the Chief Justice of the Supreme Court, or a justice of the Supreme Court
- participation in the meetings of the Government of the Republic and of the Riigikogu, and committees of the Riigikogu, with the right to speak at the meetings

## **YOUR FUNDAMENTAL RIGHTS**

The fundamental rights and freedoms and duties of persons are listed in Chapter II of the Estonian Constitution.

Fundamental rights are enjoyed first and foremost by natural persons, i.e. human beings. Legal persons can also have fundamental rights.

The fundamental rights that are enjoyed by every individual, regardless of their citizenship, are called everyone's rights, or the fundamental human rights. Fundamental human rights are equal for the citizens of Estonia as well as foreign nationals and stateless persons who are staying in Estonia. Some of the rights contained in the Estonian Constitution can be enjoyed only by Estonian citizens.

The state's legislative and executive authorities, the judicial authorities and local governments are required to ensure compliance with your fundamental rights. Fundamental rights are thus applicable in the relationship between an individual and a public authority. In this relationship, you have certain rights and the public authority is required to comply with them.

Your fundamental rights include, for example, the right to the protection of the state and the law, the right of recourse to the court, the right to life, the right to honour and good name, the right to free self-realisation, the right to liberty and security of person, the right to the compensation of moral and material damage, the right to the inviolability of private and family life, the right to the protection of health, the right to the protection of property, the right to education, the right to hold an opinion and beliefs, and many other fundamental rights listed in Chapter II of the Constitution. There is no difference whether a fundamental right is formulated as a subjective right (e.g. Art 19 of the Constitution: everyone has the right to free self-realisation), a prohibition (e.g. Art 17 of the Constitution: no one's honour or good name shall be defamed), or as a duty of the state authority (e.g. Art 29 para 3: the state shall organise vocational training and shall assist persons who seek employment in finding work).

Your constitutional rights and freedoms can be restricted only in accordance with the Constitution and on the basis of a law. Such restrictions must be necessary in a democratic society and may not distort the nature of the rights and freedoms restricted. When restricting fundamental rights, the principle of proportionality, or reasonableness, must be taken into account – in order to achieve the desired objectives, the state should choose the means that least distort the fundamental rights of individuals. Fundamental rights cannot be restricted “just in case”.

## SUBMISSION OF APPLICATIONS

If you think that an Act or other legislation is not in conformity with the Constitution, you can submit an application to the Chancellor of Justice with a request to verify the constitutionality and legality of the relevant legislative act.

If you think that an agency or an official performing public functions has violated your rights or freedoms, treated you contrary to a law or the principles of good governance, you can submit a complaint to the Chancellor of Justice against the activities of the relevant body or person.

If you think that a natural person or a legal person in private law has discriminated you on grounds of sex, race, nationality, colour, language, origin, religious or other conviction, proprietary or social status, age, disability, sexual orientation or other grounds specified in law, you can submit an application to the Chancellor of Justice for carrying out conciliation proceedings to settle the discrimination dispute.

In order to apply to the Chancellor of Justice, you do not need to have knowledge of law, and submitting an application is free of charge. You can submit your application either in writing or orally, an oral application will be drawn up at the reception with the help of an adviser of the Chancellor of Justice.

### **An application should definitely contain the following information:**

- the applicant’s first name and surname, or the legal person’s name, postal address and the means of communication
- the title of the legislative act or the name of the institution that you would like to have supervised
- a description of what constituted the violation of your rights (and any supporting documents to your application)

### **The Chancellor of Justice can be contacted through the following media:**

- postal address: Office of the Chancellor of Justice, 8 Kohtu Street, 15193 Tallinn
- e-mail: [info@oiguskantsler.ee](mailto:info@oiguskantsler.ee)
- phone: +372 693 8404
- fax: +372 693 8401
- by submitting an electronic application on the homepage of the Chancellor of Justice at [www.oiguskantsler.ee](http://www.oiguskantsler.ee)
- at a reception in the Office of the Chancellor of Justice in Tallinn, as well as in Tartu, Pärnu, Narva and Jõhvi.

## FORM OF APPLICATIONS

### **An application for the verification of the constitutionality of a legislative act (constitutional review)**

1. First name and surname
2. Postal address, e-mail
3. The title of the law or other legislative act and the specific provision the constitutionality and legality of which you wish to have verified
4. Description of the contradiction of the act to the Constitution and the laws
5. Whether you have addressed the same issue to other agencies and what were the results

**An application for the verification of fundamental rights and freedoms (supervision of the activities of agencies, the ombudsman's proceedings)**

1. First name and surname
2. Postal address, e-mail
3. Name of the state agency, local government body, legal person in public law or legal person in private law performing public functions whose activities you wish to have verified
4. Description of the fact or action against which you wish to complain; when did you find out about it and how it violates your fundamental rights
5. Has a court decision entered into effect in the matter of the complaint, or have you turned to the court or other institution with the issue, and what were the results

**An application for resolving a discrimination complaint**

1. First name and surname
2. Postal address, e-mail
3. Name of the natural person or legal person in private law against whose activities you wish to complain
4. Grounds on which you believe you have been discriminated (sex, race, nationality, colour, language, origin, religious or other conviction, proprietary or social status, age, disability, sexual orientation or other grounds specified in law)
5. Description of the discriminating behaviour
6. Have you turned to the court or other institution with the matter of the complaint, and what were the results

## WHAT IS NOT WITHIN THE COMPETENCE OF THE CHANCELLOR OF JUSTICE

When receiving an application, the Chancellor of Justice will first assess whether it falls within his competence.

The Chancellor of Justice will decline an application if:

- the application is not within the competence given to the Chancellor of Justice by law (e.g. a person is seeking legal assistance)

- the application is manifestly unfounded or it is not clear from it what constituted the alleged violation of the person's rights
- the application concerns the activities of a legal person in private law (e.g. a public limited company, or a private limited company) or a natural person who do not perform public functions
- the application deals with property disputes
- resolving of the application falls within the competence of other state agencies
- a court judgment has been made in the matter of the application, or the matter is concurrently subject to pre-trial complaint procedures or judicial proceedings

The Chancellor of Justice may also decline an application if:

- the application was filed more than one year after the date on which the person became, or should have become, aware of the violation of his or her rights
- the person can file an administrative appeal against the body that issued the administrative act, or use other legal remedies (e.g. have recourse to the court)
- there are administrative appeal proceedings or other non-compulsory pre-trial proceedings pending (e.g. proceedings in a labour dispute committee)

In conciliation proceedings concerning discrimination disputes, the Chancellor of Justice is not competent to deal with applications concerning the activities of natural persons or legal persons in private law if they involve:

- professing and practising of faith or working as a minister of a religion in religious associations with registered articles of association
- relations in family or private life
- performance of the right of succession

In a discrimination dispute, the Chancellor of Justice may decline an application if it was submitted after four months from the date when the person found out or should have found out about the alleged discrimination.

If the Chancellor of Justice declines an application he will explain to the applicant the competence of the Chancellor and the reasons for rejecting the application, as well as which institution the applicant could contact about the issue. The Chancellor will inform you about the decision to decline the application no later than within one month.

## PROCESSING OF APPLICATIONS

Upon accepting your application for proceedings, the Chancellor of Justice will inform you about it no later than within one month and will mention the measures that he has taken or intends to take to settle the application.

The proceedings conducted by the Chancellor of Justice are characterised by the freedom of choice of the form, and the principle of feasibility. This means that the form and other details of the Chancellor's proceedings are determined by the Chancellor himself based on the objective, and the principles of effectiveness, simplicity, and speediness, trying to avoid excessive cost and inconvenience to people.

In addition to the above, the Chancellor of Justice also proceeds from an investigative principle. To ascertain the essential facts, the Chancellor will carry out efficient and impartial proceedings in the course of which he has the right to collect information and documents relating to the case.

In dealing with your application, the Chancellor of Justice may:

- request necessary information from agencies and persons
- request written explanations
- record oral statements
- have unrestricted access to documents and materials held in agencies
- use the assistance of an expert

If the Chancellor of Justice finds that legislation is in conflict with the Constitution or a law, he may propose to the body that passed the legislation to bring the legislation into conformity with the Constitution

or the law. The Chancellor's proposal should be complied with within twenty days. If the proposal is not complied with the Chancellor has the right to make a request to the Supreme Court to declare the legislation unconstitutional and invalid. Mostly, the proposals of the Chancellor of Justice are complied with and only in exceptional cases the Chancellor needs to turn to the Supreme Court.

The Chancellor of Justice's ombudsman proceedings end with the statement of the Chancellor in which he expresses his opinion on whether the activities of the relevant agency or public official were legal and compatible with the principles of good governance. The Chancellor of Justice notifies the applicant and, in case of finding of a violation, also the relevant body, in writing of his opinion. Although the opinions of the Chancellor are not legally binding, the proposals or recommendations made by the Chancellor are almost always complied with. In the case of failure to comply, the Chancellor of Justice can make a report to the body that exercises supervision over the relevant agency, to the Government of the Republic or to the Riigikogu, or he may also inform the public.

The Chancellor of Justice's opinion is final and it cannot be contested in court.

In the case of discrimination disputes between private individuals, the Chancellor of Justice will carry out conciliation proceedings. The form and outcome of the conciliation proceedings are different from the other types of procedures carried out by the Chancellor.

In discrimination proceedings, the Chancellor of Justice sends a copy of the application to the respondent whose activities are contested in the application and shall set a term for the submission of a written response. If the applicant consents to the respondent's proposal to resolve the dispute and such resolution ensures a fair balance in the rights of the parties, the Chancellor of Justice will deem the petition to be resolved and will conclude the proceedings. In the case of disagreement, a hearing is held with the participation of the parties or their representatives. If the applicant and respondent consent to the proposal of the Chancellor of Justice, the Chancellor will approve the

agreement and its performance is mandatory on the parties.

If the agreement is not performed within the term of thirty days, the applicant or respondent may submit the agreement to a bailiff for enforcement.

If conciliation proceedings are terminated at the request of the parties, or the Chancellor of Justice has declared the failure of the parties to reach an agreement, the applicant has the right of recourse to a court or to an authority conducting pre-trial proceedings, for the protection of his or her rights.

## EXAMPLES

### Verification of the constitutionality of legislation

- Based on an application submitted by an individual, the Chancellor of Justice verified whether a city council regulation that established different rates on fares of public transport depending on the person's registered place of residence was in conformity with the Constitution and the laws. The Chancellor of Justice concluded that the city council had exceeded its powers by establishing reduced fares for the inhabitants of the local governments that had joined the city's common ticket system. The Chancellor of Justice sent a memorandum to the city council, expressing his opinion that the establishment of different fares on public transport depending on the registration of people's residence was unconstitutional. The city council annulled its unconstitutional regulation and stopped the unequal treatment of inhabitants in providing access to a public service depending on the residence data.
- The Chancellor of Justice, on his own initiative, launched proceeding to verify whether the ban of election coalitions of citizens in local governments elections was in conformity with the Constitution. Having analysed the relevant prohibitive provisions of the Local Government Council Elections Act and the Political Parties Act, the Chancellor of Justice concluded

that the prohibition on forming election coalitions was contrary to the Constitution. The Chancellor of Justice made a proposal to the Riigikogu to bring the relevant provisions in line with the Constitution. The Riigikogu failed to comply with the Chancellor's proposal. Consequently, the Chancellor of Justice made a request to the Supreme Court to declare the provisions to be unconstitutional and invalid. The Supreme Court granted the Chancellor's request.

### Ombudsman's proceedings

- An individual submitted an application to the Chancellor of Justice, stating that the family health centre at his home municipality had been closed. The applicant was of the opinion that by closing down the family health centre in the local community his constitutional right of equal access to general health care had been violated, because he now had to incur significant additional expenses for transport to the doctor or for the doctor's home visit. The Chancellor of Justice concluded that in accordance with the Constitution and the laws the local government is required to ensure the constitutional protection of health to its inhabitants, so that people should not be forced to make significant additional expenses to have access to health care. The Chancellor of Justice made proposals to the county governor and the rural municipality council, as a result of which the inhabitants of the municipality were provided with free transport to the family health centre outside the municipality. The rural municipality also provided the use of premises free of charge to family doctors. The local authorities started looking for possibilities to cover the running expenses of family health centres and to reopen the general health care centre in the municipality after bringing it into conformity with the requirements.
- An individual submitted an application to the Chancellor of Justice with a request to verify the legality of the activities of the Central Law Enforcement Police at the final game of the Estonian ice hockey championship. After the end of the game the police had allowed the supporters of one team to leave the

ice hall, but kept the supporters of the other team temporarily in the hall in order to avoid conflicts between the supporters of the rival teams. The Chancellor of Justice concluded that the restriction of the freedom of movement of a whole group of persons at large public events can be justified only in exceptional cases. Restricting the freedom of movement of groups of persons should not be a standard behaviour of the police, but only an exceptional measure that is applied only if other less restrictive measures (e.g. reinforced patrols, escorting of the groups of supporters of teams, separation of offenders from law-abiding spectators) to prevent offences fail or are not likely to provide the desired results. Spectators at the event should also be informed in advance about the application of the restriction of movement, so that they could decide whether to leave the game before the end or agree with the temporary restriction of movement after the game. The Police Board accepted the Chancellor's recommendations as guidelines for organising future work and for developing police practice in Estonia.

## THE INSTITUTION OF THE CHANCELLOR OF JUSTICE

### Historical overview

The institution of the Chancellor of Justice in Estonia was created in the 1938 Constitution. Then the Chancellor of Justice was a higher level official with the rights of a Minister under the Office of the President of the Republic and his task was "to watch over the legality of the activities of state agencies and other public institutions". The term of office of the first Chancellor of Justice of Estonia, Anton Palvadre, however, remained very short. After the occupation of Estonia by the Soviet Union in summer 1940, the institution of Chancellor of Justice was eliminated and the Chancellor of Justice Anton Palvadre himself was sentenced to death.

The exercise of the function of the Chancellor of Justice, nevertheless, did not stop, either during the German or the Soviet occupations. On 18 September 1944, Prime Minister Jüri Uluots formed the

Government of the Republic of Estonia, which also included the post of the Chancellor of Justice, and Richard Övel was appointed to fulfil this role. In 1949-1981 the continuity of the institution was maintained by the Chancellor of Justice of the Estonian government in exile, Artur Mägi, who had also been one of the drafters of the 1938 Constitution.

The institution of the Chancellor of Justice was recreated in accordance with the principle of continuity in the constitution approved by a referendum in 1992. On 28 January 1993, the Riigikogu appointed legal scholar Eerik-Juhan Truuväli as the Chancellor of Justice. He assumed office on 17 June 1993.

Since 7 March 2001, the Chancellor of Justice of the Republic of Estonia is Allar Jõks.

### The Estonian model of the institution of the Chancellor of Justice

The institution of the Chancellor of Justice in Estonia is not part of the legislative, executive or judicial branch, it is not a political or a law enforcement body. The institution of the Chancellor of Justice is established by the Constitution and the Chancellor only observes the Constitution and his conscience. The Chancellor of Justice is appointed by the Riigikogu on the proposal of the President of the Republic for a term of seven years. Once a year the Chancellor of Justice submits to the Riigikogu a report with an overview of his activities.

The Chancellor of Justice in Estonia combines the function of the general body of petition and the guardian of constitutionality. Such a combined competence is unique internationally.

According to the Constitution, the Chancellor of Justice is an official who is independent in his activities and who reviews the legislation of general application of the state's legislative and executive powers and of local governments to verify its conformity with the Constitution and the laws.

Another important constitutional task entrusted to the Chancellor of Justice is the function of the ombudsman that was given to him under the Chancellor of Justice Act passed in 1999. The Chancellor of Justice as an ombudsman monitors whether state agencies comply with people's fundamental rights and freedoms and with the principles

of good governance. In 2004 the Riigikogu further expanded the functions of the Chancellor of Justice as an ombudsman – now the Chancellor of Justice also supervises local governments, legal persons in public law and private persons who exercise public functions. The Chancellor was also entrusted with the function of carrying out conciliation proceedings to settle discrimination disputes. Now the ombudsman exercises supervision over the whole spectrum of public authority – i.e. the activities of all agencies and persons who perform public functions.

By exercising these closely related tasks, the Chancellor of Justice is able to protect the fundamental constitutional principles, such as human dignity, democracy, rule of law, social state. Whether a law or a regulation of the Government, Minister, or local government is in conformity with the Constitution can to a large extent be assessed on the basis of information that the Chancellor of Justice obtains through the ombudsman's proceedings when verifying the guarantee of fundamental rights.

#### **The structure and areas of activity of the Office of the Chancellor of Justice**

The Office of the Chancellor of Justice is intended to serve the Chancellor as a constitutional institution. In terms of structure, the Office comprises the Chancellor of Justice, two Deputy Chancellor of Justice-Advisers, the Director of the Office, and four departments.

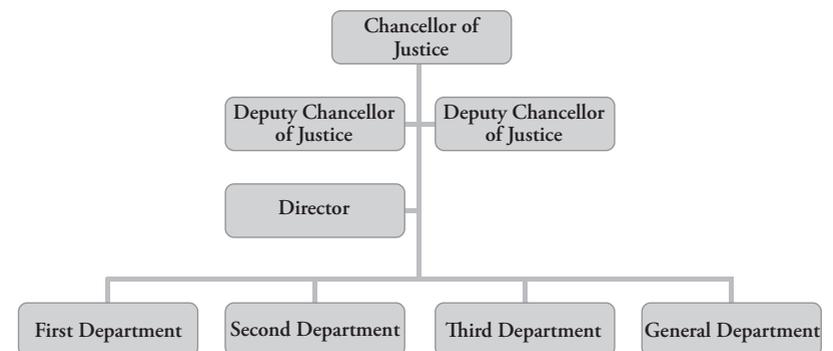
The Chancellor of Justice is the head of the Office and carries out supervision over it in accordance with the procedure and the bases provided for in the Constitution and the laws and the Statutes of the Office. The function of the Deputy Chancellor of Justice-Adviser is to provide all-round advice to the Chancellor of Justice and to replace the Chancellor in his absence.

The area of activity of the **First Department** includes all matters that fall within the competence of the Ministry of Social Affairs, the Ministry of Education and Research, the Ministry of Culture, and their subordinate agencies and other units.

The area of activity of the **Second Department** includes all matters that fall within the competence of the Ministry of Economic Affairs and Communications, the Ministry of Agriculture, the Ministry of Finance, the Ministry of the Environment, and their subordinate agencies and other units; as well as issues within the competence of the Bank of Estonia, the Financial Supervision Authority and the State Audit Office.

The area of activity of the **Third Department** includes all matters that fall within the competence of the Ministry of Internal Affairs, the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Justice, and their subordinate agencies and other units; 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.

The **General Department** deals with the organisational work of the Office of the Chancellor of Justice, the reception of individuals, drafting of the budget, monitoring and analysis of the prudent use of the budgetary resources, organisation of accounting, communication with other institutions and the public, personnel issues and training, managerial and secretarial issues of the Office. It also ensures the necessary organisational, economic and technical conditions for the functioning of the Office.



## RECEPTION OF PERSONS

### Office of the Chancellor of Justice (Kohtu 8, Tallinn)

The Chancellor of Justice and the Deputy Chancellor of Justice-Adviser receive persons on Wednesdays at 9.00-11.00

The Reception Adviser receives persons on Tuesdays at 9.00-11.00 and 14.00-17.00  
Wednesdays at 14.00-17.00.

Advisers of the Chancellor of Justice also receive persons in Pärnu, Tartu, Narva and Jõhvi.

**To register for a reception or for more detailed information call 693 8404**

The Chancellor of Justice and his advisers also receive persons during their visits to county governments, city or rural municipality governments. People are informed about this in advance through the mass media.

## ADDITIONAL INFORMATION

### Postal address:

Chancellor of Justice of the Republic of Estonia  
8 Kohtu Street, 15193 TALLINN

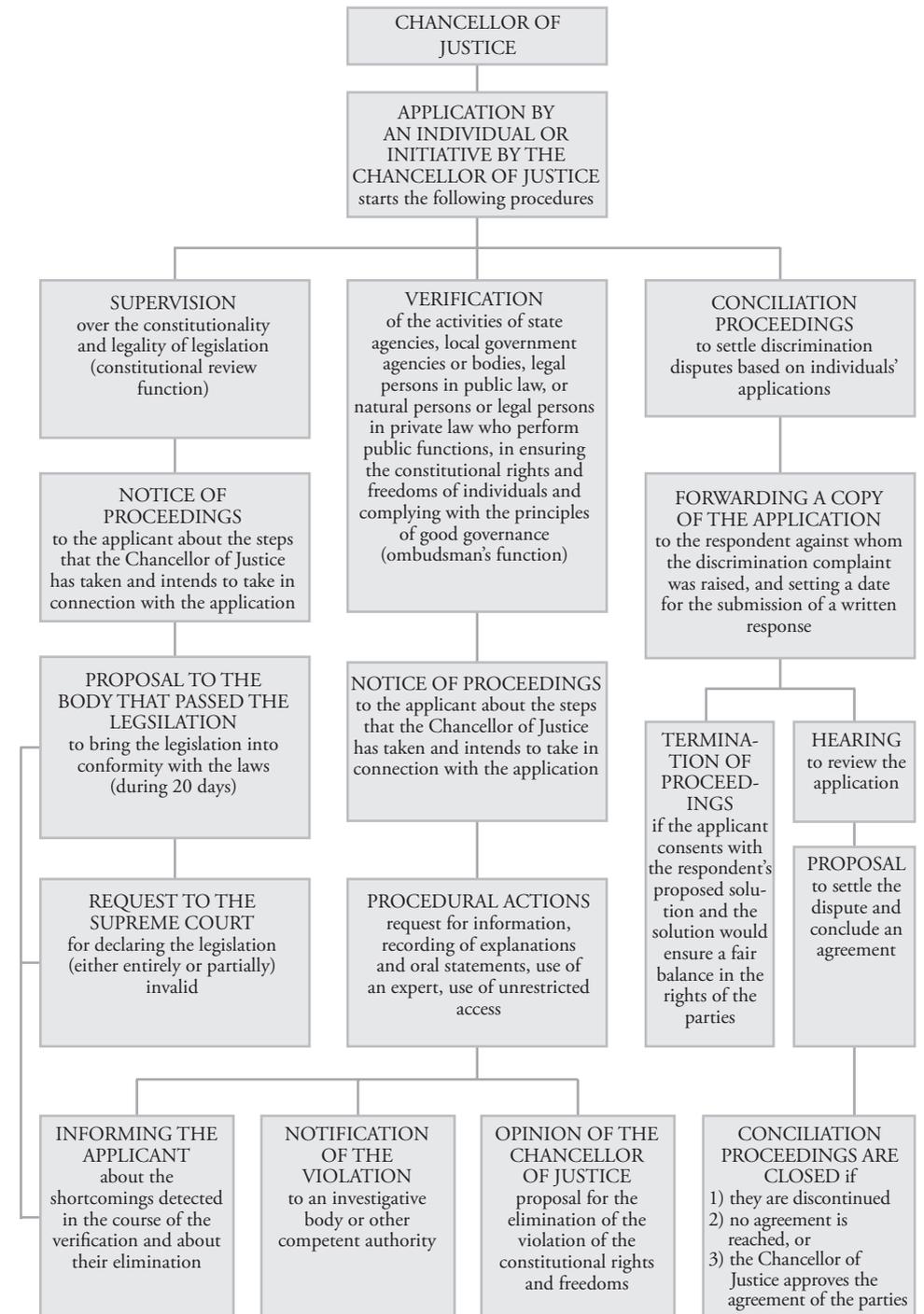
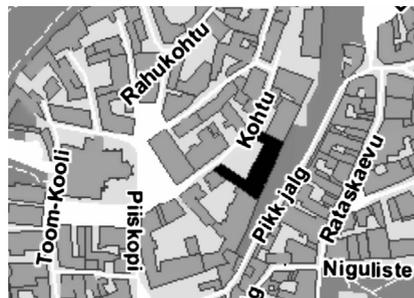
**Phone:** +372 693 8400 Chancellor of Justice  
+372 693 8404 information, reception of persons

**Fax:** +372 693 8401

**E-mail:** info@oiguskantsler.ee

**Homepage:** www.oiguskantsler.ee

### Location map:







Office of the Chancellor of Justice, Kohtu 8, 15193 Tallinn

The building was designed by the Tallinn City Architect Carl Ludwig Engel and was completed in 1814. The building is in the Empire style and it is undoubtedly one of the pearls of Tallinn's architectural heritage. Since the 1920s, the building housed various ministries, for the longest period the Ministry of Finance. Since the beginning of 2004, the Office of the Chancellor of Justice of Estonia has been housed in these premises.