Chancellor’s Year in Review

Dear Reader

At the end of each reporting year, or actually at the end of each working day, we at the Chancellor’s Office ask ourselves whether and how our work has improved life in Estonia. Whose concerns were we able to alleviate, what went well or did not go awry; what did we do to ensure that the Constitution really applies? We do not just carry out formal proceedings but resolve issues – this is our working principle. We try to avoid conflicts and noise in the workings of the state. To create clarity, balance and a sense of reason. All this in the spirit of the basic agreement for the common life of our nation – the Constitution. Whether and to what extent we achieve these goals is for you to assess. In this report, we have gathered examples of our most important work and trends attracting most attention during the period from 1 September last year to 31 August 2023.

The main objective of the institution of Chancellor of Justice is to restore constitutionality swiftly, competently and free of charge for those in need of assistance. Everyone may share their concerns with us in the way they can no legal assistance is needed for this. It is the Chancellor’s task to reach the core of the matter and then ascertain whether the Constitution, laws and the principles of good administration were violated. We try to act as quickly as possible and with minimum inconvenience to the individuals concerned. Sometimes a phone call to the official responsible is enough so that no extensive correspondence and signed opinions are needed at all.

For example, a family with five children had their problem quickly resolved where the robotic state benefit system had counted the family’s fourth child as the first. The mother asked the Chancellor to look into the matter and it was found that the benefit application for the first, second and third child had been signed by the children’s mother while the application for the fourth child had been signed by the father. The database was rectified and the unpaid benefit was paid retroactively. More widespread publicity was generated by a case where a kindergarten did not want to admit a child with diabetes because no one wanted to assume responsibility for the child. The problem was resolved through awareness-raising. Consequently, the message also spread that a child with diabetes must be welcome at a kindergarten just like any other child.

There were numerous cases where ministries, rural municipalities and city governments failed to respond to someone's application in time. Often a person received a reply after we intervened but the authority that had erred nevertheless received an official recommendation from the Chancellor to improve its working arrangements.

Sometimes it seems that the level of administrative proceedings in Estonia is deteriorating. After all, the law requires that an individual's problem must be resolved without delay, substantively and correctly, by avoiding excessive bureaucracy, without burdening the individual concerned and without causing confusion. Unfortunately, we had to deal with cases where an official had given contradictory and ambiguous information and failed to explain a person's rights and duties to them. Sometimes no necessary administrative act had been drawn up at all where it was definitely required. A clearly worded and logically reasoned administrative act enables an individual to understand their rights and duties and, if necessary, have recourse to the administrative court. This prudent requirement has been laid down by law for a reason.

Similarly, it is necessary to carefully observe the procedure for establishing spatial plans as well as restrictions related to the environment, heritage protection and national defence. The public and every real estate owner concerned must be treated fairly and all the prescribed rules followed closely. No matter whether the issue concerns expansion of Nursipalu military training area, a nesting site of the flying squirrel, or a coppice belonging to pensioners, the message conveyed by the authorities must be clear and lawful. The Constitution protects property, in particular a person's home. This is what the Constitutional Assembly had in mind and what was also set in writing; this is the Constitution adopted by referendum.

For sure, justifications can be found for these violations. It seems that sometimes cutting the number of frontline officials and poor working conditions have led to a situation where they no longer cope with their work as required. A blatant example of this during the reporting year was the Data Protection Inspectorate, which was unable to respond to people's applications on time due to shortage of staff and posted a note to that effect on its website. The law does not lay down such a possibility. If no response is given to a person's application then the person's rights are violated. Necessary supervision over protection of personal data was also delayed.

In the event of shortage of resources at a point where an individual meets the state − in order to obtain a necessary document, a benefit, authorisation, or assistance against the unlawful

activity of others − ministerial substitute activity will unfortunately continue to thrive unrestrained.

There are instances where the only useful advice to a person in need is that their predicament can best be resolved by having recourse to the court. Only the court can issue a mandatory precept or annul an administrative act. For example, we have provided comprehensive replies − which a person can use when having recourse to the court − to parents whose child has been left without a kindergarten place even though the law requires the grant of a place in a kindergarten. Hopefully, these court judgments can also be useful in the future. I would like to thank all the officials and decision-makers who have resolved people's concerns.

If a concern arises from an unconstitutional legal norm, the Chancellor can initiate constitutional review and, if necessary, eventually bring the dispute to the Supreme Court. I would like to thank members of the Riigikogu and the Government for supporting proposals to bring legal norms into conformity with the Constitution. Cooperation with the XV composition of the Riigikogu has also continued with a view to finding quick solutions. For example, under the leadership of the Riigikogu Social Affairs Committee, poorer treatment of upper secondary school pupils in a situation of unemployment was ended by introducing the necessary amendments to the Labour Market Measures Act.

Sometimes a solution is found quickly, while sometimes it takes years for a systemic change to take root. In 2019, on an application by the Chancellor of Justice, the Supreme Court declared unconstitutional regulations organising social welfare in Narva. If things have been amiss for a long time, they cannot always be rectified immediately but it is positive if progress is at least steady. Justified complaints are sent about shortcomings in the organisation of social welfare in almost all cities and rural municipalities. Money is scarce while the number of those in need is high and additionally there is a shortage of people with the resilience or skills to work as a carer or child protection official.

Fortunately, society is beginning to understand that everyone's human dignity must be respected. A person withering away in a care home or ill-treatment of a prisoner is no longer considered to be someone else's issue. The situation is the same with the rights of peoplewith disabilities: step by step we are overcoming the arrogant attitude that there is no needto lower a door threshold merely for a single wheelchair or a walking frame user.Embarrassing confusion still occasionally occurs but access by the visually impaired or hard-of-hearing to essential national and cultural events is becoming customary.

One issue has reappeared like a refrain in Chancellor's every annual report for years: some laws have been formulated so obscurely and generally that an official in charge of their implementation actually cannot make an indisputably lawful decision. Instead of a clear norm, a maze of conflicting norms has been enacted in the context of which interested parties are left with the impression that the new arrangement favours precisely them. This is true, for instance, about the Hunting Act, the Aliens Act, and about the disconnection of so-called phantom subscribers from the electricity network.

Another systemic legislative error is transfer of the grounds for restricting fundamental rights to the Government or a minister. It is often impossible to understand from the delegating norm itself what the Riigikogu deems permissible in terms of the purpose and kinds of restrictions. For example, the Government has been given the right to determine fishing opportunities for professional fishermen on Lake Peipsi but the law leaves unclear the objectives and conditions on which the Government must base its decisions. Under the Constitution, a regulation of the Government of the Republic or of a minister is intended to further detail the Riigikogu's resolution of principle or primarily to elaborate on its technical issues. The law may not be like an empty frame in which any picture can be inserted. The principle of legality enshrined in the Constitution deserves protection in any event, including in the interests of avoiding corruption and ensuring equal treatment.

The Constitution must be complied with; it is also beneficial for everyone in both short-term and long-term perspectives. Despite its simplicity and clarity, the Constitution can nevertheless be interpreted: it develops together with society and the state. Interpretation has its own rules of logic, the main one being that the Constitution may not be drained of substance as a result of interpretation. Sometimes it may indeed seem that the times and circumstances require disregard for what is written in the Constitution. However, the central idea and necessity of the Constitution lies in something else: it actually allows initial emotion, mindless eagerness and resulting harmful decisions to fade away. In the long term, the

Constitution supports wise solutions. At the moment, it may seem like a millstone around one's neck but, looking back, there has been no reason to complain about anything. Quite the other way round.

For example, errors of activity-based budgeting become clearer year by year. If all the most important expenditure and revenue were written in the annual budget as required by the Constitution, the Riigikogu could redistribute expenses where necessary. What the money is spent on in Estonia is largely determined by laws anyway – the rest, just like the results of implementing laws, can be described in an explanatory memorandum. The activity-based budget is undoubtedly convenient for the executive because money can be used quite freely without informing the Riigikogu or the public, and the possibilities of the National Audit Office to do its work are also limited.

For years, the public has with increasing equanimity accepted excessive restriction of fundamental rights, sometimes even clear violation of those rights. Previously, this was driven by the terrorist threat, then economic collapse, followed by the pandemic. Now security and safety seem to be appropriate to justify any restriction. Supposedly, it is not bad at all if everyone can be subject to full round-the-clock surveillance because, after all, for an honest person there is nothing to fear, is there?! Currently it seems that the next major threat to human rights and constitutionality will indeed arise from the public's consent to violating the Constitution in the interests of security and safety. Fear and anger are extremely strong emotions and, unfortunately, always put the rule of law at risk.

Political fads once again favour unwillingness to compromise, considering those with different views as enemies and not merely competitors, and in principle denial of independence, impartiality and balance. While in the 1930s Estonian politicians, too, went to Germany to learn how to attract people and shape their mood, now the trend of political technology is driven by American polarisation. If debates about the future of the Estonian nation die away in indignant antagonism where the deeds of members of one's "own tribe", as well as the members themselves, are always right − even when they have lied or clearly done harm − then nothing good can be expected.

We have reached the stage where the Riigikogu, whose constitutional right and duty is to steer the country, is choking on the steps undertaken to disrupt the constitutional order. The current ruling coalition missed the opportunity to be emphatically correct and statesmanlike, to clearly distinguish itself from previous manifestations of shallowness of political culture. The current opposition justifiably reacted by causing obstruction but, alas, eventually went

too far with it. Thus, the President of the Republic also lost the opportunity to effectively oppose the fast-track procedure for passing draft legislation significantly changing society, and linking adoption of that draft legislation to a vote of confidence in the government – because, indeed, a situation had developed where the work of the Riigikogu was completely stalled.

It has been suggested that perhaps democracy has exhausted itself, that forms of government alternate, that this is human nature and not much can be done about it. It is certainly true that everything changes and develops and the carefree terminus of history remains a philosophical dream. It is not wise to carelessly or casually surrender the democratic rule of law as the best guarantee of Estonia's survival and of everyone’s personal freedom and responsibility.

The virtue of a system protecting human rights becomes clear when the system no longer exists. The need to protect the individual can be understood, for example, in cases where one falls victim to attacks depriving oneself of honour and dignity, without the presumption of innocence, without trial and without evidence. No one is guilty until a judgment of conviction has entered into force – this principle, too, often becomes clear only when an unjust ‘public execution’ has already taken place. This is not about political responsibility.

Only a democratic state governed by the rule of law can offer effective protection of human rights. The Constitution helps to bring out the best in each individual, as well as in a state created to serve the people. That way, our people, language, culture, internal and external peace would last unequivocally, so that Estonia would be the best place to live. In the Office of the Chancellor of Justice we will do our best to achieve this.

Gratefully,

Ülle Madise

Chancellor of Justice

Chancellor of Justice as the National Human Rights Institution

As of 1 January 2019, the institution of the Chancellor of Justice is simultaneously the National Human Rights Institution (NHRI). The main task of this independent institution is to monitor,

promote and protect human rights in its own country. The guidelines for the operation of the institution are set out in the so-called Paris Principles adopted by a resolution of the UN General Assembly.

Every national human rights institution may seek official international accreditation status, which gives the institution additional rights within the UN human rights protection system and links it more strongly to other human rights institutions and international organisations. In charge of the accreditation process is the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI). Since December 2020, the Chancellor has held A-status, i.e. the highest level of NHRI accreditation. Human rights institutions are accredited every five years.

Work of the Advisory Committee on Human Rights

For four years, the Advisory Committee on Human Rights has been operational under the Office of the Chancellor of Justice, its main task being to advise the Chancellor on issues of human rights protection and promotion. A committee set up by the Chancellor selects members of the Advisory Committee in public competition every four years. Selection of the members proceeds from the principles of equal treatment, diversity, and balance. The work of a member of the Advisory Committee is voluntary.

In autumn 2022, the mandate of the first composition of the Chancellor's Advisory Committee on Human Rights ended and the second composition of the Advisory Committee started its work.

The last meeting of the Advisory Committee's first composition was held on 30 November. The discussion focused on problems concerning the reception of Ukrainian war refugees as well as other human rights related issues. A summary of the Advisory Committee's work was also presented at the meeting. During the four years of its operation, the Chancellor in cooperation with the members of the Advisory Committee initiated several projects related to children's rights, law enforcement and environmental protection. The Chancellor thanked members of the Advisory Committee for the work done.

On 9 March 2023, the Chancellor announced a public competition to form the second composition of the Advisory Committee on Human Rights. Fifty people from different walks of life were selected to sit on the Advisory Committee. Members of the Advisory Committee include experts with considerable experience from the fields of equal treatment, the rights of

people with disabilities, children's rights, violence prevention, healthcare, gene technology, medical ethics, and many other fields. The new Advisory Committee convened for the first time on 23 May.

International reports

During the reporting year, the Chancellor participated in preparing several international reports and other documents.

- In February, the Chancellor had an online meeting with representatives of the European Commission to discuss the situation of the rule of law in Estonia. The European Commission published its report in July. The report deals with significant developments in connection with the principles of the rule of law in all European Union member states. The Chancellor also contributed to preparing a similar report by the European Network of National Human Rights Institutions (ENNHRI) (see State of the rule of law in the European Union).

- In March, the Chancellor submitted an opinion on the draft general comment prepared by the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). The draft deals with the concept of a place of detention mentioned in Article 4 of the Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Subcommittee was impelled to write the general comment by the fact that States Parties to the Protocol put different interpretations on the concept of a place of detention.

- In April, the Chancellor submitted her opinions to the Monitoring Committee of the Congress of Local and Regional Authorities of Europe (CLRAE), which is preparing a report on the situation of Estonian local authorities.

- In August, the Chancellor submitted a report to the UN Committee on the Rights of the Child on implementation of the Convention on the Rights of the Child. In addition, Estonian children are for the first time sending to the Committee their overview of the situation of children in Estonia. Assistance to children in writing the report was offered

by advisers from the Children's and Youth Rights Department of the Chancellor's Office and staff of the Union for Child Welfare. Estonia acceded to the UN Convention on the Rights of the Child in 1991 and assumed the obligation to regularly monitor the situation of children. Responsible for monitoring implementation of the Convention is the UN Committee on the Rights of the Child to which States Parties must periodically report on the situation of the rights of the child. In May, the Estonian government sent to the Committee its combined fifth to seventh periodic reports on implementation of the Convention on the Rights of the Child. The Committee's session where the reports on Estonia will be discussed will take place in winter 2024.

- As a member of the European Network of National Human Rights Institutions (ENNHRI), the Chancellor has participated in the work of several working groups which, inter alia, help to prepare ENNHRI positions on artificial intelligence, migration, people with disabilities, older persons, and other issues.

Human rights blog

Under the auspices of the Chancellor's Office, in 2022 the compendium "Inimõigused" (Human Rights) was published, being the first comprehensive treatment of the field of human rights in Estonian. The book is freely available on the website www.inimoigusteraamat.ee, and on the same page it is also possible to download a pdf version of the book. In addition to the book, the same website includes a blog on human rights offering regular shorter posts to support the issues covered in the book.

The Chancellor's senior adviser Ksenia Žurakovskaja-Aru dealt in her post with the issue of searches in prison from the standpoint of the rights of the child. The post was impelled by the Chancellor's years-long awareness-raising in prisons and the judgment of the Tallinn Court of Appeal of February 2022 (case No 3-21-161), which mostly supported the Chancellor's previous opinions.

Legal scholar Lauri Mälksoo in his blog post analysed how the UN Independent International Commission of Inquiry has dealt in its report with violations of human rights and international humanitarian law in Ukraine.

Legal adviser Liina Lumiste from the NATO Cooperative Cyber Defence Centre of Excellence explained in her post the principles of operation of the International Criminal Court and its

role in investigating crimes.

Tallinn Administrative Court judge Pihel Sarv in her post dealt with climate change, human rights and the related role of the court.

Political analyst Risto Uuk from the Future of Life Institute analysed the impact of ChatGPT on human rights.

Articles and presentations

Liiri Oja, Head of the NHRI Activities of the Chancellor's Office, and Noemí Pérez Vásquez, a Legal Officer at the Office of the United Nations High Commissioner for Human Rights, published an article "A Change of Narrative: Protecting Sexual and Reproductive Rights in Post-Conflict Criminal Justice" in the *Columbia Journal of Gender and Law*; the article was impelled by crimes committed in the Ukraine war.

On 8 November the *Postimees* daily published an article by Ülle Madise "Hirm ja viha on kõlbmatud teejuhid" (Fear and anger are unsuitable guides), discussing the impact that the fear and anger caused in society by crises has on fundamental rights and freedoms.

On 18 November, at a conference of the Estonian Union for Child Welfare the Chancellor of Justice delivered a presentation on the rights of the child to participate in decision-making concerning their life.

On 11 January in Pärnu and on 7 March in Viljandi, the Chancellor delivered a lecture "Sõltumatus, tarkus ja vaikimise nõiaring" (Independence, wisdom, and the vicious circle of silence) on issues of human rights in the frame of the lifelong learning scheme väärikate ülikool.

On 10 February, the Chancellor moderated a debate with professor of international affairs Nina Khrushcheva and journalist Dmitri Muratov at the annual human rights conference " War, Dictatorship and Human Rights" organised by the Estonian Human Rights Institute.

On 17 April, the Chancellor of Justice delivered a lecture "Inimõigused – nende seos ja mõju julgeolekule" (Human rights – their connection with and impact on security) at the XLVII Estonian National Defence Course.

In May, the journal *Juridica* published an article by the Chancellor's Senior Adviser Merle Malvet titled "Fundamental Right to Social Security. Practice of the Supreme Court in the

Interpretation of Subsection 28(2) of the Constitution" in which the author dealt with the state-guaranteed right to financial assistance when a person's income falls, and how the Supreme Court has interpreted that right.

International relations

The Chancellor of Justice has been internationally active since the institution of Chancellor was re-established. First, cooperation contacts were created with colleagues in neighbouring countries; subsequently the Chancellor has joined international organisations and networks uniting chancellors of justice, ombudspersons and human rights institutions.

Since 2001, the Chancellor has been a member of the International Ombudsman Institute (IOI). The Institute includes over 200 national and regional ombudspersons from over a hundred countries worldwide. In May 2023, the Chancellor of Justice Ülle Madise was elected for the second time to the Board of the International Ombudsman Institute European region. The Board of the European region comprises seven members and currently includes ombudspersons from Greece, Portugal, the United Kingdom, Belgium, Slovenia, the Netherlands, and Estonia.

In addition, the Chancellor of Justice is a member of the European Network of National Human Rights Institutions (ENNHRI), the European Network of Ombudspersons for Children (ENOC) and the networks of European Ombudsmen (ENO), the International Conference of Ombuds Institutions for the Armed Forces (ICOAF), police ombudsmen (IPCAN) and National Preventive Mechanisms (NPM).

Cooperation and meetings

During the reporting year, ombudspersons from several countries visited Estonia. In September, the Chancellor hosted a meeting of ombudspersons and chancellors of justice from the Baltic and Nordic countries, which had repeatedly been postponed due to thecorona pandemic. The meeting dealt with issues of artificial intelligence and automaticadministrative decisions. The foundation for this form of cooperation was laid in the 1990swhen, at the invitation of Eerik-Juhan Truuväli, the then Estonian Chancellor of Justice, theFinnish Chancellor of Justice, the Finnish ombudsman and the Latvian ombudsman met forthe first time. Over time, other Baltic and Nordic colleagues also became involved in annualmeetings. The next meeting will be organised by the Danish ombudsman in autumn 2023 in Copenhagen.

In April, the Chancellor organised the annual cooperation meeting of Baltic and Polish ombudspersons for children. This time the meeting focused on involvement of children in decision-making concerning them and problems of assisting Ukrainian refugees. In the same month, the Chancellor received a visit from the Finnish Ombudsman for Children as well. The Chancellor also received visits from the Azerbaijani ombudsman and the Chair of the Estonian parliamentary group of the Ukrainian parliament together with an adviser to the Ukrainian ombudsman.

In addition, the Chancellor received representatives from several international organisations and European countries. In September and June, the Chancellor received visits from judges from European countries participating in a training programme in Estonia. On the Estonian side, the training of judges is organised by the Supreme Court.

In June, the Chancellor introduced her work concerning supervision of surveillance agencies to members of the G10 Commission of the German Bundestag. In the first half of 2023, the Chancellor also received visits from the ambassadors of Ireland, Latvia and Georgia.

In January, a delegation of the OSCE Office for Democratic Institutions and Human Rights arrived for a visit to Estonia in order to familiarise themselves with preparations for the Riigikogu elections and the competence of the Chancellor of Justice in this respect. In February and July, the Chancellor had a visit from the fundamental rights monitors of the European Border and Coast Guard Agency (Frontex) in order to learn about guaranteeing fundamental rights at the Estonian border, which is simultaneously also a European Union external border. In February, an online meeting with European Commission officials took place to discuss the situation of the rule of law in Estonia. In April, the Chancellor met with

representatives of the Monitoring Committee of the Congress of Local and Regional Authorities of Europe (CLRAE) and representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

During the reporting year, the Chancellor and her advisers also participated in several events organised by colleagues in other countries and by international organisations. For example, at the invitation of her colleagues the Chancellor participated in meetings in Strasbourg and in Vitoria-Gasteiz to discuss the tasks of an ombudsman in an increasingly rapidly developing digital world. The Chancellor's advisers represented the Chancellor in working groups set up by the European Network of National Human Rights Institutions and in several meetings organised by ombudspersons for children and other networks.

In December and January, in the frame of the Nordic-Baltic Mobility Programme for Public Administration, the Chancellor's advisers visited their colleagues in Denmark and Finland. During the study visits, issues of involuntary psychiatric care were discussed and local psychiatric hospitals visited. A contribution towards the cost of the study visits was made by the Nordic Council of Ministers.

In April, the European Network of National Human Rights Institutions (ENNHRI) convened for an extraordinary meeting to vote on the exclusion of the Russian Commissioner for Human Rights (i.e. the Russian human rights institution, or NHRI) from the organisation. Members of the network found that the *modus operandi* and statements of the Russian Commissioner for Human Rights did not comply with the goals and activities of the network and decided to exclude the Commissioner from the organisation (see the news on the vote by the members of the network). The UN Sub-Committee on accreditation of national human rights institutions (SCA) also decided to launch a special review of the Russian Commissioner for Human Rights in order to assess the Commissioner's compliance with the requirements for human rights institutions, i.e. with the Paris Principles (see para. 4.3 of the report).

International reports

The Chancellor participated in drawing up several international reports. For example, the Chancellor submitted her opinions to the Monitoring Committee of the Congress of Local and Regional Authorities of Europe which is preparing a report on the situation of Estonian local authorities, and to the European Commission, which drew up a report on the situation of the rule of law in European Union member states. The Chancellor also contributed to preparation of the rule of law report by the European Network of National Human Rights Institutions

(ENNHRI) (see the State of the rule of law in the European Union), the purpose of which was to provide additional information for the above-mentioned report drawn up by the European Commission.

Estonia acceded to the UN Convention on the Rights of the Child in 1991 and thereby assumed the obligation to regularly monitor the situation of children. Responsible for monitoring implementation of the Convention is the UN Committee on the Rights of the Child to which States Parties must submit regular reports on the situation of the rights of the child. In May, the Estonian government submitted to the Committee its combined fifth to seventh periodic reports on implementation of the Convention on the Rights of the Child. In August, the Chancellor submitted her report on implementation of the Convention. In addition, Estonian children are for the first time sending to the Committee their overview of the situation of children in Estonia. Assistance to children in writing the report was offered by advisers from the Children's and Youth Rights Department of the Chancellor's Office and staff of the Union for Child Welfare. The Committee will examine the reports on Estonia at a session taking place in winter 2024.

The Chancellor also submitted an opinion on the draft general comment prepared by the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). The draft deals with the concept of a place of detention mentioned in Article 4 of the Optional Protocol (OPCAT) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Subcommittee was impelled to write the general comment by the fact that States Parties to the Protocol put different interpretations on the concept of a place of detention.

Property

Under § 32(1) of the Estonian Constitution, everyone's property is inviolable and equally protected. Although this constitutional norm is generally very well known, it can be seen from petitions sent to the Chancellor that the state or local authorities do not always exhaustively take it into account. Otherwise, it would be impossible to explain a rural municipality's wish to obtain a part of a person's plot of land or pressure exerted by the state on a house owner to terminate a tenancy contract because in the future the state wishes to acquire ownership of the building on grounds of public interest.

Property is also related to building and use of construction works. If procedural rules are

unclear or they are not complied with, this amounts to restricting enjoyment of someone`s property. The same effect results from rules which are wrongly applied.

Nuisance arising from the surrounding environment, such as noise from construction works, can also be interpreted as restriction on property. In this respect as well, rules must be formulated in a manner similarly understood by all parties. If rules are conflicting or they are not applied, this leads to confusion interfering with enjoyment of property.

Enjoyment of property

Pressure to surrender part of an immovable

On several occasions, the Chancellor has been contacted with a concern that a local authority has set a precondition for performing a measure or issuing an administrative act, requiring that land should be surrendered free of charge in the public interest. For example, surrender of land free of charge for building a public road was required after a person had expressed a wish to divide their immovable and contacted the rural municipality with a view to carrying out land consolidation procedures to that end. This case was resolved as a result of the Chancellor's intervention.

In another case, a rural municipality set a requirement as a precondition for an engineering design that a larger part of the land unit should be given to the rural municipality. The rural municipality justified this by the need to ensure that forest growing on that plot would be preserved and remain in public use.

Compensating the cost of commissioning a valuation report of an immovable

Several petitions revealed that no compensation of the cost of valuing an immovable had been laid down within proceedings for acquisition of an immovable in the public interest. So the question arose as to the constitutionality of § 17 (valid to 1 January 2023) of the Acquisition of Immovables in the Public Interest Act, which only laid down compensation for procedural costs.

The Chancellor concluded that it was unconstitutional that the cost of commissioning a valuation report was not compensated to the owner of an immovable even though, in the event of a price dispute, the law requires them to commission a comparative valuation report.

Under § 32 of the Constitution, if the state expropriates an owner's land, forest or house in the public interest, then fair and immediate compensation must be offered. This means that the owner must be paid a sum corresponding to the market price of the immovable or an equivalent plot of land must be offered in exchange. Expropriation may not cause financial loss to the owner. Since the earlier version of the Acquisition of Immovables in the Public Interest Act did not enable compensating the cost of commissioning a comparative valuation report, this cost was left to be borne by the owner of the expropriated immovable.

The Chancellor made a proposal to the Riigikogu to bring the Act into conformity with the Constitution. Based on the Chancellor's proposal, the Riigikogu amended the Act so that now a person whose immovable the authorities wish to acquire in the public interest may claim compensation of procedural costs related to transfer of the immovable as well as the cost of preparing a comparative valuation report.

The Chancellor's conclusion was also affirmed by the Supreme Court (judgment of 6 June 2023 No 5-22-15). The court affirmed that § 17 of the Acquisition of Immovables in the Public Interest Act in the wording in force before 2 January 2023 contravened the Constitution insofar as it failed to lay down compensation of costs incurred in commissioning a comparative valuation report of an immovable.

Activities of the Land Board in acquiring immovables

The Chancellor was asked to check whether the Land Board was acting lawfully when requiring tenants to terminate their tenancy relationship within proceedings for acquisition of immovables in the public interest. Specifically, the procedural materials revealed that the Land Board required tenants of an immovable to be acquired to vacate the rented space by a certain date. This requirement was also reaffirmed to owners of an immovable and tenants in subsequent correspondence.

In her memorandum, the Chancellor explained that the Land Board has no legal basis to require tenants to terminate their contract and vacate the property before an immovable is actually acquired in the public interest. Fundamental rights and freedoms and othersubjective rights may only be restricted by law (§ 3 Constitution, § 3(1) AdministrativeProcedure Act). Under the Acquisition of Immovables in the Public Interest Act and the Law ofObligations Act, the acquirer of an immovable gains the right to terminate a tenancy contractunder the provisions of the Law of Obligations Act after they have acquired the immovable.

Consequently, it is contrary to good administrative practice if the Land Board requires tenants to terminate their tenancy contract while proceedings for acquisition of an immovable in the public interest are still ongoing. A tenant may choose whether they wish to terminate their tenancy contract during or after the proceedings. The acquirer of the immovable cannot oblige them to do so but may only offer an option to terminate the contract earlier. In doing so, tenants must be explained the possibilities concerning acquisition of the immovable and obtaining compensation.

The Land Board promised the Chancellor that they would act in compliance with the law in the future.

Expansion of Nursipalu training area

Russian aggression against Ukraine has brought about the need to expand the military training area at Nursipalu in Võru County. The Chancellor explained that under § 32(1) of the Constitution the state may acquire (including by expropriation) land suitable as a training area for the Defence Forces for fair and immediate compensation.

When expanding a training area and acquiring land, the law must be complied with even under the conditions of security risk and exceptional circumstances (§§ 3, 10 and 13 Constitution). If the state deprives someone of their home in the public interest then fair thus also constitutional compensation must be in an amount that enables acquiring an equivalent dwelling.

The state failed to make use of statutory options for expanding Nursipalu training area. For example, the state failed to initiate a national designated spatial plan or planningproceedings. Planning proceedings enable ensuring greater legal clarity and effectivelyinvolve persons interested or concerned. Without proper planning proceedings the reasons,necessity and legal basis for expanding the training area remained unclear for many people.

In order to enable expedited expansion of the training area, the Riigikogu amended the Weapons Act and laid down an exceptional possibility that the Government, on a proposal by the Minister of Defence and on the basis of a relevant risk assessment, may decide on establishing or expanding a training area of the Defence Forces or the Defence League without spatial planning proceedings. In that case, the process takes place in open proceedings under the Administrative Procedure Act where persons may submit proposals and objections.

The Chancellor concluded that the provisions inserted in the Weapons Act did not contravene the Constitution. Although the Planning Act does not apply to exceptional establishment or expansion of a training area, persons are ensured a possibility to participate in proceedings for issuing a legal act for establishing or expanding the training area and to submit their opinions in open proceedings. Persons may also contest the order for establishing or expanding a training area in an administrative court.

Property rights procedure

Building notice proceedings

A building permit is not always required for construction. In simpler cases, a building notice is sufficient, which should be quick and as little burdensome as possible. At the same time, it should enable a local authority to assess whether the planned construction works are compatible with the public interest as well as the interests of the persons concerned. In most cases, proceedings for a building notice can be carried out as a silent procedure: unless the local authority comes forward with additional requirements within a set time limit, a building notice is considered to have been submitted and construction may begin. A local authority must present the requirements in an administrative act as laid down by law.

During the reporting year, the Chancellor had to draw the attention of Tallinn City Government to the procedure for handling building notices. All the requirements imposed by

a local authority must be lawful, justified and set within the statutorily prescribed time limit. The duty of justification helps to ensure that the requirement is lawful and understandable and that compliance with it does not cause resentment. Justification is particularly important if the requirement imposed comes down to a subjective assessment, such as the architectural appropriateness of construction works or extension to a building.

Approval of the location of a borehole

Under § 124 of the Building Code, before constructing a drilled well or borehole the approval of the local authority must be obtained regarding the location of the drilled well or borehole, and only then can an application for a building permit be submitted. Under the law, these proceedings should be simple and swift. However, Kiili rural municipality organised approval proceedings for a drilled well and borehole more stringently than laid down by law. The municipality required that investigation should be carried out before approving the location. Although the requirement for investigation may be justified in constructing a drilled well or borehole, this requirement must be imposed at the right stage of proceedings. Constructing a drilled well and borehole presumes the existence of a building permit and, in order to apply for the permit, all the necessary investigations must be carried out in any case.

Construction is a process and advancing a certain stage may cause inconvenience or unjustified expense. For example, this may be expressed in the need to carry out an investigation sooner than planned. The requirement of investigation prior to proceedings for issuing a building permit, as well as lack of approval for the location, may mean that no application for a building permit can be submitted.

The Chancellor had to explain repeatedly to the local authority the essence of proceedings for approval of a borehole and that prior to an application for a building permit the local authority does not actually need to resolve issues to be subsequently resolved by a building permit. This kind of exceptional procedure might not be justified or necessary and amending the law should be considered. However, until then the law must be complied with as is.

State fee for legalisation of construction works

Under § 331^6 of the State Fees Act, a state fee of 500 euros is payable if construction works illegally built prior to entry into force of the Building Code (i.e. before 1 July 2015) is sought to be entered into the register of construction works (i.e. to be legalised). So far, this rate of state fee has also been applied in other cases: for example, if illegal remodelling has been

carried out in lawfully built construction works.

This kind of implementing practice is not correct. This is an exceptional rate of state fee whose conditions of application may not be interpreted expansively.

This does not mean that no state fee should be charged for retroactive legalisation of illegal remodelling. If remodelling works are of the kind for which the current law also requires a building and occupancy permit then the amount of state fee required in applying for those permits should be paid. The Chancellor drew the attention of Tallinn city to the fact that the correct rate of state fee must be applied.

In many older houses, remodelling has been carried out over time and retroactive proof of its lawfulness is exceptionally burdensome both for the current owner of the building as well as for the official resolving the issue. At the same time, no situation may be allowed to develop where it is easier and cheaper to circumvent the legal requirements rather than comply with them.

A precept in resolving disputes in private law

The Chancellor explained to Luunja Rural Municipality Government that in resolving a private law dispute between the rural municipality and a private person the municipality cannot invoke the powers of a public authority and issue a precept to a private person. Disputes in private law must be resolved in line with private law rules and principles.

In this case, the municipality issued a precept to demolish a fence with the justification that the fence had been built over the border of the immovable and was located on municipal land. The owner would have incurred considerable expense by demolishing the robustly built fence. Moreover, the issue was only about a few dozen centimetres and the plot border data may have also been imprecise.

Noise target value and limit value

Noise significantly affects our living environment, well-being and health. For this reason, some legislation lays down normative levels of noise based on which the quality of the living environment can be assessed.

The limit value of noise is a normative level which, if exceeded, results in noise reduction measures having to be taken. The target value of noise, on the other hand, is stricter than the limit value and it applies in cases where emergence or deterioration of the noise problem can

be prevented, i.e. primarily in spatial planning proceedings.

Unfortunately, legislation does not clearly and unequivocally set out the conditions for applying the target value of noise, and regulation by the Minister of the Environment includes a provision which allows disapplying the law. This situation has caused disputes. Applying the target value of noise determines, for example, whether any buildings can be erected at all in a certain location. This, however, is a vital issue in terms of the right to property. One may presume that relying on the target value of noise would improve the living environment. However, this is not always so. Erecting a new building may sometimes actually reduce the spread of noise.

The Chancellor drew the attention of the Health Board to the fact that the correct normative level of noise must be applied. Since resolving the case is prevented by lack of legal clarity of the norm, the Chancellor contacted the Riigikogu and the Minister of the Environment with a request to tidy up the legislation.

Natural resources and the environment

The global climate crisis and the right to use natural resources (fish stocks and wild game) were among the central issues in petitions sent to the Chancellor last year. Besides this, people were still concerned about environment conservation related property restrictions and cutting of forest.

In a written presentation to the Riigikogu Environment Committee, the Chancellor dealt with several central and repeated issues. Hopefully, finding solutions to these problems will begin as early as this autumn.

Climate protection

Climate protection and the related ‘green transition’ raise hopes in people. However, there is also room for concern as people fear crippling restrictions, additional expenses involved in home renovation, or whether and what kind of car they will be able to afford in the future.

The green transition action plan is not a law. A plan does not impose any restrictions or duties. Even while preparing an action plan, it should be kept in mind that if any of the planned activities restrict people’s rights or impose a duty on people then the relevant

restriction or duty must be laid down by law. This is required by the Constitution (sections 3, 11, 31 and 32). In addition, the socio-economic impact of planned restrictions or duties must be ascertained. Exceptions, too, must be established by law.

For example, if the state wishes to improve energy consumption, the starting point could be those population groups in the case of whom the biggest savings would be achieved by incurring reasonable expense. When planning investments involved in green transition, it is necessary to observe that expenses should not exceed expected savings. It could be considered probable that in some instances for example when renovating an old wood-heated farm building the environmental cost exceeds the expected energy savings. Well-considered and justified exceptions should be established for such situations.

It is not conducive to achieving the aims of the green transition if more resources are eventually spent in the name of environmental efficiency than can be saved at the end of the day, or if too many harmful side effects arise in implementing the aims. The Chancellor submitted a written presentation on climate protection and restrictions on fundamental rights to the Riigikogu on 16 January 2023 and introduced it to the parliament on 19 March 2023.

Estonia has assumed several nature and climate protection related obligations to be met by a certain deadline. For example, one of the objectives is to achieve climate neutrality, i.e. a situation where anthropogenic greenhouse gas emissions are balanced out by removal of emissions. Fulfilling this obligation presumes that private individuals, too, must reorganise their activities because the obligations assumed also concern entrepreneurship: mining, energy, transport, building, housing, waste management, and industry.

Under § 3 of the Estonian Constitution, people's rights and freedoms may only be restricted in a predictable manner and on the basis of law. Imposing duties and prohibitions that have a significant impact on people's life arrangements presumes an adaptation period which is longer than normal. This means that a law establishing significant duties and prohibitions must be adopted, promulgated and published in sufficiently good time before it enters into effect. Sometimes the constitutionally required time for adaptation may even be several years.

Deadlines for meeting obligations assumed by Estonia are approaching but so far no relevant provisions have been added to the laws regulating the above-mentioned areas. So it may happen that soon it will probably no longer be possible to impose duties or prohibitions on

businesses or other persons without considerable compensation because the time for adjusting to changes is too short.

According to businesses, indications in terms of the need to reorganise their activities have been given to them through development plans or even simply on the basis of a coalition agreement. However, neither a development plan nor a coalition agreement confers any rights or imposes any duties on anyone. The adaptation period does not begin to run from adoption of a development plan or a coalition agreement. The start of the adaptation period can be counted only from the moment when a law is published in the *Riigi Teataja* gazette. The law must prescribe in sufficient detail what is allowed and what is prohibited in a certain area as of a certain deadline. For example, the Earth's Crust Act may lay down restrictions on oil shale mining and grounds for refusal to issue mining permits.

Restrictions with a significant social and economic impact must be understandable, the procedure and principles for establishing them must be known, and a necessary adaptation period or compensation must also be laid down. Businesses need legal clarity and legal certainty so as to be able to choose a course of action, dare to make investments and be able to source and train competent workers.

Local authorities, too, need to be able to know as far in advance as possible what kind of entrepreneurship having an impact on climate status will be allowed in the upcoming decades, whether a large employer needs to close down or reorganise their operations, and what possibilities exist to attract businesses to a city or rural municipality. Clearly worded objectives and the rights and duties needed to attain them must be set by law.

The purpose of the Chancellor's presentation was to remind the Riigikogu, state agencies and businesses, as well as the public, that so far legislation contains no norms necessary for fulfilling the objectives assumed by Estonia, and that adoption and enforcement of those norms will presumably take time. Nor can a law be replaced by development plans or other documents because nothing can be required from private persons based thereon, nor can restrictions be imposed on the basis of an abstract general law or regulation.

Certainly, only the Riigikogu can decide whether the duties and restrictions necessary for achieving climate neutrality should be established through sectoral laws or a new law created for this purpose. The package of amendments to all sectoral laws may also be called a climate law if the intention is to combine and adopt all those amendments simultaneously. In terms of legislative drafting technique, the interests of private persons can be better protected if

rules in different areas are adopted through separate laws. A so-called cluster law (package law) also involves risks in terms of constitutional review: upon finding an unconstitutional provision in a cluster law, the President of the Republic must refuse to promulgate the whole law. This means that even for constitutionally compliant provisions the adaptation period before entry into force is postponed.

It may also happen that some provisions requiring large-scale readjustments would end up in the Supreme Court for constitutional review – this, too, constitutes a normal course of events in state matters. Thus, introducing some changes has become extremely urgent even at this stage if the state does not wish to abandon fulfilling obligations assumed or to pay compensation.

Hunting

Disputes still arise about extending the right to use a hunting district and fair competition in granting the right to use a hunting district.

It is vital that permits for the right to use a hunting district should be issued in line with legal certainty and as a result of a transparent process. The state may not unlawfully distort competition between hunting societies. The executive cannot arbitrarily impose conditions on granting someone the use of limited public resources or overlook the conditions laid down by the Riigikogu.

The Chancellor sent recommendations on implementing the Hunting Act to the Ministry of the Environment and the Environmental Board (by letter of 11 March 2022, 1 July 2022 and 20 September 2022) and asked the Environmental Board to bring its administrative practice into line with the Hunting Act.

People have asked the Chancellor how those in charge of state lands (the State Forest Management Centre, the Land Board) should act when granting use of state-owned hunting areas so as to ensure fair competition between hunting societies.

The Chancellor found that the State Assets Act applies to state assets in all cases not regulated by a special law (see § 2(3) State Assets Act). The Hunting Act does not contain provisions to the effect that the State Forest Management Centre or the Land Board should necessarily grant use of state land to those hunting societies who have obtained a right to use a hunting district on the basis of the transition provisions of the Hunting Act. Permits for the

right to use a hunting district issued on the basis of transition provisions were in force to 31 May 2023 but, in the future, permits must be issued in line with the rules of the current law.

A landowner may impose conditions on hunting on their land and they may also prohibit hunting. An owner may also propose changing the user of a hunting district and changing the borders of a hunting district. The Hunting Act does not distinguish between the rights and duties of a private landowner and of the state as landowner, nor does it prohibit landowners from entering into contracts with several hunting societies. Thus, on their immovable the state or a private owner can prohibit hunting, or allow hunting, as well as impose conditions on hunting at their discretion.

The state must also assess and weigh the feasibility of granting the use of its immovables for hunting purposes. The State Assets Act requires that an administrator of state assets must ensure that state land is administered in accordance with the aims of its administration, expediently, sustainably and prudently (§ 8(1) State Assets Act). This obligation must also be taken into account when granting use of land to a hunting society. The conditions for use of state-owned hunting areas must be made public for all to see. All decisions on granting use of state lands for hunting purposes must be made publicly and transparently and the lawfulness of decisions must be judicially verifiable (in the administrative court) because state-owned land constitutes a limited public resource.

A representative of the executive (e.g. the Environmental Board, the State Forest Management Centre, or the Land Board) cannot arbitrarily prevent competition between hunting societies for the right to use a hunting district by having the state preclude competition for a public resource (i.e. use of state land). The tasks of a landowner are laid down by the State Assets Act. Proceedings for allowing use of state-owned land for hunting purposes may not lead to a situation where the purpose of the Hunting Act is unfulfilled but, instead, the only interests taken into account are those of hunting societies who have obtained the right to use a hunting district on the basis of transition provisions. A competing hunting society may also comply with the interests of the state as landowner, i.e. be prepared to fulfil the applicable contractual conditions for hunting set by the State Forest Management Centre and the Land Board (for instance, compensate game damage to a larger extent than prescribed by law).

Restrictions imposed on the use of state-owned land and which change the competitive situation must be based on a clear legal basis and the Riigikogu must have compelling reasons for establishing such restrictions. Currently, no such grounds are laid down by the

Hunting Act. For this reason, granting use of state land must be based on the State Assets Act (in some cases also the Forest Act for the purposes of generating income).

Of course, only the administrative court can make a binding assessment of each specific case of extending or refusing a permit granting the right to use a hunting district. Indeed, several such current disputes have ended up in court.

Fishing

In late autumn last year, the Chancellor received several petitions concerning the change of organisation of professional fishing on Lake Peipus, Lake Lämmijärv and Lake Pskov.

To the end of 2022, the state allocated the use of fish stocks on the basis of the so-called Olympic fishing method. This means that all professional fishers were allowed to fish until the quota set by the state for a certain area was exhausted. This way a fisher's catch depended on their own skills and quality of fishing gear.

Since 2023, the system of individual quotas was introduced for certain fish species. Now, eligible fish stocks are allocated among the fishing gear of professional fishers. Fishing gear is allocated among fishers on the basis of historical fishing rights. However, this change has worsened the situation of those fishers who have invested in high-quality fishing gear and are motivated and skilful but can only use a small part of their historical fishing rights. These fishers can no longer rely on the extent to which they would be able to fish but must proceed from the share allocated to their fishing gear.

The issue is whether the change of previous fishing arrangements was constitutional and whether the changes could enter into force immediately without leaving businesses any time to adjust to the changes.

Misgivings have also been expressed as to whether the Government in its regulation observed the objectives set by the Riigikogu. With this regulation, the Government laid down opportunities for professional fishing, allowable annual catches, and the fee rates for fishing rights for 2023.

The Chancellor noted that the Riigikogu may change applicable fishing arrangements if a sufficient transition period for this is set and restrictions on entrepreneurship are proportionate. She recommended that the Riigikogu should also elaborate on the delegating norm laid down by § 47(1) of the Fishing Act to ensure greater clarity as to the objectives

based on which the executive should in the future intervene in the organisation of professional fishing.

The state must carefully analyse the experience gained in 2023 so as to be able to decide whether the objectives sought by the changes have been attained. If necessary, amendments to legislation must be made. Currently, no reason exists to consider the transfer to individual quotas as disproportionate. However, if the objectives of the law are not attained by individual quotas in the future, then no reason exists to consider the applicable fishing arrangements as constituting an appropriate, necessary and narrowly proportional restriction of freedom of enterprise.

Money

Dealing with crises requires money, which is never unlimited. There are always questions about the expediency and conditions for distribution of support and implementation of aid measures. More important financial choices must be made by the Riigikogu, and the comprehensibility and transparency of the state budget is becoming increasingly important.

During the reporting year, the issues of tax and banking services and measures to combat money laundering, as well as the issues of payment of support intended to mitigate the effects of the crisis, came to the attention of the Chancellor.

Clarity of the state budget

Under § 115 of the Constitution, making important budgetary decisions is the task of the Riigikogu (“the budget of all state revenue and expenditure”). In a situation where the state’s expenditure exceeds revenue and the budget is therefore in deficit, the work of the Riigikogu is complicated. This means that the Riigikogu will have to make increasing efforts to find a suitable balance point for the majority of society in deciding on cutting expenses and tax increases planned to cover borrowing and the deficit.

The structure of the state budget should be such that the Riigikogu can decide, to the extent necessary and relevant for it, on the reasonableness and expediency of using state funds. Therefore, the state budget must be understandable, or otherwise the Riigikogu will be unable to perform the task assigned to it by the Constitution.

When planning the budget, decision-makers still focus only on the economic substance of the expenses that they understand, i.e. on activities. Activity-based budgeting involves a lot of additional work, the results of which are not used or are only little used. The benchmarks used to assess programme objectives set out in the explanatory memorandum to the state budget are often vague and give the impression that the state is engaged in substitute activities. If understanding the cost figures given under the objectives is impossible and if understanding requires unnecessary additional work, serious consideration should be given to whether it is reasonable to continue with activity-based budgeting at all.

The Chancellor drew attention to problems related to the budget in the letter "The right to decide on the budget", sent to the Riigikogu committees, in a presentation prepared for the Riigikogu Finance Committee, as well as in a letter sent to the Ministry of Finance about the intention to prepare the State Budget Act. The Chancellor recommended that the Minister of Finance might also consider amending the State Budget Act so that budgetary decisions concerning constitutional institutions would be made by the Riigikogu in the future and the government would have the role of submitting their opinion, if necessary.

Availability of basic payment services

The Chancellor has been approached by both businesses and individuals who are concerned about having their bank account closed without having been given any substantive reasons for doing so. As a rule, other banks then also refuse to open an account for the person, and as a result, managing their everyday affairs becomes almost impossible.

The Chancellor explained in a letter to the Estonian Banking Association that currently two related problems are being reviewed by the Chancellor. The first concerns the obligation of banks to provide reasoning if a bank decides to refuse to open an account or to close it. The second issue concerns everyone's right (§ 14 Constitution) of access to basic payment services that are essential for day-to-day living.

In conclusion, the Chancellor noted that, in order to ensure better legal protection, banks will have to provide substantive reasoning as to why they have decided to terminate a payment services contract. The Supreme Court also recently explained that a bank may extraordinarily cancel a client's basic payment service contract only for a good reason.

Closing a bank account also restricts access to vital services. Among other things, it may prove

impossible to pay for utilities, childcare and other services, as the Chancellor explained by referring to her earlier opinions. This, in turn, means that the constitutional right of access to the court, free self-realization, family law, freedom of enterprise and the fundamental right to property are restricted (§§ 15, 19, 27, 31, 32 Constitution).

Banks also take care of combating money laundering and terrorist financing as an important national objective. At the same time, people need a bank account to cope on a daily basis, regardless of how their activities are legally evaluated. Depriving a person of all access to all basic payment services can lead to social and economic exclusion.

The solution may be to provide a so-called social bank account. When using this account, the volume and purpose of transactions can be limited by law. Where necessary, a suspect's transactions can also be effectively checked. However, when people suspected of money laundering or terrorist financing are directed to settle through front persons or in cash, this works directly against national objectives.

If, during court proceedings, a company is deprived of the right to use an account, the resulting restriction on fundamental rights may not be as intense as if a natural person loses their account. Securing a court claim can reduce the intensity of the restriction.

Compatibility with the Constitution of anti-money laundering measures and justification of measures in explanatory memorandums

The Chancellor has been asked to check whether measures and restrictions established in § 20 of the Money Laundering and Terrorist Financing Prevention Act (MLTFPA) comply with the Constitution. Dissatisfaction was caused by the requirement that a person must also prove to a notary the origin of the money in their bank account, although the bank has already checked this beforehand.

If, in a real estate transaction, both the bank and the notary ask the buyer to prove the origin of their assets, this may limit the buyer's ability to freely dispose of their assets and, moreover, a person must repeatedly disclose information about themselves. Thus, applying a due diligence measure may restrict the right to property (§ 32 Constitution), freedom to conduct a business (§ 31), the right to informational self-determination (§ 26) and free self-realization (§ 19).

Nevertheless, the Chancellor found no conflict with the Constitution. Banks and notaries are obliged entities that need to apply due diligence measures to prevent money laundering and

terrorist financing. This obligation is imposed on notaries by §§ 19 and 20 of the MLTFPA. Notaries can cooperate with other obliged entities while applying due diligence measures (§§ 16 and 24 MLTFPA), but this is not an obligation. It is the responsibility of the obliged entity itself, in this case the notary, to ensure compliance with the due diligence requirements. This is necessary to ensure compliance with anti-money laundering requirements. No obliged entity is required to assume that due diligence measures have been applied sufficiently effectively for a particular transaction.

The Chancellor also analysed the constitutionality of § 44 of the MLTFPA. This provision stipulates that an obliged entity may transfer the client's assets only to those accounts that meet the conditions set out in the MLTFPA. Transferring the client's assets, for example, to accounts located in payment institutions and electronic money institutions regulated by the Payment Institutions and E-Money Institutions Act is not allowed.

A restriction on the transfer of assets restricts a person's right to freely use and dispose of their property (§ 32 Constitution). If limiting the transfer of assets serves and helps to achieve a constitutional purpose, there is no reason to conclude that the requirement is unconstitutional.

The Chancellor reached the opinion that – taking into account the explanations in the national risk assessment, international studies, as well as by the Financial Supervision Authority and the Financial Intelligence Unit – there is currently no basis to assert that the restrictions on transfer of assets laid down by § 44 of the MLTFPA would be unconstitutional when assessed in the abstract. These restrictions prevent assets from being transferred to an environment where there is a higher risk of money laundering and terrorist financing and where less effective due diligence measures are generally applied to prevent this.

The Chancellor also pointed out that, when imposing measures restricting the right to property, restrictions should be clearly justified, and this should also be done in the explanatory memorandum to the provision imposing the restriction. In doing so, reference should be made to relevant risk assessments and studies. The explanatory memorandum helps both market participants and the general public to understand the need for restrictions. This, in turn, helps to understand the importance of preventing money laundering and terrorist financing.

Taxes

Tax-free income for children

Questions arose in connection with the distribution of tax-free income for children. The Chancellor was contacted by a parent raising three children: two of them from an earlier and the third from a later cohabitation. When it was found that both parents had declared tax-free income for the first two children, the Tax and Customs Board adjusted the income tax return of one of the parents so that the tax-free income for the children was applied to the taxation of that parent's income only for the months in which the parent had received child allowance for those children. The Tax and Customs Board also reduced the tax-free income provided for the third child, although the child allowance for that child had been received by the petitioner throughout the taxation period.

The Tax and Customs Board explained to the Chancellor that the petitioner was still entitled to the additional tax-free income for the third child for the entire taxation period and stated that the Board had re-adjusted the income tax return of the petitioner. As a result, the parent finally received an additional income tax refund.

Although the specific concern was essentially resolved, the Tax and Customs Board erred against the requirements of the law because the tax authorities are not allowed to amend income tax returns of persons without making a decision. The Board may amend the declaration only with the consent of the person who submitted it. If there is no consent, the Board must issue a decision to adjust the tax records and file a claim for refund. This must be the case even if the parents have not reached an agreement between themselves on the distribution of the tax incentive.

From a decision, i.e. an administrative act, a person can find out under what circumstances the tax authorities applied the law in a specific way. The tax authorities must give reasons for their decision, refer to the rules of the relevant legal act, and provide a description and explanation of the facts. The decision must also make it clear how and for how long a person can challenge the act.

The Chancellor recommended that the Tax and Customs Board should comply with the law and draw up an administrative act before amending the data submitted in people's tax returns. The Board agreed with the Chancellor's recommendation.

Taxation of pensions

The Chancellor received repeated complaints about the taxation of pensions. Some people consider taxation of an already scarce pension to be fundamentally wrong, considering that a pension is a reward earned for long-term work that should not be taxed by the state. Others were dissatisfied with the fact that a pension received from a foreign country affects the amount of tax-free income, while others complained about taxing the income of working pensioners.

An old-age pension received from a foreign country is not taxed in Estonia, but receiving this pension may still have reduced the amount of tax-free income in 2022. As a result, a situation may have arisen that if a person received a pension from a foreign country, they had to pay more income tax on their Estonian pension.

The Chancellor found that whether and to what extent a pension should be taxed depends on political choices. No reason exists to assert unconstitutionality of the rules on tax-free income, according to which income from abroad is also taken into account when calculating the tax deduction.

With regard to the income tax liability of a working pensioner, the Chancellor noted that tax-related choices are essentially political choices made by the Riigikogu elected by the people. The Riigikogu must find a fair balance in the distribution of the tax burden in society. Whether and from what threshold the income of a working pensioner can be taxed is indeed a question of such a balance.

The Riigikogu changed the taxation of income of old-age pensioners. From 1 January 2023, a separate tax-free income (instead of graduated tax-free income) will be applied to the taxation of income of people in retirement age. Also, in the future, income earned in a foreign country will not affect the taxation of income received from Estonia by people in retirement age.

The Chancellor was also asked to assess whether it is constitutional that the tax incentive for old-age pensioners is not granted to all pensioners but only to people in retirement age.

Although the law gives a person the opportunity to retire earlier, the state does not want to encourage earlier retirement. The Chancellor found that this choice of tax policy also falls within the scope permitted by the Constitution.

Taxation of the second pension pillar

A petitioner complained that the Tax and Customs Board did not provide an opportunity to deduct from the taxable income generated by payment of the mandatory funded pension a loss sustained from the transfer of securities. The Chancellor found that the decision of the Tax and Customs Board to refuse to refund income tax was legitimate.

Different rules apply to the taxation of second pillar disbursements than to the taxation of other investment income. Contributions to the second pillar have been deducted from a person's taxable income (and part of those contributions is social tax), which is why it is understandable that the Riigikogu has regulated taxation of disbursements differently from taxation of other investment income.

The Riigikogu may establish different tax rules for each type of investment, otherwise the parliament would not be able to create special taxation schemes.

Taxation of compensation for non-pecuniary damage

The Chancellor was asked to check whether it was constitutional to subject non-pecuniary damages to income tax. Under § 12(3) of the Income Tax Act, compensation for non-pecuniary damage paid by the state or local authority or awarded by a court is not treated as income of a natural person.

The Chancellor asked the Minister of Finance to explain why non-pecuniary damages are exempt from tax if awarded by a court, but income tax must be paid on damages paid under an out-of-court settlement.

In the opinion of the Minister of Finance, the exemption of all non-pecuniary damages from income tax would create the risk that transactions that are currently subject to income tax might be carried out by mutual agreement under the name of such damages. The Minister agreed that it is not right to favour a situation where a person has no interest in agreeing to an out-of-court settlement, since in that case income tax is payable on the damages. The Minister of Finance promised to analyse the issue and prepare the necessary amendments to the Income Tax Act.

The impact of nature conservation on the income base of local authorities

The Chancellor was asked to assess whether it was legitimate for the state to have failed to compensate local authorities for land tax that is not collected from nature reserves.

The Chancellor found that rural municipalities and cities did not have a legitimate expectation to be compensated for the loss of tax revenue resulting from any change in the tax element. There is also no right to assume that the share of tax received by rural municipalities or cities will always remain the same. The state has the obligation to ensure sufficient funding to rural municipalities and cities so that they can perform the functions of self-government (§ 154(1) Constitution). In addition, local authorities are entitled to receive money from the state budget for the performance of state functions assigned by law (second sentence of § 154(2) of the Constitution).

The state may reduce the amount of money allocated for the performance of municipal functions if a local authority is still able to perform these functions to the minimum extent necessary.

Unemployment allowance and sickness benefit

Income tax refund and unemployment allowance

The Chancellor was contacted by an individual who was denied unemployment allowance because they had been refunded overpaid income tax for the previous calendar year.

The Estonian Unemployment Insurance Fund may suspend or terminate payment of unemployment allowance if a person's monthly income exceeds the amount equal to at least 31 times the daily unemployment allowance rate. Unemployment allowance is linked to actual need for assistance. If an unemployed person's income is equal to or greater than the

established minimum, payment of unemployment allowance is suspended for 30 days (§ 32(1) 4) Labour Market Services and Benefits Act). Unemployment allowance is paid for a total of up to 270 days (§ 30(1)) and the number of days on which the person is entitled to unemployment allowance does not decrease. Thus, payment of unemployment allowance may be spread over a longer period.

Employer's voluntary sickness benefit and social tax liability

In the event of an employee's illness, initially their replacement income is guaranteed by the employer and then by the Health Insurance Fund. Sickness benefit paid by the employer can be conditionally divided into two parts. The first part is mandatory sickness benefit (70 per cent of the employee's average wage) and the second part is voluntary sickness benefit, which the employer can pay up to the employee's average wage beginning from the second day of illness until the day when the Health Insurance Fund starts paying compensation to the sick person.

There is a special scheme for payment of sickness benefit to pregnant women. From the second day of illness, they will be paid sickness benefit by the Health Insurance Fund. The amount of sickness benefit is 70 per cent of the income subject to social tax in the previous calendar year. An employer cannot pay sickness benefit to an employee who has fallen ill during pregnancy. If an employer were to pay sickness benefit to a pregnant employee at the same time as the Health Insurance Fund, the employer would have to pay social tax on this remuneration. If a woman were to receive income subject to social tax at the same time as the Health Insurance Fund sickness benefit, she would lose her right to health insurance benefit. This places a pregnant employee in a worse position than employees to whom the employer has also decided to pay voluntary sickness benefit.

No reason exists for worse treatment of a pregnant employee. If the state has decided to build the system of sickness benefits so that, in certain cases, it allows maintaining an average income for a sick worker, then all employees who have fallen ill must be able to take advantage of this opportunity.

The Chancellor made a proposal to the Riigikogu to amend the law and allow pregnant workers to maintain proportionally the same replacement income as the rest of the insured persons to whom the employer pays voluntary sickness benefit. The Riigikogu supported the Chancellor's proposal.

Mitigating price increases

Support to cover the costs of rising energy prices

From 1 October 2022 to 31 March 2023, support was paid to people to mitigate the effects of rising energy prices. However, not all people received support to cover the costs of heating their homes, but only those whose homes are heated by electricity, gas or district heating. Heating costs were not compensated to those heating their homes with, for example, wood, pellets or liquid fuel, and therefore people deprived of support turned to the Chancellor.

The Chancellor found that the state is entitled to decide what measures to take in the event of an increase in the price of energy. Many people could be helped quickly with automatically paid support. Automatic support could be paid to cover the costs of heat and electricity sold via the network, but not, for example, to cover the cost of firewood. In some cases, unequal treatment may be justified by the complexity of administration.

If someone cannot cope with their home heating costs, they can apply for support from the local authority of their place of residence. Heating costs are also taken into account when paying subsistence benefit.

Support paid to mitigate restrictions

The Chancellor participated in two constitutional review court proceedings initiated by the courts concerning support paid to mitigate the coronavirus restrictions.

One case concerned the treatment of undertakings who applied the special VAT scheme for travel services. Tour operators who made use of the special scheme complained that, in payment of support, they were treated less favourably than other tourism operators who did not apply the special scheme. When applying for support, the reduction in turnover during the period of restrictions had to be proved on the basis of VAT returns. Since the declarations of the operators applying the special scheme for the taxation of travel services do not reflect actual turnover but the average profit margin calculated on the basis of data from previous tax periods, it was impossible for the petitioner to satisfy the requirement.

The Chancellor found that there was no reasonable or appropriate reason for unequal treatment of undertakings that had implemented the special scheme. Differential treatment may in some cases be justified by the complexity of administration of support, but the state

has failed to indicate what that complexity is for this group of undertakings. For instance, it is not clear how it would be more difficult to determine the turnover of undertakings which have applied the special scheme on the basis of their sales revenue than to carry out similar work in the case of undertakings which are not liable to account for VAT.

The Supreme Court took a similar view.

The second case concerned support for accommodation undertakings paid where reduction in turnover had been established on the basis of the VAT returns of undertakings liable to account for VAT. The Chancellor found that there was no appropriate and reasonable reason to treat undertakings in essentially similar situations differently.

The Supreme Court also took the view that the regulation allows for unjustified unequal treatment of accommodation undertakings that are subject to VAT. The court refuted assertions by the Minister of the Economy that paying support based on labour taxes would make administration much more difficult. The Court held that, in the instant case, ease of administration was not a sufficiently compelling reason to justify such a difference in treatment between sustainable and functioning accommodation establishments.

Previously, the Chancellor has resolved petitions concerning measures to alleviate the coronavirus restrictions which were submitted to contest the conditions regarding wage support, extraordinary operating loan, support for accommodation establishments, partial compensation for decreased turnover of accommodation establishments, support for catering establishments, support paid to operators of international regular bus services, support to tour operators, support to artistic associations and wage compensation for sole proprietors.

Recording the minutes of statements

Questions arose in connection with statements given to the Tax and Customs Board. A petitioner claimed that the Board had prepared the answers written down as their testimony even before questioning took place. The petitioner signed the minutes but, because of the large volume of text, they were unable to read the minutes before signing and, therefore, did not raise any objections as to their answers.

It was no longer possible for the Chancellor to establish what actually happened when the statements were taken. At the same time, the Chancellor pointed out that if the Tax and Customs Board indeed pursues the practice that auditors prepare possible answers of

interviewees before taking statements, the tax procedure may not be honest, objective and impartial, or leave the impression of an honest, objective and impartial procedure. The Tax and Customs Board affirmed that this was not their standard practice.

The rule of law

In line with the principle of the rule of law, state and local government institutions representing public power must act on the basis of the Constitution and laws in conformity therewith. The rule of law also includes the principles of separation of powers and legal certainty, and prohibits abuse of power. Unjustified unequal treatment is prohibited, and everyone must have access to fair administration of justice. The state must ensure people's fundamental rights, which may be circumscribed only if unavoidably necessary.

The executive must act under the conditions and within the limits established by the Riigikogu, and these conditions must be clearly set out in laws. Once again, the unfortunate conclusion had to be drawn that sometimes, even when drafting high-impact legislation, norms could not be formulated so that all parties could understand them uniformly and accurately.

An example is a provision in the Aliens Act, according to which before issuing a visa the Police and Border Guard Board (PBGB) must first coordinate it with the Estonian Internal Security Service. It appears that differently from the substance of the word *kooskõlastamine* (approval; coordination) in the Administrative Procedure Act, the Aliens Act uses the same word within the meaning of giving an opinion. It transpires from § 82(2) of the Aliens Act that refusal to approve a visa application cannot automatically constitute grounds to refuse issue of a visa.

If the Internal Security Service does not approve the issue of a visa the PBGB must ascertain why the Internal Security Service adopted this position and then, having regard to all the circumstances, decide whether to issue the visa. It has now appeared that the PBGB does not ask for any reasons from the Internal Security Service and simply refuses to issue a visa to the applicant.

Of course, a visa may not be granted to someone who may pose a threat to Estonia's security. However, when making its decision, the PBGB must consider, on the one hand, the level of security risk and the probability of its actually occurring, and on the other hand, the reasons why the person is applying for a visa to stay in Estonia.

Another example of the ambiguity of a norm relates to the provisions of the Hunting Act on granting the right to use a hunting district. The currently effective Hunting Act entered into force on 1 June 2013. It follows from the law that although existing permits to use a hunting district were valid for ten years, new permits must be issued on the basis of the provisions of the Hunting Act entering into force in 2013. It was found that different interest groups had interpreted the Hunting Act differently: according to whichever solution was more suitable for the specific interest group. Current users of a hunting district want their permits to be extended for up to ten years and the current law not to be applied to their activities.

So far, the Environmental Board has indeed followed the norms for extending the right of use permit instead of the norms for granting a permit for the right to use a hunting district and thus partially failed to comply with the requirements of the current Hunting Act. For example, the Environmental Board failed to ascertain whether another hunting society that does not currently have a permit to use the hunting district would be interested in using the hunting district.

The Chancellor emphasised that the executive cannot arbitrarily impose conditions on granting someone the use of limited public resources or overlook the conditions laid down by the Riigikogu.

The Chancellor also monitors whether and how the authorities observe the principle of good administration when communicating with people. This means that, in addition to communication which is polite and to the point, the authorities must arrange their work so that no one is left in an information gap due to the authorities' action or inaction. Unfortunately, state agencies often fail to register people's petitions or reply to applications. Several ministries and local authorities had problems with responding to memorandums and requests for clarification, and on several occasions people received a reply only after a reminder from the Chancellor of Justice.

However, it is positive to note that quite a few problems were swiftly resolved after an enquiry made by the Chancellor's Office. An example is the procedure for registering going on

a transboundary water body, about which the website of the PBGB stated that registration was possible only by sending an SMS or via the PBGB's self-service website, but not by calling. The PBGB reacted quickly to the Chancellor's request, and within two weeks the simple possibility of registering by phone was restored.

Even if most people generally prefer to send an SMS or the website, it is reasonable also to offer other channels of communication. This is necessary, for example, in the case of a technical failure in one of the systems. Duplicative notification options ensure smooth conduct of everyday matters regardless of technical failure.

When creating or developing any services, the state must take into account people's possibilities and needs. When developing e-government, it should not be forgotten that everyone must be able to communicate with the state and obtain services regardless of whether they know how, can or want to conduct their affairs through e-channels. Additionally, it should be taken into account that some regions (e.g. border areas) do not always have the best mobile coverage, and this also prevents the use of e-channels. For this reason alone, several solutions need to be considered.

Under the Constitution, local authorities must be able to independently decide and administer local matters. Issues of local life are often closest to people's hearts and essential to them, so that the Chancellor regularly receives questions and complaints about the work of local authorities. The Chancellor verifies whether, in their activities, rural municipalities and cities observe the Constitution and other laws and respect people's fundamental rights and freedoms.

Petitions sent to the Chancellor revealed that even though under the Local Government Organisation Act cities and rural municipalities may establish regulations (property maintenance rules, regulations on keeping dogs and cats, etc), it is not clear from the legal rules how a city or rural municipality can discipline a violator of the rules before they commit an offence. For example, there are disputes as to whether the owner of a dog that endangers people (especially a dog running around freely) can be given a warning in the form of a precept to restrict the movement of their dog. It is debated whether the general powers provided under the Law Enforcement Act can be relied on to issue a precept.

In the Chancellor's opinion, such disputes should stop and people's sense of security be ensured. To this end, local authorities must be given the right to effectively control compliance with the rules established on the basis of the provisions of the Local Government

Organisation Act. Local authorities should also be entitled to issue a precept for non-compliance with the rules and, if necessary, to implement substitutional performance or impose a coercive penalty payment.

Local authorities have also been confused by provisions in the Anti-corruption Act regulating procedural restrictions. The Chancellor also drew attention to the same issue in 2018 when presenting an overview of her activities to the Riigikogu. Since violating a procedural restriction carries a penalty, the distinction between what is allowed and what is prohibited must be clear and unambiguous in the law. For example, making individual decisions with regard to oneself has raised questions in a situation where a connection between an official and a legal person arises from the official duties of the particular official. Also ambiguous is the basis for applying a procedural restriction laid down by § 11(1) clause 3 of the Anti-corruption Act, according to which an official must recuse themselves from making a decision or performing an act if the official is aware of a risk of corruption. The risk of corruption is a general and undefined concept, so it is often complicated to presume that an official is always able to accurately define the risk of corruption.

Several complaints concerned the activities of the prosecutor's office. Quite a few people in Estonia believe that criminal proceedings in Estonia are initiated and conducted selectively. The Chancellor has explained to people that every suspicion of a crime must be checked, but in doing so, no one must be considered guilty of a crime until a judgment of conviction has entered into force.

Criminal proceedings are initiated in respect of facts indicating a crime, not in respect of a person. The identity of a potential suspect must not influence the initiation of criminal proceedings. Refusal to initiate criminal proceedings and termination of criminal proceedings initiated are subject to judicial review. A prosecutor performing the functions of a public prosecutor's office in specific criminal proceedings is also subject to supervisory control.

Good administration

People are often dissatisfied with how state agencies resolve their applications. The problem starts right from an agency's failure to register an application.

Under the Public Information Act (§ 12(1) clause 1), applications and other documents must be registered in an agency's document register not later than on the working day following the day on which they were received. The requirement to register documents helps to ensure

that each application leaves a trace and is also dealt with.

The Chancellor found that applications had not been properly registered, for example, by Kambja Rural Municipality Government and Tartu Rural Municipality Government.

In carrying out its tasks, an authority is obliged to comply with the deadlines set by legislation. Compliance with deadlines and informing people is part of good administrative practice. According to the law, memorandums and requests for explanation must be replied to promptly but no later than 30 calendar days as of registration. In complicated cases, the deadline for reply may be extended to two months. The following institutions had problems with responding on time to memorandums and requests for clarification: the Ministry of Justice, the Ministry of Economic Affairs and Communications, the Social Insurance Board, Tallinn City Government, Harku Rural Municipality Government, Kiili Rural Municipality Government, Kose Rural Municipality Government, Saku Rural Municipality Government, Türi Rural Municipality Government, Kambja Rural Municipality Government, Narva-Jõesuu City Government and Peipsiääre Rural Municipality Government.

Kambja Rural Municipality Government also failed to respond to a proposal to initiate a detailed spatial plan within the statutory deadline and did not extend the deadline for resolving it. After receiving an application to initiate a detailed spatial plan, the local authority must take the necessary steps enabling it to resolve the application within the deadline laid down by the Planning Act. If establishing essential facts takes more than 30 days, the applicant must be informed of the extension of the time limit for resolving the application.

Several complaints were made about the activities of the Data Protection Inspectorate. The Chancellor found that the Inspectorate has problems with responding to memorandums and requests for clarification, as well as with resolving formal challenges and complaints about violations of the processing of personal data. For example, the Inspectorate failed to respond to applications and extended the deadlines for reasons not provided for in legislation. It also extended deadlines beyond what is allowed by legislation.

Since the Inspectorate justified the situation by lack of resources, and the delay in responses indicated that a critical situation had lasted for a long time, the Chancellor asked the Inspectorate and the Ministry of Justice to solve the problem together. In 2023, the Inspectorate did receive additional money to increase salaries as well as to recruit new staff.

Organising public events

Haapsalu City Government and Tartu Rural Municipality Government failed to act lawfully or in accordance with the principles of good administration when responding to applications concerning public events (a car rally, an entertainment event). The Chancellor asked these local authorities to consider, among other things, the interests of people living in the immediate vicinity of the venue of an event before granting permission for an event in the future.

When resolving a petition it was also revealed that Tartu Rural Municipal Council had failed to establish a regulation on the requirements for organising and holding a public event, which the rural municipality government should observe when resolving an application for organising a public event. Tartu Rural Municipal Council informed the Chancellor that the regulation had been adopted and entered into force.

Business continuity of the register of construction works

The Chancellor was contacted by an individual whose house could not be found in the map application of the register of construction works, so that the designer of their solar park could not upload the solar park project and the construction of the park was delayed. The Construction Works Register Division of the Ministry of Economic Affairs and Communications admitted the problem and promised to send a relevant error notice to the developer of the register of construction works.

The Chancellor pointed out that unfortunately problems with the operational reliability of the new register of construction works had occurred even beforehand, which impeded the processing of building and occupancy permits. Glitches in implementing a new system are humanly understandable to a certain extent. However, this should include an analysis of problems along with a possible solution.

A heavy administrative burden could be an indication that the resource needs of the register of construction works and of the helpdesk should also be reviewed. New officials should be hired, if necessary.

Once the state has created a register that should facilitate communication with the state,then the state must also ensure the smooth operation of the register and, in case of failures, quickly provide people with effective assistance.

A pupil's school route

The local authority must organise a pupil's transport to and back from the school assigned to the pupil based on their place of residence. In this respect, it should be taken into account that the length of walking distance for a child should not be more than three kilometres. The purpose of the applicable requirements is to ensure an opportunity for the child to receive basic education in the school at their place of residence.

When considering transport options, the local authority must also assess how the way to school may affect a child's ability and will to learn. The route to school must not be dangerous to the life and health of the child, nor should it be too tiring. Once in school, the child must be able to learn.

If circumstances change and the proposed school transport solution does not meet the needs and best interests of the child, the local authority must reassess the situation.

Receiving identity documents

The Chancellor was contacted by an individual who had applied for a new passport but could not receive it, because, although they tried several times to collect the document, there were very long queues in the service bureau of the Police and Border Guard Board (PBGB), and during the coronavirus pandemic they did not want to wait long in a crowded room. When the person was finally able to go and collect the document, the PBGB had destroyed their passport. The PBGB had not informed the person that it intended to invalidate and destroy the document. The person asked why it was not possible to get the documents through the postal service.

The Chancellor explained that, according to the law, the PBGB may invalidate an issued identity document and destroy it if the document has not been collected within six months. However, the PBGB must make this decision in accordance with the requirements of administrative procedure. At the same time, the person must be notified if it is planned to invalidate and destroy their identity document. All the relevant circumstances should be taken into account when making this decision. The PBGB must also notify the person of the

decision by which the document was invalidated. Unfortunately, the PBGB did not do this and thereby violated the requirements of administrative procedure. The state must also inform those who do not use e-services.

However, investigation of the circumstances revealed that due to the coronavirus pandemic, the PBGB had kept documents in service bureaus longer than usual. The petitioner's passport was also kept in the service bureau for more than a year, during which time it would still have been possible to go and collect the passport.

Under the law, a person must also be able to receive identity documents by post if they so wish. Although the relevant legal provision already entered into force on 1 January 2016, the PBGB does not comply with the law. For this reason, it is not possible to send documents home by courier within Estonia, although this option would make receiving documents much easier.

A precept in resolving problems in private law

The Chancellor explained to Luunja Rural Municipality Government that in resolving a private law dispute between the rural municipality and a private person the municipality cannot invoke the powers of a public authority and issue a precept to a private person. Disputes in private law must be resolved in line with private law rules and principles.

In this case, the municipality issued a precept to demolish a fence with the justification that the fence had been built over the border of the immovable and was located on municipal land. The owner would have incurred considerable expense by demolishing the robustly built fence. Moreover, the issue was only about a few dozen centimetres and the plot border data may have also been imprecise.

Registration of going on a transboundary water body

The Chancellor was informed that allegedly, as of 30 July 2021, it was no longer possible to register going on a transboundary water body by calling from a landline telephone. According to the petitioner, registration was only possible via a mobile phone SMS or via the self-service website.

Although the PBGB did not confirm this, the restriction could also be inferred from theoptions offered by the automatic answering machine as well as information published on thePBGB website.

The possibility of registering by phone is necessary because people must also be able to fulfil their obligations in ways other than merely e-channels. For example, there may be a technical failure in e-channels or a person does not have the opportunity to use the e-channel for some other reason.

It is worth acknowledging that the PBGB took the Chancellor's recommendation into account and restored the previous situation within two weeks. Now it is again possible to register going on a transboundary water body via a telephone call, and information about this can also be found on the PBGB website.

Population

Entering into a registered partnership contract and applying for a residence permit

The Chancellor received a complaint that Estonian notaries did not allow same-sex partners to enter into a registered partnership contract even though their marriage contracted in a foreign country is not recognised in Estonia, and for this reason, a person could not apply for a residence permit to settle with their partner.

The Chancellor explained that it must be possible to enter into a registered partnership contract even if same-sex partners have registered their marriage in a foreign country but this is not recognised in Estonia. Such cases have been heard in Estonian courts. In this case, these people can legitimately formalise their relationship in Estonia only through a registered partnership contract. After conclusion of a registered partnership contract, it is possible to apply for a residence permit to settle with a same-sex partner.

Legal status of a newborn child of parents staying in Estonia on the basis of a visa

The Chancellor was asked about the legal status of children born in Estonia if their parents are staying in Estonia on the basis of a visa. The Police and Border Guard Board had told the parents that their child born in Estonia was a person living in Estonia illegally, for whom it is possible to apply for a visa or a residence permit only in a foreign country.

The Chancellor found that since this issue is clearly not regulated by law, a gap exists in the Estonian legal order. In the event of a gap in legislation, it must be overcome through interpretation. In order to guarantee fundamental rights, an analogy with the provisions of the Aliens Act must be applied. These provisions state that newborn children of persons residing in the country on the basis of a residence permit acquire, directly by law, the same status as their parents. Consequently, the correct interpretation should be that a child born in Estonia to parents staying in Estonia on the basis of a visa is also staying in Estonia legally and it must be possible to issue a visa for them in Estonia.

The Chancellor also dealt with this issue in a report sent to the Riigikogu Constitutional Committee. She noted that, in order to ensure legal clarity and fundamental rights, the Aliens Act must clearly stipulate that a child born in Estonia to parents staying in Estonia on the basis of a visa is staying in the country directly on the basis of law.

Visa procedure

When resolving petitions submitted to the Chancellor, it was revealed that the PBGB automatically refuses to issue a visa to a person if the Estonian Internal Security Service has declined to approve their visa application. The PBGB also denied the objection against the visa decision solely because the Estonian Internal Security Service did not consider it justified to change its position.

Under the Aliens Act, the PBGB is entitled to decide domestically on the issuance of visas. The law stipulates that issuance of a visa must be coordinated with the authority designated by the Minister of the Interior, which is the Internal Security Service. The Chancellor explained to the PBGB that under the Aliens Act the term coordination/approval (*kooskõlastamine* in Estonian) is understood in the sense of expressing an opinion. Thus, if the Estonian Internal Security Service fails to coordinate/approve a visa application, the PBGB must ascertain the reason for the position of the Service, but may then make a decision regardless of that position, while having regard to all the circumstances of submission of the application. Thus, the current practice of the PBGB is not in line with the Constitution or the Aliens Act.

It transpires from § 82(2) of the Aliens Act that refusal to approve a visa application cannot automatically constitute grounds to refuse issue of a visa. The PBGB as the competent body must itself decide on the issue of a visa and, while examining a challenge filed against a visa decision, ascertain all the essential facts and resolve the objection by having regard to those

circumstances.

Of course, a visa may not be granted to someone who may pose a threat to Estonia's security. However, security risk is an undefined legal concept and an administrative authority enjoys a broad margin of appreciation in interpreting it. When making that decision, the level of security risk and the probability of its actually occurring should be assessed, as well as the circumstances why the person is applying for a visa to stay in Estonia. This is particularly important if a visa applicant has compelling family reasons for staying in Estonia.

Examination of applications for a residence permit

People also expressed dissatisfaction with proceedings for resolving applications for residence permits, as these proceedings often take too long. When resolving the petitions, it was found that PBGB officials extended procedural deadlines repeatedly and for long periods at a time.

Under the legislation, an application for a residence permit must generally be examined within two months, and the deadline may be extended by up to two months at a time (§ 34(2) of the Aliens Act, Minister of the Interior regulation § 26). However, PBGB officials extended procedural deadlines, for example, immediately by three or four months at a time.

The Chancellor was also approached by a person who was unable to submit an application for a residence permit because for the next two months all the time slots for submitting an application had been booked. The PBGB also did not offer people new times because it was waiting for a decision on the immigration quota for 2023. At the same time, it was also impossible to obtain time slots for people whose application for a residence permit was not subject to the immigration quota. This shows that although, according to the legislation, the PBGB should generally resolve an application for a residence permit within two months, it might not even be possible to submit an application for a residence permit during this period. Thus, through its booking system the PBGB prevents people's access to the procedure. (See also the chapter on "Security".)

Administrative fines

Due to proposed amendments to the Competition Act, administrative fines and related issues were also the focus of attention during the reporting year. The idea of wider application of administrative fines has been abandoned, at least for the time being. At the same time,

Estonia has still not transposed the Competition Law Directive of the European Parliament and of the Council into its legal system. The Directive lays down a possibility of imposing fines outside criminal proceedings in the field of competition. In order to implement the Directive, Estonia intends to start imposing fines for infringements of competition law in administrative proceedings and to bring judicial review under the jurisdiction of the administrative court.

The Chancellor has referred to several problems related to administrative fines that need to be resolved before the law is passed.

Among amendments to the Competition Act (version sent for an approval round on 15 May 2023), most questions arise in connection with protecting the confidentiality of messages (§ 43 Constitution) and privilege against self-incrimination (§ 22(3) Constitution).

According to this draft, the Competition Authority would be entitled to gain access to information or collect information when applying an investigative measure, regardless of the medium. This includes any exchange of information, including unopened messages, with the exception of confidential exchange of information between a person subject to proceedings and their contractual or state legal aid representative.

However, § 43 of the Constitution guarantees confidentiality of messages to everyone, and exceptions in this respect can only be made by a court for the purpose of preventing a crime or for ascertaining the truth in criminal proceedings. The Draft Competition Act would also allow infringement of the confidentiality of messages in administrative proceedings.

In addition, the Draft Act obliges a person subject to proceedings, or another person, to provide information available to them, including explanations. Complying with a request for information may only be refused to the extent that the person would directly be pleading guilty to violation. According to the Draft Act, all evidence in the possession of a person subject to proceedings must be surrendered, even if it tends to incriminate them. On the basis of that information, an administrative fine may be imposed of up to ten per cent of the total worldwide turnover of an undertaking or association of undertakings in the business year preceding imposition of the fine. In order to ensure compliance with the duty of provision of information, a coercive penalty payment or a fine is laid down.

The Constitution stipulates (§ 22(3)) that no one may be compelled to testify against themselves, or against their next of kin. Thus, the obligation written into the Draft Competition Act might not be compatible with the Constitution. The same has been conceded

by the authors of the draft, who, in the explanatory memorandum to the draft, counter a possible problem with the argument that presumable constitutional interference cannot concern legal persons whose rights are protected somewhat differently from the rights of natural persons (explanatory memorandum, pages 7–8).

Both protection of confidentiality of messages and the privilege against self-incrimination are of fundamental significance to protection of fundamental rights. Therefore, we hope that, on the basis of feedback on the draft, it will nevertheless be amended to ensure the best protection of fundamental rights.

In the end, however, legal peace must be achieved, and it is clear that Estonia must transpose the European Union Competition Law Directive. If necessary, the Chancellor of Justice can apply to the Supreme Court after the law has been promulgated. The Supreme Court assesses the constitutionality of norms and, if necessary, also offers guidance on how questionable provisions can be constitutionally interpreted and implemented.

Courts

The Chancellor comes into contact with the work of the courts in three ways. The Chancellor of Justice is a member of the Council for Administration of Courts, she may initiate disciplinary proceedings in respect of all judges, and additionally, she submits opinions for the Supreme Court in constitutional review court proceedings.

Participation in the work of the Council for Administration of Courts

In the second half of 2022, the Council for Administration of Courts convened on three occasions, and twice in the first half of this year.

Complaints about the work of judges

Under the Courts Act, alongside the chairs of the courts and the Supreme Court *en banc*, the Chancellor of Justice is the only institution outside the court system that may initiate disciplinary proceedings in respect of a judge. The final decision in a disciplinary case is made by the disciplinary chamber operating under the Supreme Court.

The Chancellor does not assess substantive issues concerning administration of justice. She can only assess whether a judge has failed to fulfil their official duties or has behaved disreputably.

However, mostly the Chancellor is contacted about issues in which she cannot intervene. Generally, people are not satisfied with a court decision or how the court has assessed evidence. Thus, people expect the Chancellor to intervene in judicial proceedings and assess the court decision. The Chancellor cannot do this since, under the Constitution, justice is administered by the courts, and only a higher court can assess substantive issues of administration of justice.

Nevertheless, every year there are also cases where the Chancellor examines the work of judges more specifically in the information system of the courts in order to decide whether a reason exists to initiate disciplinary proceedings. During the reporting period, there were ten such cases. On some occasions, the Chancellor also asked for an explanation from a judge and/or chair of the court. In none of the cases did the Chancellor find a reason to initiate disciplinary proceedings in respect of a judge.

Complaints to the Chancellor mostly concerned the issue that judicial proceedings become protracted. First and foremost, this concerned cases dealt with by Harju District Court, but the issue of reasonable length of proceedings also arose in connection with the work of other courts.

A *reasonable length of proceedings* is an undefined legal concept and its substance is interpreted on a case-by-case basis. The Supreme Court disciplinary chamber has explained that assessment of the reasonableness of judicial proceedings depends on several circumstances. In order to conclude whether judicial proceedings took place within a reasonable time, it is necessary to assess the complexity of a case, the importance of the benefits at stake, and the conduct of parties to the proceedings. Certainly, the workload of a particular court and judge and the resulting objective circumstances must be taken into account: the court's resources, the availability of support staff, the number of complaints, and the like.

In one instance, it had to be noted that a case concerning child maintenance support had indeed lasted too long, even though no judge could be reproached for having delayed with resolution of the case. The lawsuit repeatedly passed through several court levels, which inevitably took time. In resolving the case, the courts had to follow the views and guidance of

the higher court and take into account changes in legislation on payment of minimum maintenance support. Among other things, the speed of resolution of the case was also affected by the conduct of the parties.

In general, the number of complaints about the conduct of judges has decreased over the years. This is probably because in most cases audio recordings of hearings are made. This makes it easier to verify what happened at a hearing and probably also motivates all the parties to better control their conduct.

Opinion in constitutional review court cases

The Supreme Court may ask for the Chancellor's opinion in constitutional review court proceedings.

One such opinion concerned the procedure for grant of a temporary residence permit. Specifically, Tallinn Circuit Court had declared the Aliens Act unconstitutional insofar as it did not enable grant of a temporary residence permit to a foreigner to settle with their parent in need of care (constitutional review case 5-23-6). The court also declared unconstitutional the Regulation of the Minister of the Interior No 7 of 12 January 2017 insofar as it failed to lay down the list of data to be provided in the application and the evidence to be attached to the application in the event where an adult foreigner applies for a temporary residence permit to settle with their parent in need of care.

The Chancellor found that both legal acts contravened §§ 11 and 26 and § 27 subsections 1 and 5 of the Estonian Constitution. The Supreme Court found that the respective Acts were in conformity with the Constitution and rejected the application by Tallinn Circuit Court.

The Chancellor also submitted an opinion to the Supreme Court concerning Government of the Republic Regulation No 322 on "The procedure for paying remuneration and compensating expenses to participants in proceedings in criminal, misdemeanour, civil and administrative cases". The Chancellor found that the regulation was unconstitutional because the government exceeded the powers conferred on it by the Code of Criminal Procedure when establishing the amount of fee for a forensic psychological evaluation. The Supreme Court in its judgment declared the regulation unconstitutional for the same reason.

State legal aid

The Chancellor made a proposal to the Minister of Justice that provisions of Regulation No 16

of 26 July 2016 on the "The procedure for paying the state legal aid fee and compensation of expenses to an attorney" concerning rates of remuneration paid for provision of state legal aid should be brought into conformity with the Constitution. The current system of rates no longer guaranteed the right to a fair trial or the right of defence of a criminal suspect.

The Supreme Court analysed the constitutionality of payment of remuneration in judgment No 5-22-2 of 7 November 2022. The court found that in this specific case the maximum remuneration limit was not unconstitutional because the attorney could find out in advance how laborious the case was, and on that basis they could also drop the case. The Supreme Court also found that since in this particular case the attorney was a member of the management board of a law firm and not a paid employee, they could provide state legal aid alongside and on account of other activities (presumably more profitable provision of contractual legal aid). At the same time, the Supreme Court noted that, at current rates, provision of state legal aid might not be sustainable.

In the opinion of the Office of the Chancellor of Justice, the situation has become difficult for many people. Those people who, even with the best of will, are unable to pay for expert legal assistance, may have been deprived of the necessary legal aid and the court proceedings also tended to drag on. This undermines the rule of law as a whole. It was difficult for the Estonian Bar Association to find attorneys who would have voluntarily agreed to provide state legal aid (see the website of the Estonian Bar Association "Advokatuur tegutseb riigi õigusabi kriisi ennetamise nimel" (The Bar works to prevent a state legal aid crisis) and "Advokatuur: õigusemõistmine rippus juuksekarva otsas juba septembris" (The Bar: administration of justice was hanging by a thread already in September).

If legal aid is necessary to protect someone's fundamental rights but the person is not able to pay for it, legal aid must be provided by the state. This legal aid must be competent and reliable. State legal aid is provided from the money allocated for this purpose from the state budget. The state must ensure that sufficient funds have been allocated to pay for provision of state legal aid (§ 30 State-funded Legal Aid Act). Insufficient funding does not guarantee high-quality legal assistance.

The Minister of Justice agreed with the proposal by the Chancellor of Justice and increased the rates for provision of state legal aid.

Local authorities

The Estonian Constitution guarantees the autonomy of local government, i.e. the right of local authorities to resolve and manage local matters independently. The Riigikogu, the Government of the Republic and ministries must respect the autonomy of local government. Naturally, rural municipalities and cities must also observe the Constitution and other laws in their activities. A local authority must respect people's fundamental rights and freedoms, save taxpayers' money and be honest in its dealings. Uniform fundamental principles of democratic local government in Europe are determined by the European Charter of Local Self-Government and its Additional Protocol.

A local authority is not a subsidiary body of the Government of the Republic or the ministries, but it is also not a state within the state. The idea of local government is that local matters are resolved by the community itself in a manner most suitable for the particular city or rural municipality. In doing so, a local authority must act lawfully. The state should provide support to a local authority: matters should be arranged so that local authorities have the appropriate levers and enough money to promote local life. The state may also impose functions of the state on local authorities by law, but in that case sufficient funds should be provided from the state budget to fulfil those functions. Local and state budgets are separate.

During the reporting year, the Chancellor helped to resolve problems regarding internal working arrangements in local authorities and checked whether local authority legislative acts (regulations) were in conformity with the Constitution and laws. The Chancellor also monitored that rural municipalities and cities performed public functions lawfully and did not violate the fundamental rights and freedoms of persons.

Restriction of the right of self-organisation

The Chancellor was asked to verify whether § 13(6^2) of the Place Names Act violated local authorities' right of self-organisation, i.e. local government autonomy. Under the Place Names Act, the right of a rural municipality or city to assign a place name in its capacity as a names authority transfers to the minister if the minister has proposed to the respective local authority to change a place name that contravenes the requirements of law but the local authority has failed to comply with the proposal within two months. In this context, the law has in mind a commemorative name associated with a person who acted against creation of the Republic of Estonia, maintenance of constitutional order or restoration of Estonia's

independence, or a place name clearly incompatible with Estonian history and culture.

The Chancellor found that even though § 13(6^2) of the Place Names Act restricts a local authority's right of self-organisation, it does not violate it. The restriction has a legitimate purpose, as it aims to ensure that place names are compatible with Estonian history and culture and to avoid the use of inappropriate place names. The restriction is also proportionate to its objective, i.e. appropriate, necessary and narrowly proportional.

This conclusion can be deduced from a number of procedural requirements laid down by law. For example, before changing a place name, the minister must officially consult with the Place Names Board and the respective local authority. The draft ministerial regulation is published and the local authority as well as local residents can express an opinion on it.

The minister's right to establish a place name is limited and this does not concern most place names. The costs and losses that a rural municipality or city has to bear as a result of assigning a new place name are reimbursed from the state budget. The local authority may contest the minister's regulation in court.

In the opinion of the Chancellor, it is also constitutional that, under the Earth's Crust Act, the state may also grant a permit for extraction of mineral resources without taking into account the comprehensive plan or even in contravention thereof (see e.g. Supreme Court Constitutional Review Chamber judgment of 20 May 2020, 5-20-2, paras 34, 36 et seq., including judgments cited in para. 16; the Chancellor's opinion of 17 March 2020).

By law, the planning autonomy of a local authority can be restricted. It would be incompatible with the principle of the unitary state (§ 2 Constitution) if resolving an important national issue would prove to be impossible due to local authority opposition.

Mineral resources are natural riches, which must be used sustainably (§ 5 Constitution). The requirement of sustainable use of mineral resources also means that it should be possible to extract a resource. In accordance with the Earth's Crust Act, mineral resources belong to the state, and consequently the state also organises any procedures undertaken with mineral resources. The Constitution obliges the state to guarantee that a local authority would not render making use of a mineral resource excessively expensive or impossible.

Consequently, when preparing a comprehensive plan, a rural municipality or city must take into account that mineral resources are located within its boundaries and at some point the state may wish to make use of those resources (§§ 14 and 15 Earth's Crust Act). Thus, the

state can force a local authority to lay down a spatial plan in the interests of the state. This is also compatible with the principle of balancing and integrating interests as laid down by § 10(3) of the Planning Act. Even if a comprehensive plan lays down conditions not enabling extraction of mineral resources, these conditions cannot prevent the issue of an extraction permit if overriding national interest for this exists (§ 55(4) Earth's Crust Act).

Local government supervision of compliance with local regulations

Under the current Local Government Organisation Act, the municipal council enjoys exclusive competence for establishing the rules for excavation operations and property maintenance rules in order to ensure maintenance (§ 22(1) clause 36^1). Only a municipal council can establish rules for keeping dogs and cats (§ 22(1) clause 36^2) and the requirements and procedure for organising commerce on land which is in public use (§ 22(1) clause 36^7). Issues related to waste management rules (§ 22(1) clause 36^3), including supervision of compliance with those rules, is regulated more specifically by the Waste Act.

Unfortunately, a situation has arisen where it is not clear from the legislation how a local authority can discipline a violator of the rules before they commit an offence. Misdemeanour punishments (see Chapter 66^2 of the Local Government Organisation Act) have been prescribed for cases where a person's health or property has already been damaged.

The Chancellor drew the attention of the Minister of Public Administration and the Riigikogu Constitutional Committee to the need to supplement and clarify legal provisions. In order to improve the sense of security and public order, it is possible and necessary to legally ensure effective control by local authorities over compliance with the rules established on the basis of the Local Government Organisation Act and that the provisions regulating it are unambiguous and take into account the right of self-organisation of local authorities (§ 154(1) Constitution). The Local Government Organisation Act should stipulate that rural municipalities and cities may issue a precept for non-compliance with the rules and, if necessary, to implement substitutional performance or impose a coercive penalty payment.

Protection of rights of municipal council members

The Chancellor drew the attention of members of the Riigikogu Constitutional Committee to the fact that municipal council members should be guaranteed the opportunity to defend their rights in an administrative court. Under current law, although the administrative court has jurisdiction to resolve legal disputes within a municipal council, council members do not

have the relevant legal standing.

A legal dispute arising in internal relations between a collegiate body (council) and its member (councillor) can be resolved by an administrative court only if the law clearly provides for it. Currently, the law does not allow this. For members of the Riigikogu, such regulation is established by §§ 16 and 17 of the Constitutional Review Court Procedure Act. The Riigikogu can also introduce similar regulatory provisions to protect the rights of municipal council members.

The Chancellor dealt with the same issue in a letter sent to the Riigikogu Constitutional Committee as long as four years ago.

Funding of local authorities

Under § 4(1) clause 1^1 of the Land Tax Act, land tax is not payable on land of strict nature reserves and special management zones of protected areas and land of special management zones of species protection sites. In addition, some land (land of special conservation areas, limited management zones of species protection sites, land of the water protection zone of shores) is exempted from land tax to the extent of 50 per cent (§ 4(2) Land Tax Act). As a result of these tax incentives, municipalities lose some of their tax revenue.

Haljala and Kuusalu rural municipality mayors asked the Chancellor to assess whether it was lawful that land tax revenue not collected from nature conservation areas was not compensated to local authorities. Much of the land of Haljala and Kuusalu rural municipalities is covered by Lahemaa National Park, so a great deal of money is lost to both municipalities.

The Chancellor of Justice can intervene if political choices of the Riigikogu and the government go beyond the bounds of constitutionality. In the instant case, the Chancellor had to limit herself to explanations.

Complaints about non-compensation for unpaid land tax have also been resolved by thecourt (see e.g. case No 3-11-1819). In doing so, the courts have also considered the issue ofnon-compensation of loss of land tax in the context of §§ 154 and 157 of the Constitution.Both the administrative court and the court of appeal denied the local authority complaint.The reasoning given by the court was that that neither a rural municipality, nor city has a legitimate expectation to be compensated for loss of tax revenue resulting from amendment to the tax law. Nor did the local authority have any legitimate expectation that the share ofthe tax received by it will always remain the same.

No law imposes an obligation on the state to compensate a rural municipality or city for land tax not received on land exempted from land tax (in whole or in part). However, the state must provide rural municipalities and cities with sufficient funding to enable them to perform local government functions. Local authorities are also entitled to money from the state budget for performance of state functions assigned to them by law. The state is not prohibited from reducing funding if, after this happens, a particular rural municipality is still able to perform local government functions to the minimum extent necessary (Supreme Court *en banc* judgment of 16 March 2010, 3-4-1-8-09 , para. 68).

Räpina Rural Municipal Council and Government approached the Chancellor about the issue of financing care reform. In their application, they noted that since 1 July 2023 Räpina rural municipality will have to pay a higher fee to a care home for a person residing in a care home but the state has not given Räpina rural municipality enough money to fulfil this obligation.

The Chancellor explained that if the rural municipal council believes that not enough money has been allocated to Räpina rural municipality for performing the functions assigned by the Social Welfare Act then constitutional review directly from the Supreme Court may be sought by a majority of members of the municipal council (see § 7 Constitutional Review Court Procedure Act; § 45(5) Local Government Organisation Act). The Supreme Court has exclusive competence to decide whether the state has violated the Constitution.

Municipal council working arrangements

Under § 156 of the Constitution, the local authority representative body is the municipal council. This gives rise to the municipal council's right of self-organisation, meaning that a municipal council is entitled to establish its working arrangements and procedural rules. Under the Local Government Organisation Act, a municipal council establishes the rural

municipality or city statutes specifying the working arrangements of the municipal council and government.

However, the council's right of self-organisation is not unlimited; it must be compatible with the Constitution and laws (about the working language, see the section "Municipal council's working language" and "The working language of municipal council committees").

The Chancellor ascertained that Kose rural municipality statutes failed to regulate clearly by what time municipal council committee members are entitled to receive materials of a committee meeting. Thus, the relevant provision of the statutes contravened the principle of legal clarity (§ 10 Constitution), and the Chancellor asked the municipal council to formulate this provision clearly and unambiguously. The rural municipal council amended the municipality statutes.

Municipal council audit committee

When replying to a petition by Saarde Rural Municipal Council Audit Committee, the Chancellor explained some important issues concerning the work of an audit committee.

Section 48(4) of the Local Government Organisation Act states that an audit committee performs the functions within its competence in line with the procedure laid down by the rural municipality or city statutes and on the basis of its work plan or as required by the municipal council. Thus, according to the law, rural municipality or city statutes must lay down the procedure for performance of the functions of the audit committee.

Performing an audit is a public task of an audit committee. If experts participate in the work of the audit committee, this means that the experts are involved in performing a public task. Involving experts in the activities of the audit committee is not just a formality, but an important issue that must be regulated in the rural municipality or city statutes. An expert from outside the rural municipality or city government involved in the work of the audit committee should act on the basis of a written contract. This contract can and should deal in more detail with the rights, duties and responsibility of the expert.

An audit committee is entitled to obtain information and all documents needed for its work (§ 48(6) Local Government Organisation Act). The work of an audit committee is described in § 48(3) of the Act. According to this provision, the committee must verify and assess the lawfulness, purposefulness and productivity of the activities of a rural municipality or city government, their administrative agencies as well as agencies under the administration of

those administrative agencies, or companies, foundations and non-profit organisations under the dominant influence of a local authority, and the purposeful use of rural municipality or city funds, and compliance with the rural municipality or city budget. In the course of each audit, the audit committee is entitled to receive all the documents necessary for it in view of the purpose and substance of the particular audit. The purpose and substance of an audit arise from the work plan of the audit committee or a task assigned by the municipal council. However, the law does not specifically lay down the substance or form of an audit committee's work plan.

In order to carry out its tasks, the audit committee must collect the necessary evidence in a reasonable manner so that the evidence can also be recorded and reproduced. Supervisory control (§ 66[1] Local Government Organisation Act) does not limit the audit committee's control-related competence.

Requirements for a public event

A public event is an entertainment event, competition, performance, commercial event or other similar event where people gather together and which takes place in a public place and is aimed at the public but which is not a meeting (§ 58(3) Law Enforcement Act). Under the Law Enforcement Act, the requirements for organising and holding an event within the administrative boundaries of a local authority are established by a municipal council regulation (§ 59(1) of the Act). The law does not regulate the requirements for organising and holding public events in substance but only lays down a delegating provision under which a rural municipal or city council itself can set those requirements. When authorising a public event, the rural municipality or city government must comply with the requirements laid down by that regulation.

When resolving a petition submitted to the Chancellor, it was revealed that Tartu Rural Municipal Council had failed to establish requirements for organising and holding a public event. The Chancellor drew the attention of the municipal council to the fact that this situation was not lawful, and asked when the council would establish the requirements for organising and holding a public event. Tartu Rural Municipal Council did this by its Regulation No 6 on 17 May 2023.

The Chancellor also approached Tartu Rural Municipality Government and explained that since authorising a public event is an administrative procedure the rural municipality government must also involve in the proceedings those persons whose rights or duties the

public event may affect (§ 11(1) clause 3 Administrative Procedure Act; see also Supreme Court Administrative Law Chamber order of 1 November 2018, 3-18-763, para. 13).

Authorising a public event is a discretionary decision (an administrative act within the meaning of § 51(1) of the Administrative Procedure Act). A discretionary decision must be made in accordance with the limits of authorisation, the purpose of discretion and the general principles of law, taking into account relevant facts and considering legitimate interests (§ 4(2) Administrative Procedure Act). Thus, in its decision, the rural municipality government must consider, inter alia, the interests of the persons concerned living in the immediate vicinity of the venue of the public event and the circumstances they present in this regard.

The Chancellor also explained issues of authorising a public event to Haapsalu City Government.

The public and the budget strategy

The Chancellor explained to Kuusalu Rural Municipality Government that municipality residents must also be involved in preparing the budget strategy.

Under the Local Government Financial Management Act (second sentence of § 20(1)), budget strategy must be prepared, processed, adopted and published in accordance with the provisions of § 37^2(5) of the Local Government Organisation Act. In line with that provision, a rural municipality or city government must organise public debates in order to involve all interested persons in preparation of a development plan and budget strategy.

So the law explicitly states that a rural municipality and city government must hold public debates when drawing up the budget strategy. It is not enough to simply disclose the draft budget strategy: each requirement is regulated by a different provision under § 37^2 (subsections 5 and 6). If public debate were only to consist of disclosure of the documents then § 37^2 (5) of the Local Government Organisation Act would become devoid of substance.

A local authority is entitled to decide how to organise these debates. However, it should be kept in mind that the right to submit a proposal is not yet a public debate. A public debate requires justification of the objectives and choices of the budgetary strategy, as well as an overview of opinions already expressed.

A public debate also means that everyone enjoys the right to participate and discuss. This is

broader than introducing the draft to the authorities and agencies under their administration.

Enforcement procedure

The Chancellor also often receives complaints about the work of bailiffs. As a rule, the Chancellor explains to the petitioner the opportunities they have to protect their rights, but sometimes it is also necessary to draw attention to shortcomings in the work of bailiffs.

The state has decided that child maintenance claims are enforced as a priority. Due to a mistake by a bailiff, a child did not receive money from the father's mandatory funded pension disbursement to cover the maintenance claim. Since the bailiff failed to determine the type of claim correctly, the claim reached the Pension Centre's information system as an ordinary attachment and in making disbursements the Pension Centre proceeded from the order in which attachment notices had been received (the maintenance claim was the second in the queue).

The Chancellor found that the bailiff had failed to demonstrate sufficient diligence in enforcing the maintenance claim and recommended that the bailiff should consider remedying their error. Although the bailiff initially acknowledged that the claim in question was a child maintenance claim which is to be satisfied as a priority, after receiving the Chancellor's recommendation, the bailiff took the view that only periodic maintenance claims and not the maintenance debt should be enforced as a matter of priority.

The Chancellor did not agree with this interpretation and reiterated her recommendation. The law adopted by the Riigikogu does not stipulate that only periodic maintenance claims must be enforced as a matter of priority. Nor does the law contain a provision to the effect that a maintenance debt accumulated from the moment of submission of a maintenance claim to the entry into force of a court decision, or a maintenance debt incurred after the entry into force of a court decision (including during enforcement proceedings), might not be enforced as a matter of priority.

The bailiff refused to remedy their error and believed that the matter should be resolved in court.

National Electoral Committee

The National Electoral Committee has been set up on the basis of the Riigikogu Election Act

and its main task is legal supervision of all the decisions and steps taken in connection with elections. In addition, the Electoral Committee organises elections for the President of the Republic and the Board of the Riigikogu.

The Electoral Committee ascertains the voting results in elections for the Riigikogu and for the European Parliament or in a referendum. It also registers members of the Riigikogu and members of the European Parliament elected from Estonia. The Electoral Committee also handles election-related complaints.

The mandate of the Electoral Committee lasts for four years; the mandate of the current members began on 1 June 2020 and runs to 31 May 2024. Under the law, members of the Electoral Committee include a first instance judge appointed by the Chief Justice of the Supreme Court, a second instance judge appointed by the Chief Justice of the Supreme Court, an adviser to the Chancellor of Justice appointed by the Chancellor, an official of the National Audit Office appointed by the Auditor General, a State Prosecutor appointed by the Prosecutor General, an official of the Government Office appointed by the Secretary of State, and an information systems auditor appointed by the Board of the Estonian Auditors' Association. Every member of the Electoral Committee also has a substitute member.

During the reporting year, elections to both the Riigikogu and the Board of the Riigikogu took place. During the reporting period, the Committee held 23 meetings, the majority of which related to decisions in connection with Riigikogu elections and resolving election complaints.

Marking the reporting year are two more long-term processes, which are expected to reach a final outcome in regular elections to the European Parliament in June 2024. First, it should become clear whether it will be also possible to use Smart-ID as an identity document in elections and whether m-elections will also be introduced as a subcategory of e-voting. The National Electoral Committee stressed that a public and parliamentary debate should take place on implementation of m-elections and that all security risks arising from technology should be mitigated. Second, based on Supreme Court case-law, it is planned to clarify the technical organisation of online voting laid down by the Riigikogu Election Act.

On its own initiative, the Chancellor's Office checked the organisation of Riigikogu elections in general care homes. Under the Constitution, the right to vote is a fundamental right of every citizen of the Republic of Estonia.

Those who, for example, due to age, poor health or any other reason, are unable to cast their

vote at a polling station or to vote by e-voting, must also be able to perform their civic duty. In cooperation between election organisers and welfare institutions, elections are also held in care homes. To do this, on-site election organisers go to a care home with a ballot box, paraphernalia, voter lists, and other necessary means.

The practical details of organising elections (including statutory requirements) are set out in the election manual prepared by the State Electoral Office, which is also used as a guide by election organisers, i.e. district and divisional polling committees formed in the run-up to elections.

During these inspection visits, the Chancellor's advisers monitored in particular whether the voting process was secret and whether the identity document required for voting was checked. No significant violations of electoral law that would have provided grounds to challenge the election results were identified during the inspection visits. However, a number of observations were made on the basis of monitoring, which can be used to supplement and clarify the election manual and to train staff for the next elections. These observations were also sent to the State Electoral Office.

Supervision over financing of political parties

Under the Political Parties Act, the Chancellor of Justice appoints one member to the Political Parties Financing Surveillance Committee. The Chancellor has appointed Kaarel Tarand, the editor-in-chief of the cultural paper *Sirp*, as a member of the Committee. The Committee and its members are independent, they have no obligation to report their activities to the persons or institutions appointing them, and they also do not accept or receive instructions from the persons appointing them.

The previous composition of the Riigikogu and the governments formed by it were still unable to resolve long-standing problems and shortcomings in the financing of political parties and supervision thereof. Two years ago the Riigikogu and the Government attempted to start moving in the right direction, and there was hope that the financing of political parties taking place before and after the 2023 Riigikogu elections could already be controlled by the supervisory body – the Political Parties Financing Surveillance Committee – by relying on a new and better basis.

However, initiatives stalled despite the fact that improving the rules of supervision is primarily in the interests of political parties themselves, as this would, first of all, ensure fairer

competition and thereby also increase the overall credibility of political parties in the eyes of the electorate.

Nevertheless, even within the limits of the current rules, supervision of funding has been working slowly but effectively in areas that can be controlled. Political parties have learned to comply with the law in areas subject to control, but alongside this have found – and not always on their own initiative – new ways of gaining a competitive advantage in the so-called grey area, where it is known that supervisory proceedings cannot be brought to a clear and non-contestable final decision.

The most notable and probably the publicly best-known example of this is promotion of a certain world-view, analysis of the patterns and wishes of the electorate, and data processing through non-partisan associations (i.e. through their affiliated organisations), which has been of interest to political parties.

Affiliated organisations do operate in practice and political parties even complain about them to the supervisory bodies, while well aware that the current law does not force political parties to register their actual affiliated organisations and thus subject them to supervision. For this reason, in legal terms affiliated partisan organisations do not exist in Estonia. By deliberately providing unresolvable tasks to supervisory bodies, political parties discredit supervision, but inevitably also themselves and the functioning of Estonia's constitutional democracy as a whole.

Regardless of what elements of the funding of political parties the supervisory bodies are able to check and how well they are able to do it, data on the economic situation of political parties have been public for years and demonstrate a persistently unstable, risky and poor financial situation of the parties. After the last Riigikogu elections, all political parties, no matter large or small, were at least in the short term incapable of covering expenses and paying for services received, and had to take out loans or defer payments. The very strong dependence by political parties on contributions from individual so-called major donors is also known, which in turn increases the risks of corruption. This proved once again that the current model of political party funding does not ensure sufficient revenue and economic stability for political parties.

The total income of political parties in 2014 was 6.9 million euros, and in 2022 it was 7.7 million euros, i.e. in eight years it increased by less than 12%. During the same period, the consumer price index increased by 44%, which means that political parties are falling into

ever deeper impoverishment, as less and less can be bought for the same money. All the tools for getting out of this situation are in the hands of the political parties, and more specifically their parliamentary representations.

Social protection

The rise in the cost of living has also hit hard those who previously coped without state aid or with benefits paid by the state. Recipients of work ability allowance find themselves in a big financial predicament. The state work ability allowance is currently lower than the sum for minimum subsistence outlined in the Revised European Social Charter.

While pensions have been exceptionally increased three times in recent years, no similar extraordinary measures have been implemented for work ability allowance. In one instance, the amount of work ability allowance was reduced to such an extent that the person was essentially left without income for one month. The Chancellor approached the Riigikogu Social Affairs Committee to resolve this problem.

On the basis of the Chancellor's application, the Riigikogu amended the provision of the law according to which pupils of vocational educational institutions were allowed to register as unemployed, but not upper secondary school pupils. At the end of 2022, the Riigikogu adopted a new Labour Market Measures Act, which also takes into account the position of the Chancellor of Justice that the state should treat upper secondary school pupils in the same way as pupils of vocational educational institutions when registering as unemployed. The law will enter into force on 1 January 2024.

During the reporting year, the Chancellor submitted several opinions to the Supreme Court on the constitutionality of special pensions and answered questions regarding amendment of the Family Law Act and the Family Benefits Act.

Supporting families with children

The Chancellor was asked whether it was constitutionally compatible that only half of the allowance for a previous family with many children was taken into account in calculating maintenance support and the other half remained for increasing the well-being of the new family of the parent.

The Chancellor explained that the concept of a family with many children and the amount of benefits for the family do not arise from the Constitution but are decided through legislation by the Riigikogu. This means that the Riigikogu has the right to decide where to set a balance point when supporting families.

The Chancellor was also asked for an opinion on the draft law amending the Family Benefits Act, implemented as of 1 January 2023, which aimed to reduce the allowance for families with many children from 1 January 2024.

The Chancellor confirmed that the Riigikogu is entitled to choose how to support families with many children. According to § 28(4) of the Estonian Constitution, families with many children are under the special care of the state and local authorities, yet it does not entitle anyone to demand assistance in a certain way or in a certain amount. However, if the Riigikogu has decided to financially support families with many children, then a person's right to support can be protected in court on the basis of both the fundamental right to property (§ 32 Constitution) and the provision on protection of parents and children (§ 27 (4) Constitution).

A right granted to a person carries more weight the stronger the person's legitimate expectation of continued support. Thus, creating any expectation by law constitutes great responsibility. Lightly making a promise and withdrawing it quickly damages the credibility of the Riigikogu. However, based on a Supreme Court judgment, it cannot be asserted that in the present case reducing the allowance for a family with many children by 200 euros and waiving indexation of the allowance violates the principle of legitimate expectations (Supreme Court judgment No 5-20-3, paras 56–58).

At the same time, the Chancellor found that a transitional provision that would have deprived the family whose one child turns 19 years old after 1 July 2023 of family allowance for a family with many children would have infringed the principles of legal certainty and equal treatment. The Riigikogu took the Chancellor's position into account when adopting the law and made the relevant amendments to the Draft Act.

The concerns of several parents were resolved in cooperation with the responsible authorities. For example, a parent asked the Chancellor why the Social Insurance Board paid them the allowance for the fourth child as if it were the first child of the family. It was found that the benefit for the family's first three children and the fifth child had been applied for by the mother while the application for the fourth child had been submitted by the father. The

father was paid benefit as if he only had one child, even though all the family's children were the common children of the parents. The Social Insurance Board admitted the mistake and the petitioner's concern was resolved: the data about the family in the database were rectified and the unpaid benefit was paid retroactively.

The Chancellor was contacted by a parent who believed that they had been unfairly deprived of the childbirth allowance paid by the city. The issue was that the parent had applied for childbirth allowance from the city later than the deadline but still before the time limit for reinstatement of a procedural deadline as laid down by § 34 of the Administrative Procedure Act.

The Chancellor asked the city to assess whether any of the facts put forward by the applicant may have been compelling enough to prevent them from filing a childbirth allowance application in a timely manner. If the city finds that, under these circumstances, the deadline for applying for allowance cannot be reinstated, then the city must explain to the person why this is the case.

Increasingly often, people who have gone to live or work abroad are asking the Chancellor for advice. For example, a person working in Finland wanted to know why their children were not paid family benefits applicable in Estonia.

Under European Union social security coordination rules (Regulation 883/2004 of the European Parliament and of the Council) family benefits are not usually paid from several countries simultaneously. A person receives benefit from the state where they work. This specific family was paid family benefits by Finland.

At the same time, European Union rules allow the children's country of residence to pay supplementary benefit to the family if the benefits of the parent's country of residence are higher than the benefits of their country of work. In Estonia, a family with three children is paid a higher benefit than in Finland.

While resolving this petition, it was found that under the Family Benefits Act in force until 31 December 2022 the family had two children receiving child allowance. The family's eldest child was not entitled to child allowance since the child was adult and not enrolled in study. On 1 January 2023, an amendment to the law entered into force, according to which the family's eldest child also began to receive child allowance. The Social Insurance Board granted the family a supplementary family allowance retrospectively – starting from 1 January 2023 –

in the amount by which the Estonian family allowances paid to that family were higher than the Finnish family allowances.

The Chancellor also dealt with the conditions on cancelling a study loan on preferential terms. One parent had applied for cancellation of a study loan on the grounds of caring for a disabled adult child, but the Social Insurance Board rejected the application.

The Chancellor explained that under § 22(3) of the Study Allowances and Study Loans Act a study loan can be cancelled if the recipient's child is found to have a severe or profound disability. Under Estonian legislation, all young people under the age of 18 are considered to be children (see § 3(2) Child Protection Act). Since the Study Allowances and Study Loans Act does not specify a child's age, the provisions of the Child Protection Act must be taken as a basis and it should be concluded that after the child has reached the age of majority, the parent is no longer entitled to apply for cancellation of a study loan.

Labour market services

The Chancellor was asked why it was not possible for upper secondary school pupils enrolled in full-time study to use all the labour market measures stipulated for vocational school pupils. For example, upper secondary school pupils cannot be registered as unemployed.

The Chancellor approached the Riigikogu Social Affairs Committee, after which, on a proposal by the Committee, the Draft Labour Market Measures Act pending in the Riigikogu Social Affairs Committee was supplemented. The parliament passed the new law and, as a result, the Estonian Unemployment Insurance Fund will also be able to register upper secondary school pupils as unemployed in the future. This ensured equal treatment between upper secondary school pupils enrolled in full-time study and vocational school pupils. At the same time, the law was also supplemented so that a student acquiring higher education in full-time study can also be registered as unemployed. The Labour Market Measures Act enters into force on 1 January 2024.

The Chancellor's assistance was sought by a person who had been deprived of unemployment allowance for one month. The reason was that during that month the person had been refunded overpaid income tax paid in the previous calendar year.

The Chancellor explained that unemployment allowance is paid with a view to actual need for assistance. The Estonian Unemployment Insurance Fund may suspend or terminate payment

of unemployment allowance if a person's monthly income exceeds the amount equal to at least 31 times the daily unemployment allowance rate. If an unemployed person's income is equal to or greater than the established minimum, payment of unemployment allowance is suspended for 30 days (§ 32(1) clause 4 Labour Market Services and Benefits Act). After that, payment of unemployment allowance is resumed. Unemployment allowance is paid for a total of up to 270 days (§ 30(1)) and the number of days on which the person is entitled to unemployment allowance does not decrease. Thus, payment of unemployment allowance may be spread over a longer period on account of an income tax refund.

The Estonian Unemployment Insurance Fund estimates that currently about 20 per cent of people with no capacity for work are engaged in work (the total number of people with no capacity for work is approximately 38 000). The Chancellor has been asked why it is not possible for people with no capacity for work to apply for occupational rehabilitation services. The state should not deprive people of necessary assistance if, with such support, they could work even a little and thereby improve their material and mental well-being.

The Chancellor informed the Riigikogu Social Affairs Committee of the concerns of people with no capacity for work, so that the Riigikogu could consider the possibility of also granting the right to occupational rehabilitation to those people with no capacity for work who wish to continue working or find new work within their abilities.

Reduction of work ability allowance

Under § 28(2) of the Constitution, Estonian citizens have the right to assistance from the state in the case of incapacity for work. In line with § 28(4), persons with disabilities are under the special care of the state. This means that in the event of loss of capacity for work (and the resulting loss of income), a person must be offered financial support that protects them from poverty.

Under the Revised European Social Charter, it has been found that if someone is deprived of income due to loss of capacity for work then the state must ensure them income not lower than 50 per cent of the median equivalised net income of a member of the household. If a person also receives other benefits, compensation paid in case of a decrease in capacity for work may be 40-50 per cent of the median. Compensation of less than 40 per cent cannot under any circumstances be considered sufficient. The latest data on the median equivalised net income in Estonia date back to 2021, and work ability allowance accounted for only 37.1%

of this. Although the calculations have been made for 2021, there is no reason to believe that the situation has improved significantly so far.

Before the work ability reform, incapacity for work pensions were increased at the same pace as old-age pensions, but now that work ability allowance is no longer part of the pension system, the recipients of work ability allowance have been forgotten. For example, in 2020, the base amount of the pension was increased by 7 euros, in 2021 by 16 euros and the national pension by 30 euros, and in 2023 both the base amount of the pension and the national pension rate were increased by 20 euros (see § 61(1^7)–(1^8) of the State Pension Insurance Act. If work ability allowance had been increased at the same rate as pensions, each work ability allowance recipient would receive over 500 euros more each year than currently.

A problem may arise if, in the same month, a person with no capacity for work is paid the salary for the previous calendar month along with termination of employment remuneration for the work performed, as well as remuneration for unused vacation days. As a result, a person's work ability allowance may be reduced in the second month after termination of employment to the extent that the person is left without any income in that month.

In one such case, a person received only 35 euros work ability allowance a month. After termination of employment, the person had been paid the last month's salary normally paid at the beginning of the month and, in addition, salary for the month of termination of employment, as well as remuneration for unused vacation days. The employer declared the social tax payable on these amounts to the Tax and Customs Board at the beginning of the month following termination of the employment relationship. The Estonian Unemployment Insurance Fund considered these amounts to be income of the month following the end of the employment relationship and, as a result, reduced the person's work ability allowance in the second month. If the person had left work at the beginning of the month and not at the end of the month, their work ability allowance would not have been reduced.

It is clear that the person was caught in the cogwheels of the system. Therefore, the Chancellor approached the Riigikogu Social Affairs Committee. The Social Affairs Committee discussed the Chancellor's application in two sessions in January 2023, but no solution was reached in the Riigikogu. The Chancellor drew attention to the problem once again in awritten report (see page 3 para. 6) sent to the Social Affairs Committee of the newcomposition of the Riigikogu at the end of May.

Conditions for receiving a pension

A parent wanted to know whether, under § 28(2) clause 12 of the State Pension Insurance Act, a parent who has paid maintenance to a child is also considered to be the parent who has raised that child. Specifically, that provision stipulates that raising a child is to be accounted as contributing to the length of pensionable service of the parent who has actually raised the child for at least eight years.

The Chancellor found that the provision is in accordance with the Constitution. This condition has been set with a view to supporting, in particular, those people who have been able to work less because of raising children. A parent who has only paid maintenance to their child has had more time to insure themselves for old age in other ways.

Since a parent is obliged to ensure the well-being of their child until the child reaches the age of majority, the statutory condition that, in order to obtain pensionable service, the parent must have been raising the child for at least eight years is also justified. This means that under the State Pension Insurance Act, a parent who has only paid maintenance to a child is not considered to be the person who actually raised the child.

The Supreme Court asked the Chancellor of Justice for an opinion in two constitutional review cases concerning the pensions of police and border guard officers.

One case (No 5-23-1) concerned the second part of § 111^2(2) of the Police and Border Guard Act in force from 11 January 2020 to 30 June 2022, which did not enable calculation of a police officer's superannuated pension to be based on the salary rate in force on the date starting from which the pension was granted. The Supreme Court judgment in this matter is still pending.

The second case (No 5-23-25) concerned the issue of the constitutionality of § 114(3) clause 3 of the Police and Border Guard Act. This provision does not allow a police officer to receive a

superannuated pension at the age of 50 if, by 1 July 2007, the officer had accumulated at least 20 years of police service under the Police Service Act and they entered the border guard service after 1 July 2007 but before 1 January 2010 when the Police Board and the Border Guard Board were merged, and they continued service as a police officer in the police service from 1 January 2010 until attaining 50 years of age. Unlike the Chancellor of Justice, the Supreme Court concluded that § 114(3) clause 3 of the Police and Boarder Guard Act is constitutional.

The Supreme Court also asked for the Chancellor's opinion in constitutional review case No 5-22-12. The issue concerned § 132^7(2) of the Courts Act insofar as it excludes indexation of a judge's pension calculated on the basis of the current year's salary. Similarly to the Chancellor of Justice, the Supreme Court found that § 132^7(2) of the Courts Act contravenes the Constitution.

The Chancellor also explained the possibilities to collect a pension during a hospital stay. The person's concern was resolved in cooperation with the Social Insurance Board. The Social Insurance Board also promised to supplement the information on payment of pensions published on the Board's website.

Allowance for pensioners living alone

Some people complained that they had not received a single pensioner allowance.

Since 2017, the state pays an allowance of 115 euros once a year to pensioners living alone. In paying the allowance, the Social Insurance Board relies on data in the population register. The main obstacle to receiving the allowance may be that, according to the population register, the pensioner does not live alone in the dwelling. At the same time, the population register data may be outdated: for example, because someone who had lived together with the pensioner has failed to submit a new notice of residence after moving to a new residence. The Chancellor has explained that, in this case, in order to receive the allowance, the pensioner must apply for amendment of the residence data, which may take some time. As long as the conditions for receiving the allowance are not met, the pensioner cannot receive the single pensioner allowance.

Human error, due to which inaccuracies may appear in the population register data, is not excluded. For example, the dwellings of a co-owned residential building had separate addresses, but one of the co-owners chose the wrong address when registering their

residence, and because of this, the pensioner was deprived of the allowance. The problem was resolved in cooperation between the authorities: Tartu City Government notified the co-owner and a correction was made in the register on the basis of their application. The Social Insurance Board paid the allowance to the pensioner one month later than usual.

In one case, a person was deprived of the single pensioner's allowance because their address data were not correct: their dwelling did not have a separate address. The pensioner lived on the first floor of a detached house, while on the second floor of the house lived another household, which had a separate entrance to the house, as well as a separate electricity, water and sewerage system. Tallinn Urban Planning Department agreed to clarify the address data.

The Chancellor was also asked to justify why only old-age pensioners can receive the single pensioner allowance. The Estonian Association for the Blind approached the Chancellor expressing a desire that people with no capacity for work should be paid the same one-off benefit as pensioners living alone. The Chancellor explained that the conditions for payment of the allowance depend on political choices, which the Chancellor of Justice cannot assess. However, people may propose amending the law to the Riigikogu.

Provision of social welfare services

The Chancellor of Justice was asked for help by a person living in Maardu as the examination of and decision on their application for assistance took the city government nearly seven months. The applicant had applied to the city for assistance to their family member.

The Chancellor found that Maardu City Government had failed to comply with deadlines when arranging assistance. An application for social assistance must be resolved within ten working days as of its correct submission (§ 25(1) General Part of the Social Code Act). The Chancellor asked the city government to explain to the person why the city considered that it had already adequately assisted the person in need and that the person did not need other services (e.g. the service of a personal care assistant).

The Chancellor was also asked whether a personal care assistant could be appointed for a person under guardianship.

The aim of the personal care assistant service is to increase the self-sufficiency of an adult who needs physical assistance due to disability, as well as to reduce the burden of care for

the person's legal carers. A personal care assistant helps a person with their daily activities, such as moving around, eating, preparing food, dressing, household chores and other activities (§ 27(1) and (2) Social Welfare Act). Thus, it is important that due to disability the person needs physical external assistance in their everyday activities.

The Chancellor explained that if a person with intellectual disability in need of physical assistance is able to communicate what they want within the limits of their communication skills (for example, asking to be supported when moving from one room to another), there is no reasonable justification why the possibility of using a personal care assistant should be restricted only because the person in need has an intellectual disability or that, for example, in financial matters their legal capacity is limited. Failure to provide a personal care assistant to someone with restricted legal capacity would be contrary to international agreements. The Revised European Social Charter (Art 15 para. 3), as well as the UN Convention on the Rights of Persons with Disabilities (Art 19), stipulate that people with disabilities have the right to independent living (General Comment by the Committee on the Rights of Persons with Disabilities, No 5 (2017), paras 8, 16 (c, iv), 17, 21).

The Chancellor's assistance was also sought by a person to whom the rural municipality government refused to reimburse the costs of adapting the dwelling. The municipality government justified its decision both by lack of money as well as the fact that there was nothing to adapt, because the person in need had already done the necessary work themselves. The Chancellor recommended that the municipality should find out whether, based on communication with municipal officials, the person may have developed an understanding that the municipality would retrospectively reimburse to that person the expenses they had incurred. Subsequently, the municipality should take a position as to whether the petitioner had thereby suffered harm which the municipality should compensate under the State Liability Act.

The Chancellor was informed that, as of 1 January 2023, Tallinn will no longer appoint a carer for children with moderate disabilities. When investigating the situation, it was found that the city replaced the social benefit paid voluntarily from its budget with a social service. At the same time, the city increased the opportunities to obtain the care service for a disabled child, as this service is now provided to all children with disabilities. Adapting to the changes may take some time, so that the city will continue to pay the benefit until the end of the previously set deadline.

The Chancellor found that the changes introduced in Tallinn did not contravene the

Constitution. It is important that those needing help (including disabled children and their families) are not left without assistance and that their ability to cope does not deteriorate in the changed situation.

Sometimes the Chancellor has to approach a rural municipality or city government repeatedly to resolve the same problem. For example, Kambja rural municipality government failed to assess a person's need for assistance immediately after receiving an application for assistance. The municipality did not make decisions within the time limit prescribed by law and these decisions did not adequately satisfy the needs of the person. The Chancellor advised the rural municipality government to re-examine the application, assess the person's need for assistance as soon as possible, and decide by an administrative act what social services the person needs.

The rural municipality government made a new decision, but this, too, did not cover the person's entire need for assistance. The Chancellor reminded the municipality that, before making a decision, the municipality must hear the opinion of the person needing help, and then make a proper decision. If the person's opinion is not taken into account, the municipality must justify this in its decision.

The guardian of a person receiving special care services wanted to know if a care home is entitled to charge a higher fee for a place in the care home than laid down by law. The Minister of Social Protection has established the conditions for provision of special care services. However, if the service is provided under better conditions, the Social Welfare Act (§ 73(6)) allows charging a higher fee for the service than prescribed.

The Chancellor found that the conditions for payment of expenses for accommodation and meals for people living under better conditions, as well as their annual changes, may remain incomprehensible to care home residents. For this reason, the Chancellor proposed that the Social Insurance Board should include a clause against unexpected price increases in future contracts. The Social Insurance Board promised to do so.

The Chancellor was approached with a concern that Tallinn did not sufficiently support people receiving the supported daily living service in paying expenses.

The Chancellor explained that Tallinn has helped to pay the own contribution of those people receiving 24-hour special care services under better conditions than required by law (§ 73(6) Social Welfare Act. The city pays them support on the basis of § 10(2) of "The procedure for the provision of social assistance

". Under this provision, assistance may be given in the case of emergence of exceptional circumstances or an urgent problem.

The Chancellor asked Tallinn City Council to consider whether and under what conditions the city could permanently pay support to those people receiving special care services who do not have enough money to pay their own contribution.

Security

The Chancellor of Justice regularly checks the work of those agencies that organise interception of phone calls and conversations, surveillance of correspondence, and otherwise covertly collect, process and use personal data. In other words, the Chancellor monitors that surveillance and security agencies (the Estonian Internal Security Service, the Police and Border Guard Board) do not violate people's rights when collecting personal data. The Chancellor carries out this supervision on the basis of complaints, but also checks the activities of surveillance and security agencies on her own initiative. Under the law, the Chancellor has access to closed surveillance files. That is, she does not intervene in ongoing surveillance.

The Chancellor's supervision focuses on whether covert measures were justified, whether they were carried out in compliance with the law and in a manner that respects people's fundamental rights. Such control offers people a sense of security that no one is wiretapped or followed randomly and without justification and that no mass covert surveillance of people takes place in Estonia.

During the last reporting year, the Chancellor's advisers verified how the Estonian Internal Security Service and the police stations of the Police and Border Guard Board had respected the fundamental rights of individuals when carrying out surveillance. The activities of the Military Police were also checked. No major problems were observed. The Military Police have not carried out any surveillance in recent years as there has been no need for this. Lack of practice is compensated through continuing education in cooperation with other surveillance agencies.

Since the work of the Chancellor of Justice is greatly influenced by events and crises in society, the Chancellor has received many petitions motivated by the war started by Russia against Ukraine and its effects. People who have fled Ukraine to Estonia have approached the

Chancellor with various questions. People mostly seek assistance in dealing with the Police and Border Guard Board, but also in solving other vital issues.

The Chancellor has been contacted by a number of people who were denied a visa to enter Estonia due to sanctions imposed by the Estonian government. Due to the border crossing ban imposed by Estonia, many Russian citizens were unable to fulfil their obligations related to real estate located in Estonia or to take the necessary action for this purpose. This has also put apartment associations here in a difficult situation, since utility bills for apartments owned by Russian citizens have not been paid. There were also problems with students who came to Estonia from Russia and wanted to continue their studies in Estonia, but were unable to apply for a residence permit due to sanctions. Amendments to the regulation adopted by the Estonian government on 18 May 2023 helped to alleviate this situation.

Many people were concerned about delay in resolving applications for residence permits. Although, by law, an application for a residence permit must be examined within two months and this period can be extended by two months at a time, sometimes the deadlines were extended by three or four months. At the same time, people sometimes remained uninformed because they were not notified about the extension of the deadline. People were also concerned about the PBGB booking system. Namely, for a certain period the PBGB suspended the possibility of booking new time slots to apply for a residence permit. This, in turn, prevented people from accessing the procedure.

Covert processing of personal data

Supervision must help to ensure that all covert measures are carried out in accordance with applicable rules and by respecting fundamental rights. Even when the actions of the relevant agencies are formally lawful, the Chancellor tries to ensure that people's fundamental rights are always reckoned with.

The Chancellor's advisers checked how the Estonian Internal Security Service and the police stations of the Police and Border Guard Board (PBGB) had respected the fundamental rights of individuals when carrying out surveillance. The activities of the Military Police were also checked, with a focus on cases where data is gathered covertly.

Detailed summaries of inspection visits to surveillance agencies are not public since they contain information classified for internal use only. These summaries are sent to supervised agencies as well as public authorities (e.g. the court, as well as the Security Authorities

Surveillance Select Committee of the Riigikogu) which are responsible for the legality of activities of surveillance and security agencies.

Inspection of police stations' surveillance files

The Chancellor's advisers carried out 16 inspection visits to PBGB police stations. Surveillance files opened in 2020−2022 were examined for which active proceedings had ended by the time of inspection. During that period, a total of 77 surveillance files were opened in police stations, of which 72 files were inspected.

During the inspections, the Chancellor's advisers assessed the guarantee of fundamental rights and interests of those persons who became objects of covert data collection (i.e. a surveillance measure) in the course of criminal proceedings either as suspects or as 'third parties' (e.g. by chance). Information contained in paper files as well as in the surveillance information system was examined and compared, and interviews with surveillance officials were also carried out. The assessment focused primarily on whether, in each specific case, conducting the surveillance measure while collecting information about a criminal offence had been lawful, unavoidable and necessary, and how the surveillance agencies complied with requirements to notify people about a surveillance measure.

With a view to ensuring more effective protection of the fundamental rights of individuals, the Chancellor made several proposals to the PBGB and the prosecutor's office to improve the organisation of surveillance. All proposals were based on specific circumstances identified in surveillance files and from interviews with officials.

Surveillance authorisations

A surveillance measure is lawful only if the prosecutor's office or the court has issued an authorisation meeting the statutory requirements, i.e. the requirements of form and reasoning. Authorisations for surveillance contained in the surveillance files examined were generally justified. They demonstrated that surveillance was indeed necessary to verify suspicion of a criminal offence in particular cases.

As regards comparison of the police station files inspected this year and in previous years, in conclusion it may be noted that the reasoning of surveillance authorisations has improved year by year. Special mention should be made of those authorisations containing reasons for the necessity of a surveillance measure in line with the principle of *ultima ratio*, i.e. the existence of an overriding need for surveillance, as well as the impact of measures on the

subject of surveillance and third parties linked to them.

However, not all surveillance authorisations were properly substantiated: some authorisations issued both by a court as well as a prosecutor's office were found where insufficient reasoning was given to justify an overriding need to carry out surveillance. Typically, the problem was that the *ultima ratio* reasoning was too general and did not meet the standards adopted in case-law.

In the case of unsubstantiated authorisations, it is striking that they are predominantly very voluminous and contain a comprehensive overview of prior information collected confirming suspicion of a criminal offence. However, those authorisations fail to fulfil their main function: to justify the overriding need to carry out surveillance in a particular case and in respect of a particular person.

In terms of fundamental rights protection, it is important that the authorising authority should assess and justify why it is necessary to carry out surveillance in a particular case and in relation to a particular person. The authorising authority must, in essence, weigh up the overriding need for surveillance and justify why, in a particular case, the public interest outweighs protecting the privacy or inviolability of a home or the confidentiality of communications.

Organisation of surveillance measures

Surveillance measures were generally carried out purposefully and with authorisation by a court or prosecutor's office issued in advance. Nevertheless, there were also cases where surveillance (in one case covert collection of reference material, in the other cases covert surveillance) was carried out regardless of the fact that the prosecutor's authorisation did not directly allow it. In those cases, the authority in charge of proceedings had wrongly assumed the existence of an authorisation or had failed to comply precisely with the conditions laid down in the authorisation.

The Chancellor of Justice has continually stressed that a surveillance agency must always follow the specific surveillance authorisation and its scope when carrying out any surveillance measure. In addition to compliance with deadlines, the conditions imposed on a measure by the authorising authority must be observed very carefully. If necessary, the authorising authority can amend or clarify those conditions (e.g. by issuing a new authorisation).

Pärnu and Viljandi police stations deserve recognition for an effective and well-considered

surveillance procedure. The surveillance files of both stations mostly demonstrated that surveillance proceedings had been carefully planned and justified. This testifies to the fact that all the options available to the investigating authority have been effectively used to ascertain the truth in a criminal case. The police stations in the West Prefecture excelled at drawing up files in a clear and concise manner.

However, inspection of some surveillance files raised doubts as to whether applying the surveillance measure (opening the file) was well-considered and justified in the specific case. Most problems were identified in surveillance files in Jõhvi and Narva police stations. At the same time, interviews with officials in Lääne-Harju and Ida-Harju police stations revealed that, since officers often lack theoretical preparation or experience, they do not know how to plan surveillance measures at the required level or keep surveillance files.

Examination of surveillance files revealed that not every surveillance measure had been accompanied by a substantive summary in the file. Although the situation has improved from year to year, some files did not contain a summary at all, or the summary was limited to a laconic statement that the data obtained had been transmitted to the authority in charge of proceedings digitally or added to the police database. In those cases, exhaustive assessment of whether surveillance had been lawful and justified was not possible on the basis of the surveillance file.

Notifying a surveillance measure

Under the Code of Criminal Procedure, a surveillance measure is notified to people with respect to whom the surveillance measure was carried out, as well as people identified during the proceedings whose private or family life was significantly interfered with by the measure. Notification may be postponed or waived only in specific circumstances set out by law if permission for this has been given by a prosecutor or the courts.

People were generally informed of surveillance activities on time. This gave people caught in the sphere of influence of surveillance a possibility to effectively protect their rights. Only at Jõhvi police station was notification delayed in some cases. One person was notified of surveillance more than a year later than the prescribed time limit, while in the other four cases notice was sent to people with a delay of 3.5 to 8 months.

However, the wider problem was that the notice sent to people did not meet the statutory requirements: for example, instead of the period of surveillance, the notice indicated the period of validity of the authorisation. Some notices did not clearly indicate what kind of

surveillance was actually carried out. Sometimes no distinction was drawn as to whether notification was sent to the person directly subject to surveillance or a person whose right to inviolability of family or privacy was significantly affected by surveillance. A misleading notice does not enable the recipient to understand the circumstances of surveillance concerning them or to decide whether and how they need to protect their rights.

Inspection of Estonian Internal Security Service surveillance files

The Chancellor's advisers examined the surveillance files opened in 2020–2022 at the Estonian Internal Security Service and, on the basis of these, assessed whether surveillance had been carried out lawfully.

When inspecting the surveillance files, the advisers focused on the justification for opening a surveillance file as well as justification for authorising a particular surveillance measure, and whether surveillance had been carried out in accordance with authorisation granted by a judge or prosecutor and within the time limit specified in the authorisation. Also monitored were whether the fundamental rights of third parties were protected and whether all the requirements for notification of surveillance and presentation of the collected material were met. Additionally assessed was whether the Chancellor's previous comments and proposals had been taken into account and to what extent surveillance files had been checked by the prosecutor's office.

Opening of all the surveillance files examined had been justified. Processing the files had been in compliance with the requirements of the Code of Criminal Procedure and other legislation. Based on the files, it may be concluded that without surveillance and without interfering with people's fundamental rights it would indeed have been complicated to gather the necessary evidence to prove suspicion of a criminal offence.

Surveillance had been carried out under authorisation by a prosecutor and a preliminary investigation judge and by complying with the conditions and time limits set out in the authorisation. The surveillance authorisations provided reasoning as to the circumstances under which a particular surveillance measure was authorised. In general, the authorisations complied with the rules adopted in case-law, i.e. they set out in sufficient detail why surveillance was absolutely necessary. In only one file were some authorisations found where the reasoning given by the preliminary investigation judge was too scant and too general.Why it was absolutely necessary to carry out each specific measure authorised had not been justified in the operative part.

All the surveillance files of the Estonian Internal Security Service contained substantive summaries of surveillance measures, enabling an overview as to the persons in respect of whom and to what extent surveillance had been carried out.

The summaries also reflected whether and what evidence or other relevant information was obtained through the measures. Including such summaries in the file is extremely important in terms of fundamental rights protection since it enables retroactive – and without having to re-examine the materials in the criminal case – assessment of the effectiveness of the surveillance measure, the intensity of instances of interference involved in it, and other essential facts.

People were notified of surveillance in a timely manner. Everyone who so wished was also enabled to access data collected on them in the course of surveillance. Timely notification and access to surveillance material ensures effective protection of the fundamental rights of persons caught in the sphere of influence of surveillance. Inter alia, this provides the right to contest the lawfulness of surveillance measures for suspects and the accused.

Inspection visit to the Military Police

The Chancellor’s advisers familiarized themselves with the legislation governing surveillance of the Military Police and interviewed the chief of the investigating division.

While at the time of the previous inspection the Military Police lacked proper regulation offering guidelines for planning and conducting surveillance and for internal control, these shortcomings have now been remedied in line with recommendations by the Chancellor of Justice.

The Military Police have not carried out surveillance in recent years, mainly because there has been no need for these measures. Despite the absence of practice, the Military Police considers it very important for officers to still have the necessary preparation to carry out surveillance.

Among other things, opportunities are being sought for further training of officers.

Resolution of applications

Besides the Chancellor's own-initiative and regular supervision of surveillance agencies, she also resolves complaints concerning surveillance measures. If necessary, the Chancellor will also verify publicly raised allegations (e.g. in the media) about illegal or insufficiently reasoned surveillance.

The impact of sanctions against Russia

In connection with the war started by Russia in Ukraine, the Estonian government, together with other European Union Member States, has imposed a number of sanctions against Russia and its ally Belarus, thus limiting interaction by individuals, organisations and companies with citizens of those countries and legal entities operating there.

The Chancellor of Justice has received a number of petitions concerning these restrictions. People have complained that they have been denied a residence permit or visa or have not been allowed to enter the country. When resolving these petitions, it has been found that people subject to exemptions established by the Estonian government have also been refused visas. For example, visas were refused to people who have in Estonia a spouse with Estonian citizenship and minor children or elderly parents living in Estonia; as well as people with whom minor children were being raised jointly, etc. Problems were also caused by the fact that the exceptions do not cover all situations protected by the constitutional right for family life. For example, an exception was made for situations where the inviting person has a long-term residence permit in Estonia or if the inviting person is the spouse. At the same time, the exception does not extend to those who are staying in Estonia on the basis of a temporary residence permit or if the registered partner is a person of the same sex. In several cases, a situation has also arisen where, under the exception, a person is issued a visa, but their family member is left without a visa.

The Chancellor of Justice was approached by a citizen of the European Union whose partner

with Russian citizenship was not granted an Estonian visa. A representative of the Embassy of the Republic of Estonia in Moscow had told the petitioner that only the spouse of a citizen of the European Union, and not a registered partner, could apply for a visa. The petitioner found the situation to be discriminatory.

The Chancellor explained that it is possible for a registered partner of a citizen of the European Union to apply for a visa despite the fact that the government has imposed sanctions on Russian citizens. According to the government regulation, sanctions do not apply to people who apply for a visa and who enjoy the right to free movement under European Union law. The legal status of a citizen of the European Union and their family member is regulated by the Citizen of the European Union Act. Under this law, the registered partner of a citizen of the European Union is also considered to be their family member.

Although the foreign representation subsequently accepted the visa application, the registered partner of the citizen of the European Union was refused a visa.

The Chancellor was also approached by several Russian citizens who were unable to apply for a residence permit due to the sanctions, but who wanted to continue their studies in Estonia or had already lived in Estonia for a long time before the sanctions were imposed.

The Chancellor explained that both imposition and application of sanctions must comply with the Constitution and the general principles of law. The Constitution lays down the principles of legal certainty and legitimate expectations. If someone has started acquiring higher education, then, in line with the principle of legitimate expectations, they should, as a general rule, be able to complete their studies at the level already started, provided that they have fulfilled all the obligations related to their studies. This means that a foreigner may stay in the country on the basis of a residence permit until completion of their studies. The principle of equal treatment must also be observed.

The Aliens Act also provides for the possibility to exceptionally grant a person a residence permit if obliging the person to leave Estonia would clearly be too burdensome for them, if the foreigner does not have the opportunity to obtain a residence permit in Estonia on another basis, and the foreigner does not pose a threat to public order and national security (§ 210^3 of the Aliens Act). The Chancellor explained that if a person is afraid to return to the country of citizenship because they may be persecuted there, it is possible to apply for international protection in Estonia.

For many people, the situation was alleviated by amendments to the regulation adopted by the Estonian government on 18 May 2023. According to the amendments, the sanctions will no longer apply to those citizens of Russian Federation and Belarus who have obtained a long-term visa or a temporary residence permit for studying, or who have the right to stay in Estonia temporarily due to the expiry of the residence permit and who have completed their studies on the basis of a curriculum in Estonian or who can speak Estonian at least at the B2 level.

Visa procedure

When resolving petitions submitted to the Chancellor, it was revealed that the PBGB automatically refuses to issue a visa to a person if the Estonian Internal Security Service has declined to approve their visa application. The PBGB also denied the challenge lodged against the visa decision solely because the Estonian Internal Security Service did not consider it justified to change its position.

Under the Aliens Act, the PBGB is entitled to decide domestically on the issue of visas. The law stipulates that issue of a visa must be coordinated with the authority designated by the Minister of the Interior, which is the Internal Security Service. The Chancellor explained to the PBGB that under the Aliens Act the term coordination/approval (*kooskõlastamine* in Estonian) is understood in the sense of expressing an opinion. Thus, if the Estonian Internal Security Service fails to coordinate/approve a visa application, the PBGB must ascertain the reason for the position of the Service, but may then make a decision regardless of that position, while having regard to all the circumstances of submission of the application. Thus, the current practice of the PBGB is not in line with the Constitution or the Aliens Act.

It transpires from § 82(2) of the Aliens Act that refusal to approve a visa application cannot automatically constitute grounds to refuse to issue of a visa. The PBGB as the competent body must itself decide on the issue of a visa and, while examining a challenge filed against a visa decision, ascertain all the essential facts and resolve the objection by having regard to those circumstances.

Of course, a visa may not be issued to someone who may pose a threat to Estonia's security. However, security risk is an undefined legal concept and an administrative authority enjoys a broad margin of appreciation in interpreting it. When making that decision, the level of security risk and the probability of its actually occurring should be assessed, as well as the

circumstances why the person is applying for a visa to stay in Estonia. This is particularly important if a visa applicant has compelling family reasons for staying in Estonia.

Examination of applications for a residence permit

People also expressed dissatisfaction with proceedings for resolving applications for residence permits, as these proceedings often take too long. When resolving the petitions, it was found that PBGB officials extended procedural deadlines repeatedly and for long periods at a time.

Under the legislation, an application for a residence permit must generally be examined within two months, and the deadline may be extended by up to two months at a time (§ 34(2) of the Aliens Act, § 26 of the regulation of the Minister of the Interior). However, PBGB officials extended procedural deadlines, for example, immediately by three or four months at a time.

The Chancellor was also approached by a person who was unable to submit an application for a residence permit because for the next two months all the time slots for submitting an application had been booked. The PBGB also did not offer people new times because it was waiting for a decision on the immigration quota for 2023. At the same time, it was also impossible to obtain time slots for people whose application for a residence permit was not subject to the immigration quota. This shows that although, according to the legislation, the PBGB should generally resolve an application for a residence permit within two months, it might not even be possible to submit an application for a residence permit during this period. Thus, through its booking system the PBGB prevents people's access to the procedure.

Real estate of foreigners in Ida-Viru County

The Chancellor has been approached by several Russian citizens with a complaint that, due to the border crossing ban imposed by Estonia, many Russian citizens were unable to fulfil their obligations related to real estate located in Estonia or to take the necessary action to that end.

Due to restrictions, a situation has arisen in Ida-Viru County where apartment owners living in Russia have not been able to cover the management costs of their apartments and have incurred large debts. According to the Ministry of Internal Affairs, about 4500 people were affected by the ban in 2022.

The Estonian government imposed a border-crossing ban by Regulation No 42 of 8 April 2022

"Imposition of sanctions by the Government of the Republic in connection with the aggression of the Russian Federation and the Republic of Belarus in Ukraine". The regulation imposed a restriction on the granting of visas, short-term employment in Estonia and granting temporary residence permits for employment, study or business to citizens of the Russian Federation and the Republic of Belarus.

The regulation applies to all citizens of the Russian Federation who apply for a visa. No exception has been made for people owning real estate in Estonia.

On 8 September 2022, the Estonian government passed order No 247 on "Temporary Restriction on the Crossing of the State Border by Citizens of the Russian Federation", restricting entry into Estonia of Russian citizens on a short-term visa. The order also sets out exceptions but these do not concern owners of real estate.

The order was established under § 17(1) clause 1 of the State Borders Act. Under that provision, in the interests of national security, in order to ensure public order, prevent and resolve a situation which may endanger public health, as well as at the request of a foreign state, the Government may temporarily restrict or suspend crossing of the state border.

Although the Riigikogu has declared the Russian regime as terrorist and the Russian Federation as a country supporting terrorism, and the Estonian government has imposed a border-crossing ban, the Legal Assistance Agreement between the Republic of Estonia and the Russian Federation still applies and enjoys primacy over national laws and European Union legislation. The conditions for application of the agreement on legal assistance are met if the owner of real estate is a citizen of the Russian Federation.

As a measure of last resort, some apartment associations in Ida-Viru County have had recourse to the court to collect debts. Estonian courts have found that, under Article 21(1) of the Legal Assistance Agreement, an Estonian court has no jurisdiction to hear a claim brought against a Russian citizen residing in Russia.

A situation where a person has an apartment in Estonia and fails to bear the management costs thereof, but it is not possible to file a claim against them in an Estonian court, burdens other apartment owners. Unfortunately, at the moment the laws do not stipulate how the acquisition of real estate by citizens of the Russian Federation could be limited and how subsequent debts incurred by apartment associations could be resolved. For this reason, several apartment associations have applied to the court for assistance in appointing a

guardian for such real estate.

Section 18 of the General Part of the Civil Code Act regulates conservatorship of a person's property. The court may place a person's property under conservatorship if the person is missing, as well as if for some reason a person is unable to attend to, or make disposals concerning, their property. Under § 516(1) clause 1 of the Code of Civil Procedure, in that case the court appoints a conservator for property.

In the opinion of the Chancellor of Justice, if a person is not staying in Estonia and does not bear the management costs of their apartment, it can be assumed that it is necessary to set up conservatorship of the person's property. The conservator must manage property prudently and guarantee its preservation. The courts have repeatedly applied conservatorship at the request of apartment associations. In more complicated cases, the court has also given consent to transfer of apartment ownership, because the value of some apartments in Ida-Viru County often does not even cover the debts incurred.

Education

The Chancellor receives many petitions from parents complaining that not enough kindergarten places are available for their children of creche age.

Under the Preschool Childcare Institutions Act, a rural municipality or city must give a kindergarten place to each child at least 1.5 years old whose residence is within the boundaries of that rural municipality or city and coincides with the residence of at least one of the parents. A rural municipality or city has complied with its duty if it gives a family a kindergarten place within a reasonable time. Merely placing a child in a queue for a kindergarten place is not sufficient.

The state should understand that even though the law requires a local authority to ensure a kindergarten place, all in all the shortage of kindergarten places is not just the problem of occasional families or merely local authorities. Under the Constitution, provision of education falls under state supervision. If a local authority is unable to comply with the law and regularly leaves parents in trouble, the state must intervene.

Problems still exist with organising school transport and education for children with special needs. Problems related to hobby education have also been the same throughout years:

issues arise in connection with the funding of hobby education and local government benefits.

Preschool education

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Ensuring a kindergarten place

According to the law, a local authority must give a kindergarten place to each child at least 1.5 years old whose parent expresses a wish for this. If a local authority has failed to comply with this requirement, the Chancellor will explain to parents their right and how they can defend their rights in court, if necessary.

Many parents have had recourse to court with a complaint about having been deprived of a kindergarten place, and extensive case-law has developed based on these cases. According to the courts, a family must generally be given a kindergarten place within two months of submission of an application. The courts have ordered local authorities to provide kindergarten places, and local authorities have also complied with court decisions. The courts have also ordered local authorities to pay compensation for the costs incurred by the family because the local authority had failed to give them a kindergarten place within a reasonable time.

In her opinion to the Supreme Court, the Chancellor emphasised that, according to the Constitution, local authorities may not refuse to comply with the law. Through the population

register, cities and rural municipalities can generally find out how many children of kindergarten and school age live in their territory and how many children will soon reach kindergarten age. A local authority can also give a family a kindergarten place in cooperation with a neighbouring municipality or a private kindergarten.

In view of this, the Chancellor concluded that the provision in a regulation of Rae rural municipality, which made obtaining a kindergarten place dependent on the availability of a vacancy in the relevant age group in the kindergarten, was unconstitutional. The Supreme Court agreed with the Chancellor and acknowledged that the provision in question was unconstitutional and invalid (judgment in case No 5-22-10).

In its decision, the Supreme Court noted that both the state and local authorities are responsible for access to preschool education. They both have a responsibility to find a systemic solution to the problem that will enable children to receive preschool education and help families reconcile their professional and family lives. In the opinion of the judicial panel, a situation cannot be allowed in which the availability of public services largely depends on the extent to which a city or rural municipality decides to fulfil the obligations imposed on it by law (judgment No 5-22-10, para. 58).

The Chancellor is convinced (reply to a question by a member of the Riigikogu) that the state as a whole is ultimately responsible for access to education, including preschool education. Under the Constitution, provision of education falls under state supervision. Consequently, the state must be active in case it is found that a service that is so important for children and families is not provided as prescribed by law. The fact that it is possible for parents to claim compensation from the local authority directly or through the court, or that in some places social benefits are paid if the local authority violates the law and fails to offer a kindergarten place, does not solve the problem and does not comply with the principle of the rule of law. Laws must be complied with.

Availability of a kindergarten place

Many parents have considered a kindergarten place offered to them as unsuitable, since in the family's opinion, the kindergarten is located unreasonably far from home.

According to the Chancellor's assessment, the law does not give a parent the right to get a kindergarten place in the specific kindergarten that the parent prefers or that is closest to their residence or place of work. It is important that the child has a reasonable opportunity to

attend kindergarten, taking into account public transport timetables or the time required for a car trip and related costs (see Tallinn Court of Appeal judgment in case No 3-21-336).

When resolving a petition concerning this issue, the Chancellor concluded that the particular municipal council had not acted manifestly unreasonably when designating kindergarten service areas. What is important is that the kindergarten service should be available to a family.

In another case, the Chancellor explained that a travel time between 10 and 15 minutes cannot be considered excessively tiring or burdensome for a child. However, since the child cannot go to the kindergarten on foot, the parent has the right to assume that the local authority will arrange a transport opportunity for the family, if necessary. It should be borne in mind that a kindergarten day, which also includes going to the kindergarten and time spent on the trip home, should not be excessively long and tiring for a child.

The amount of kindergarten fees and seasonal closure of a kindergarten

The Chancellor was also asked about kindergarten fees. Parents were concerned about the increase in place fees as well as the differential treatment of families, and the summer place fee.

The Chancellor found that, as long as the municipal council does not exceed the statutory decision-making limits when increasing the kindergarten fee, the Chancellor cannot interfere in determining the fee. The city council may decide how to divide the maintenance burden of kindergartens between the city budget and families, i.e. service recipients.

It is certain that the kindergarten fee may not exceed 20 per cent of the minimum wage established by the Government of the Republic. However, the law allows the municipal council to differentiate the kindergarten fee, taking into account a child's age, the management costs of the childcare institution, or other circumstances. The Chancellor considered the grounds for differentiation established by a regulation of Pärnu City Council (existence of a swimming pool, location of a childcare institution in the city) to be reasonable and permissible.

The Chancellor further explained that families who cannot afford to pay the fee can apply for assistance from the city or social benefit from the state to pay it, or ask to be exempted from the place fee, if the municipality has laid down such a possibility.

Analysing the procedure for paying kindergarten fees in Saku rural municipality, the Chancellor came to the conclusion that the municipal council may also decide that families pay the same amount of fee every month. That way, the fee is not higher in winter months, nor is it lower in summer. Although this solution may seem unfair to parents, it fits within the frame of the law.

One parent asked why the kindergarten was closed after the Christmas holidays, i.e. from 27 to 31 December. The Chancellor explained that, although a child is entitled to attend kindergarten throughout the school year, the kindergarten may still be seasonally closed if the rural municipality or city government so decides on the basis of a proposal from the board of trustees. This decision was not arbitrary and it was announced early on so that parents could reckon with the temporary closure of the kindergarten. The municipality offered childcare as a replacement service for families during that period.

A petitioner enquired whether a provision in Keila City Council regulation, according to which the rate of the kindergarten fee is lower if both parents are registered as residents of Keila city, and higher if only one parent is registered as a resident of Keila, was compatible with the principle of equal treatment. The Chancellor concluded that a local government has a constitutional right to give preference to residents of its community when granting voluntary benefits and support. However, in no case (including when only one parent is the city resident) may the kindergarten fee exceed the upper limit set for the place fee.

A petitioner also asked about the difference in the kindergarten fee established by Saue Rural Municipal Council. According to the procedure set by the council, the kindergarten fee for children over three years of age is two times lower than the fee for younger children. The Chancellor maintained her earlier opinion and explained that introducing a more favourable fee for children over three years of age can be considered a voluntary benefit or support offered by the municipality. Such a benefit does lead to differential treatment, but a reasonable and relevant justification exists for this: to motivate parents of children between the ages of three and seven to put their children in kindergarten in order to support the child's development.

Cooperation of a kindergarten with parents

Complaints from several parents revealed that some kindergartens continued to enforce restrictions imposed due to the Covid-19 epidemic and did not allow parents into

kindergarten premises if parents wanted to take a closer look at life in kindergarten groups.

The Chancellor explained to the parents that the kindergarten cannot impose such a blanket ban. Parents have the legal right to see the conditions in which the child spends a large part of their day, since the child's well-being is primarily the responsibility of the parent. Nor can state supervision replace observations by parents. How parents can get the best overview of the conditions in kindergarten should be decided by the kindergarten together with the parents.

The laws do not regulate how the process of getting used to the kindergarten should take place. The presence of a parent can give the child a greater sense of security and help the child adapt to kindergarten life faster. A parent may wish to evaluate how a particular kindergarten and group suit the child and how the parent can help the child adapt. If parents and kindergarten staff do not reach an agreement on arrangements for adapting a child to the kindergarten, it is worth seeking advice from a child psychologist or educational scientists.

Kindergartens have asked the Chancellor for recommendations on how to interact with a parent who behaves aggressively. The kindergarten must ensure a safe working environment for its staff. Internal rules may regulate how to organise communication between a parent and the childcare institution. It is possible to use several communication channels, but none of them can be completely excluded for security reasons. A kindergarten teacher should receive mental support to cope with conflicts or other difficult situations, for example, from a psychologist.

The Chancellor was also asked about outdoor activities of kindergarten children, specifically how many times a day children should go outside in kindergarten. According to the regulation laying down the health protection requirements for a kindergarten, a child must go outdoors once or twice a day, depending on the weather; and, in good weather, as many activities as possible must be organised outdoors. The Chancellor explained that the statutory ratio of kindergarten staff to children must be guaranteed both indoors and outdoors, i.e. during the entire working time of the group.

The issue of the midday nap of children was raised. Based on her earlier opinion, the Chancellor explained to both the parent and the kindergarten concerned that a child over the age of four should be able to choose between sleep and quiet activities. On the other hand, the daily schedule of childcare (including the time of a midday nap) is determined by agreement between the childcare facility and the parent. Whether a child needs any daytime

sleep is primarily for the parent to assess. If childcare staff notice that a child needs a midday nap and wishes to sleep during resting time, but the parent believes that the child does not need such a long sleep period as prescribed by the daily schedule, the parent should discuss the child's need for sleep with the childcare staff and the best solution for the child should be found together.

A child with special needs in a kindergarten

Under the law, all children from the age of one-and-a-half to seven years must receive a kindergarten place if their parents so wish. No distinction is made with regard to children with poorer health or those needing additional support at a kindergarten. Although legislation and sectoral development plans have deemed it important that a child's special need is noticed at an early stage and the child is quickly offered effective assistance, the actual situation is often different. It still happens that a parent must battle to obtain a support service or a place in an adaptation or special group for their child.

The Chancellor was approached by a parent to whom the rural municipality refused to reimburse expenses incurred in connection with the child's speech therapy. The pre-school counselling team had identified that the child needed the help of a speech therapist, but this was not provided in kindergarten. The Chancellor explained that a child is entitled to receive free speech therapy in kindergarten. Timely treatment increases the likelihood that the child's need for assistance will decrease when going to school. A municipality cannot refuse to provide support to a child due to the fact that there is no speech therapist in the kindergarten. If a local authority places performance of its task on a parent, the local authority must at least reimburse the expenses incurred by the parent.

In another similar case as well, the Chancellor had to explain to the local authority that, although the child receives speech therapy on a small scale within the frame of a rehabilitation service, has a support person in the kindergarten and the kindergarten staff support the child, this does not give the kindergarten the right not to arrange assistance by a speech therapist and a special education teacher for the child. The kindergarten must follow the recommendation of the external advisory team (Rajaleidja).

The Chancellor was also approached by a parent whose child with diabetes could not attend kindergarten because no sufficient support was provided there. The Chancellor's advisers contacted the local authority, and subsequently the city, in cooperation with the kindergarten, found a solution to the problem: a support person was appointed for the child, the procedure

for substituting the support person was agreed, and the kindergarten prepared itself to support the child diagnosed with diabetes.

The Chancellor also had to investigate a case where kindergarten teachers restricted the interaction and play together of children with special needs, as parents of children with special needs feared that interaction between children with different levels of development might have a negative impact on some children.

The Chancellor emphasised that the kindergarten management and teachers must proceed in their work from the best interests of the child. If a decision concerns several children, this principle requires that the interests of each child should be ascertained before a decision is taken and a solution must be found that best meets the interests of all children.

According to an expert who assessed the situation, studies suggest that if meetings between children with different levels of development are well organised then no negative consequences have been observed in the interaction among children. On the contrary, interaction between kindergarten groups with different levels of development can be beneficial for all children. Teachers need to think through such joint activities taking into account the specific needs of children, and to guide and support children. The expert also noted that a disparaging attitude is often caused by parents' own fears and ignorance. Kindergarten teachers can dispel those fears.

General education

Compliance with the duty to attend school

The Chancellor of Justice was asked whether a Ukrainian child residing in Estonia can be exempted from the duty to attend school in Estonia if the child studies at a Ukrainian school online. The Chancellor explained that, according to Estonian law, a child residing in Estonia and subject to the duty to attend school must attend an Estonian school. This also applies to children who moved to Estonia from Ukraine due to the war. The Chancellor added that, understandably, the duty to attend school does not extend to those who have come to Estonia for a short period. However, if a child lives in Estonia, they must also attend school here.

Compliance with the duty to attend school also arose in connection with a petition in which the parent expressed a wish to homeschool their child permanently residing in Estonia, as no

school had been found for the children that would organise homeschooling in English. The Chancellor was asked whether children could study at home under the study programme of a school in the United States.

The Chancellor explained that the Constitution and laws support the view that a child subject to the duty to attend school who is permanently residing in Estonia must study at a school located in Estonia. The state must ensure that all children subject to the duty to attend school living in Estonia can attend school and acquire education of such quality and content that is in accordance with the Constitution and laws of Estonia.

Exclusion from school

The Chancellor received a letter from a pupil asking whether a pupil who had created an Instagram account could be expelled from school because another pupil considered a comment published about them on the account as bullying.

The Chancellor explained that if pupils encounter problems at school, an attempt should be made first of all to find solutions within the school. Social media is mostly not a suitable tool for this. An anonymous account opener must consider the consequences of posting offensive information on social media. Under the Law of Obligations Act (LOA), defamation – including by passing undue value judgments, the unjustified use of a person's name or image – is a violation of privacy or another personality right (§ 1046(1)). Defamation or insult may result in an obligation to compensate for harm caused (§ 1043 LOA).

The school must ensure the safety of all pupils, as prescribed by the internal school rules (§ 44 Basic Schools and Upper Secondary Schools Act (BSUSSA)), and the head of the school is responsible for this. The school's internal rules must state how situations that threaten safety are prevented and cases of bullying resolved. An incident of bullying or violence at school must be reported to the school as soon as possible as well as to the parents of the children involved in the incident.

The head of school is responsible for provision of necessary support to pupils at school. The school may implement support measures and sanctions laid down by the school's internal rules to ensure that pupils behave in accordance with the internal rules and respect others. Internal rules should prevent the emergence of situations jeopardising safety at school (§ 58(1) BSUSSA). Before taking support measures or imposing sanctions, the pupil's explanations are heard and the reasons for the choice of the particular support measure or

sanction are explained to the pupil. In that case, the pupil and their parent must be given an opportunity to express their opinion regarding the pupil's behaviour and imposition of the sanction (§ 58(2) BSUSSA).

Exclusion from school is regulated by § 28 of the Basic Schools and Upper Secondary Schools Act. Under that provision, a pupil is excluded from school if, by their behaviour, the pupil jeopardises the security of others at school or repeatedly violates the internal rules, except a pupil subject to the duty to attend school (§ 28(1) clause 4). The law allows the internal rules of upper secondary schools to stipulate additional grounds for exclusion from upper secondary school (§ 28(2)). These additional conditions may also be stricter than those laid down by law.

Exclusion from school is an extreme measure that a school may not apply arbitrarily. It would be reasonable first of all to try and resolve cases of bullying at the school itself. This can best be done in cooperation between pupils, the school and parents, based on dialogue and mutual respect. A school psychologist can help with hearing the parties. Practical advice on what to do in case of bullying can be found on the websites of the Chancellor of Justice and the Foundation Kiusamisvaba Kool.

Restrictions on leaving the school building

A disgruntled parent wrote to the Chancellor that a school security guard had not allowed their child out of the school building on the basis of a notice of absence written by the parent but required confirmation from the class teacher for the pupil to be able to leave.

The Chancellor explained to the parent that the school must ensure the safety of the child and may therefore restrict a basic school pupil from leaving the school building. The school's internal rules stated that the parent would submit a notice of absence to the class teacher, who would write permission to leave the school, which the child would give to the security guard.

The head of the school explained that the security guard is not part of the school staff and does not have access to information published in the e-school application, so that when allowing children out of the building the guard will rely on permission given by the class teacher. At the same time, the head of the school conceded that the situation described in the petition could have been resolved better, so the child should not have felt uneasy.

Graduating from basic school

The Chancellor was approached by a person in the final year (pre-graduation) at basic school with a concern that due to distance learning it was difficult for pupils to reach at least the 50 per cent threshold required to pass the final exam.

However, the Chancellor of Justice cannot assess education policy decisions. The Chancellor explained that it is also possible to graduate from basic school if a pupil receives less than 50 per cent of the highest possible number of points in one or two final exams. In that case, the pupil can take a re-examination as a school exam. Even if one or two marks in the school examination are unsatisfactory, the pupil can still graduate from basic school and get a school leaving certificate – if the pupil themselves, their parent and the teachers' council agree.

Help for final-year pupils at basic school in preparing for exams is also available from universities that offer free e-courses for this purpose.

Determination of the place of study

The Chancellor was also approached with an accusation that the school had constantly violated a pupil's rights. Among other things, the parent and the school did not reach consensus on determining the child's place of study.

The Chancellor found that organisation of studies outside the school could be carried out on the basis of an individual curriculum. The individual curriculum had to be approved by decree of the head of the school. The head of the school also had to approve an amendment to the individual curriculum that terminated studies outside the school. According to the law, parent(s) must be involved in preparing an individual curriculum, but if no agreement is reached, the head of the school may still approve the curriculum. The parent may challenge the approved curriculum.

The Chancellor recommended that, in the future, the school should proceed from the legal bases laid down by law and the conditions for implementation of those bases when organising studies outside the school for a pupil. The Chancellor also recommended that the school should by decree approve an individual curriculum and changes to the place of study provided therein.

The parent also asked for the position of the teachers' council of the school on whether and how their child's instruction for an additional year could be organised in the form of

homeschooling. The Chancellor noted that the school had not responded to that request, although it should have done so. The Chancellor recommended that, in the future, the school should respond to parents' requests as required by law.

Organisation of the route to school

The Chancellor was asked to assess whether a rural municipality government had acted lawfully in organising school transport for a 12-year-old child. The Chancellor concluded that the rural municipality government had failed to follow the principle of good administration (§ 14 Constitution) when organising the child's school route because it had failed to assess whether the school route was sufficiently safe for the child (§ 16, § 28(1) Constitution) and how this affected the child's ability and will to learn (§ 37(1) Constitution). The municipality had failed to ascertain the child's best interests (§ 21 Child Protection Act) or all the relevant circumstances (§ 6 Administrative Procedure Act).

The local authority must organise a pupil's transport to and back from the school assigned to the pupil based on their place of residence. In this respect, it should be taken into account that the length of walking distance for a child should not be more than three kilometres. The purpose of these requirements is to give an opportunity for the child to receive basic education at the school in their place of residence. When considering transport options, the local authority must also assess how the way to school affects a child's ability and will to learn. The route to school must not endanger the child's life and health, nor should it be too tiring. Once at school, the child must be able to learn.

If circumstances change and the transport arrangements no longer meet the needs and best interests of the child, the local authority must reassess the situation.

Depositing smart devices at school

A parent asked the Chancellor if a school may take and deposit a child's phone without notifying the child's parent.

The Chancellor explained to the petitioner that the law allows a smart device to be taken and kept in deposit if a pupil violates the school's internal rules by using it. The legal basis for depositing the device is laid down by the Basic Schools and Upper Secondary Schools Act. Section 58(3) of the Act sets out sanctions which the school may impose on a pupil who violates the school's internal rules. Under clause 6 of this provision, the school may take and deposit objects (including smart devices) which a pupil uses in a manner incompatible with

the school's internal rules. Smart devices and other objects are stored and returned in accordance with the school's internal rules (§ 58(5) of the Act).

The Chancellor has explained that the right granted to schools to temporarily take and deposit a smart device or other object complies with the Constitution. The internal rules of the school in question did not include the requirement to notify the parent that the child's telephone had been taken and deposited.

Quality of school meals

Some parents have expressed dissatisfaction with the quality of school meals. Provision of meals for pupils at school is organised by the local government as owner of the school in accordance with the health protection requirements established on the basis of the Public Health Act (§ 7(2) clause 8 of the Education Act of the Republic of Estonia). Compliance with the requirements for handling food is checked by the Agriculture and Food Board (§ 47(1) Food Act), while the Health Board, in turn, monitors compliance with the health protection requirements at school (§ 15(1) Public Health Act).

The Chancellor has said that a parent can report their concerns to both the school and the caterer. If the problem is not resolved, parents can discuss the issue with the school board of trustees. The board of trustees may make proposals to the owner of the school to resolve issues related to the school (§ 73(1^1) clause 17 Basic Schools and Upper Secondary Schools Act).

Hobby education

Sports and children's safety

Prompted by an increasing number of cases in recent years in which a trainer has allegedly ill-treated a pupil during training, the Chancellor's advisers thoroughly studied the requirements imposed on work as a trainer. Potential problems were analysed with trainers, athletes, federations and experts in sports ethics. During the discussions, it was found that safe sport for children is supported if the parent, child and trainer have a uniform and clear understanding among themselves of the aims of engaging in sport. It would be best if the child, parent and trainer discussed together all the rules applicable at a training session, including rules aimed at maintaining order. Agreements help prevent misunderstandings, conflicts and ill-treatment of the child.

The parent should also closely monitor how the child feels. The training load and expectations for athletic performance, as well as school absenteeism due to competitions and concerns about coping at school, can affect a child's mental health. The parent must support the child and, together with the school and the trainer, help to find the necessary balance between sports, studies and family life.

The parent also makes sure that the child develops healthy eating, sleep and hygiene habits. The parent should also educate themselves about how to recognise a child's possible ill-treatment and whom to contact with such a suspicion. At the same time, offering guidance during training and competitions should be left to the trainer.

These and many other recommendations were aggregated in the safe sporting guide "Turvaline sport" (Safe sports), about which an information leaflet for children was also prepared.

Discussions with sport experts showed a lack of clear and binding rules in sport as to what kind of behaviour should be considered abuse. It is important to agree on what will be done in the event of a violation of rules and agreements. The Constitution requires that proceedings should always be fair, which also presumes respect for the dignity of all parties.

Supporting hobby education

Parents asked the Chancellor about support for hobby education. For example, the Chancellor had to assess the provisions of the procedure for supporting hobby education in Jõgeva rural municipality. Under this procedure, only young people aged 7–19 who live and study in Jõgeva rural municipality are eligible for support.

In the Chancellor's opinion, the regulation is not unconstitutional, as the provisions of the regulation can be interpreted constitutionally and support can be paid both to those who study at the schools in Jõgeva rural municipality as well as those who study, for example, at a school in a neighbouring municipality. The Chancellor finds it understandable that the municipality wants to encourage young people to attend the municipality's own schools. At the same time, several objective reasons may exist why a young person still chooses a school in another local authority (e.g. young people with special needs, young people acquiring a vocation).

In her position, the Chancellor emphasised that acquiring hobby education and engaging in hobby activities are not only an opportunity for a child or young person to spend their free time, but also affect their studies (formal education) and subsequent life. For this reason, it is extremely important that the municipality should guarantee children and young people opportunities to acquire hobby education and participate in hobby activities.

People also asked about the financing of hobby education and hobby activities for children from Rapla rural municipality in the hobby schools of a neighbouring municipality. According to the municipality's regulation on payment of support, Rapla rural municipality pays a place fee for children attending hobby schools in the neighbouring municipalities. The municipality itself explained the regulation in the same way. The Chancellor noted that, from the point of view of parents, nothing is changed by the fact that part of the money comes from the state budget and part from the municipality's own budget.

The Chancellor was asked why Saue rural municipality does not support acquisition of hobby education by children of kindergarten age in a hobby school in another local authority, although some local authorities do so. It was explained to the parent that local authorities have different possibilities for supporting children's hobby education and hobby activities. Local authorities are also fairly free to decide on the conditions under which they will pay support. Therefore, Saue rural municipality cannot be required to support children of kindergarten age in acquiring hobby education in another municipality.

Children and young people

Estonia ratified the UN Convention on the Rights of the Child in 1991. Under Article 4 of the Convention, States Parties must undertake all appropriate legislative, administrative, and

other measures to ensure respect for the rights recognised in the Convention.

Since 2011, in Estonia, the function of the independent ombudsman for children is performed by the Chancellor of Justice. The task of the Ombudsman for Children is to ensure that all the institutions and persons that pass decisions concerning children proceed from the best interests of the child.

The Chancellor's assistance is often sought by parents who have been unable to agree with each other on matters of child custody, maintenance or access. The Chancellor does not resolve disputes between parents; however, the Chancellor's advisers do help to clarify these situations.

Certainly, it would be best if separated parents could find consensus on issues concerning the child and make a joint effort for the child's well-being. Agreement is part of parental responsibility and, if necessary, assistance of an impartial intermediary, i.e. a national mediator, can be sought to reach agreement. However, state coercion cannot mend human relationships. If parents are unable to agree on custody of the child and access to the child, the dispute is resolved by a court. When making its decision, the court must take into account the specific circumstances and proceed from the child's best interests.

Parents who have decided to have recourse to the court are often also dissatisfied with the actions of a child protection worker and consider the position of the child protection worker submitted to the court to be biased. In these cases, the Chancellor's advisers explain that, in litigation concerning a child's living arrangements, a child protection worker must also submit a reasoned opinion. The child protection worker is expected to offer an assessment as to the best solution for the child. Parents, in turn, can present to the court their views and evidence about the actions and opinions of a child protection worker. The court decides what weight it gives to the position of the child protection worker. The Chancellor of Justice cannot assess a court judgment.

The Chancellor is often approached by parents who have not been given a kindergarten place by a local authority. There are also complaints about lack of necessary support in kindergartens, such as speech therapists. Problems still persist in relation to organising school transport and education for children with special needs, as well as other issues, such as the quality of school meals and the use of smart devices at school. Problems related to hobby education have also been the same over the years: the Chancellor is asked about the funding of hobby education and local government support. The rules on payment of benefits

have caused confusion in cases where a child lives in one local authority but attends school in another.

Prompted by an increasing number of cases in recent years in which a trainer has allegedly ill-treated a pupil during training, the Chancellor's advisers thoroughly studied the requirements imposed on work as a trainer. Potential problems were analysed with trainers, athletes, federations and experts in sports ethics. During the discussions, it was found that safe sport for children is supported if the parent, child and trainer reach a uniform and clear understanding among themselves of the aims of engaging in sport. It would be best if the child, parent and trainer together discussed all the rules applicable at a training session, including rules aimed at maintaining order. Agreements help prevent misunderstandings, conflicts and ill-treatment of the child.

The parent should also closely monitor how the child feels. The training load and expectations for athletic performance, as well as school absenteeism due to competitions and concerns about coping at school, can affect a child's mental health. The parent must support the child and, together with the school and the trainer, help to find the necessary balance between sports, studies and family life. These and many other recommendations were aggregated in the safe sporting guide "Turvaline sport" (Safe sports), about which an information leaflet for children was also prepared.

Discussions with sport experts showed a lack of clear and binding rules in sport as to what kind of behaviour should be considered abuse. It is important to agree on what will be done in the event of a violation of rules or agreements. According to the Constitution, the dignity of all parties must always be respected in any procedure.

Prisons have introduced a number of changes in their work based on recommendations by the Chancellor of Justice. One major and important change is that children coming to a prison to visit a parent no longer have to undergo a strip search. Visiting and waiting rooms in prisons have been made more child-friendly. Imprisoned parents can take a picture with their children during a visit. The living conditions of young people serving a prison sentence have also improved: communal rooms of young people have been fitted with more comfortable furniture, and murals cover the walls of the rooms. Viru Prison has abandoned the daily routine search of young people.

An appropriate physical environment and treatment that respects human dignity makes it easier for young people to return to normal life after release from detention. It is also positive

that the repeated recommendation by the Chancellor of Justice to create an opportunity for prisoners to communicate with their family and next of kin via a video link has finally been taken on board. This issue has been resolved in the Draft Act amending the Imprisonment Act. Video meetings are also important for children whose parent is in prison.

Children and parental care

Parental maintenance obligation

The Chancellor was approached by a parent who was annoyed that the rural municipality government, which had been appointed as guardian of their child, demanded maintenance support for the child from the parent.

The Chancellor's advisers explained to the parent that the municipality had acted lawfully because changes made to the right of custody do not relieve the parent of the obligation to maintain their child. Thus, a parent whose right of custody has been restricted or suspended and whose child is in alternative care must also maintain their child.

Enforcement of a maintenance claim

The law lays down that child maintenance claims are enforced as a priority. Due to a mistake by a bailiff, a child did not receive money from the father's mandatory funded pension disbursement to cover the maintenance claim. Since the bailiff failed to determine the type of claim correctly, the claim reached the Pension Centre's information system as an ordinary attachment and in making disbursements the Pension Centre proceeded from the order in which attachment notices had been received (the maintenance claim was the second in the queue).

The Chancellor found that the bailiff had failed to demonstrate sufficient diligence in enforcing the maintenance claim and recommended that the bailiff should consider remedying their error. In the subsequent dispute, the bailiff took the view that, even though the claim in question was a child maintenance claim, only periodic maintenance claims and not the maintenance debt should be enforced as a matter of priority.

The Chancellor did not agree with this interpretation and reiterated her recommendation. The law does not stipulate that only periodic maintenance claims must be enforced as a matter of priority. Nor does the law contain a provision to the effect that a maintenance debt accumulated from the moment of submission of a maintenance claim to the entry into force

of a court decision, or a maintenance debt incurred after the entry into force of a court decision (including during enforcement proceedings), might not be enforced as a matter of priority.

The bailiff refused to remedy their error and believed that the matter should be resolved in court.

Infants in a shelter

Unfortunately, it still happens that a child has to live in a shelter for a long time. During the reporting year, the Chancellor was contacted by a mother whose pre-school-aged children had lived in a shelter for eight months.

The Chancellor's advisers explained to the city government responsible for the children's living arrangements that a child has the right to alternative care and that the city government must ensure this for the child even if the parental right of custody has been temporarily suspended.

As a rule, a child should stay in a shelter as briefly as possible. Even a child that is in need of substitute care for a brief period should live in a foster family rather than in a shelter. Exceptions are allowed if this is in the child's best interests.

Safety of children in a substitute home

The Chancellor was informed that there could be problems with ensuring the safety of children in one of the substitute homes. The Chancellor's advisers went to check the situation, and it was found that some children living in the family house could indeed endanger others and themselves through their behaviour. Children who had been victims of ill-treatment also lived in the family house.

The Chancellor's adviser asked the Children's House (*Barnahus*) specialists of the Social Insurance Board to assess the children's need for assistance and to offer counselling to the staff of the family house. The Social Insurance Board complied with the proposal. Counselling is ongoing. The Chancellor's advisers recommended that the family house should provide sex education training to family parents, so that they can better protect and support children.

Referral of a child to a closed medical institution

The Chancellor was approached by a parent who was dissatisfied that the rural municipality

government had not applied to the court for referral of their child to a closed medical institution.

The Chancellor explained that an application for involuntary treatment does not necessarily have to be submitted to the court by the municipality where the person in need of treatment lives. According to the law, this application can also be made by a child's guardian and the chief doctor of the hospital. Thus, the parent who has the right to custody of the child may also apply to the court.

Ill-treatment of children in a closed childcare institution

In January 2023, three former employees of Lille Home of AS Hoolekandeteenused were convicted of ill-treatment of disabled children. All the defendants were sentenced to a term of imprisonment on probation. Such a light sentence for this criminal offence breached people's sense of justice and raised many questions among the public. The Estonian Chamber of People with Disabilities asked the Chancellor to assess the proceedings of the case.

The Chancellor concluded that, in this particular case, existing legal provisions and the internal control systems of the institutions did not sufficiently protect the rights of particularly vulnerable children. The Chancellor of Justice asked the Riigikogu to consider introducing new rules so that people in a vulnerable or helpless situation could be protected against ill-treatment or systematic degradation of human dignity. This concerns care for both children with disabilities and adults with disabilities, as well as care for people in need of assistance and support due to age or illness (e.g. failure to help a person in need of support when eating and degrading treatment of those in need).

The Chancellor of Justice also called on the Riigikogu to consider whether it would be necessary to introduce a lifetime ban on working with children if a child has been repeatedly or systematically physically abused. Under § 121 of the Penal Code currently in force, a convicted person may resume work involving children after the person's criminal record has been deleted from the criminal records database. In the Lille Home case, this is three years after the end of the probation period imposed by the court judgment.

Ukrainian children in Estonia

The Chancellor of Justice inquired about the situation of children who fled to Estonia from the war in Ukraine. To that end, the Chancellor's advisers examined the children's study conditions at the Vabaduse Kool (School of Freedom) and also visited the Tallink ship *Isabelle*,

where some refugees were provided with initial accommodation.

The Chancellor's advisers organised a workshop for Ukrainian children on the ship. The advisers told the children about the rights of the child and heard how the children were doing in Estonia and what they would like to be different.

Conversations revealed that it took the children a long time to get to school because their schools were located quite far from the port. Several children followed additionally the Ukrainian school programme. Children also wished to have more opportunities to do sports and engage in hobbies. Due to the heavy study load, several children (especially those following both the Estonian and Ukrainian school curricula) did not make it to the training, hobby groups or youth centre, which are quite far away from the port. The ship had play areas for smaller children, but there were no rooms adapted to the needs and interests of older children.

The Chancellor recommended offering children more recreational opportunities on board the ship and providing information on public sporting opportunities near the port. All the observations and recommendations were sent to the Social Insurance Board.

The Chancellor's advisers also visited family houses where Ukrainian children who arrived in Estonia without their parents were living. Ukrainian children living in family houses were mostly satisfied with their lives. They said that they were well received in Estonia. Ukrainian children in family houses have the same living conditions as Estonian children who have been deprived of parental care. During the visits, it was found that some young people needed support in dealings with the authorities (for example, applying for documents) and finding a family doctor, and some needed help in finding a job and starting an independent life. The Chancellor's advisers explained to young people and family parents what their rights and opportunities are and where to ask for support if necessary.

Kindergarten

The Chancellor receives many petitions from parents complaining that not enough kindergarten places are available for their children of creche age.

Under the Preschool Childcare Institutions Act, a rural municipality or city must give a kindergarten place to each child at least 1.5 years old whose residence is within the boundaries of that rural municipality or city and coincides with the residence of at least one

of the parents. A rural municipality or city has complied with its duty if it gives a family a kindergarten place within a reasonable time. Merely placing a child in a queue for a kindergarten place is not sufficient.

The state should understand that even though the law requires a local authority to ensure a kindergarten place, all in all the shortage of kindergarten places is not just the problem of occasional families or merely local authorities. Under the Constitution, provision of education falls under state supervision. If a local authority is unable to comply with the law and regularly leaves parents in trouble, the state must intervene.

Ensuring a kindergarten place

According to the law, a local authority must give a kindergarten place to each child at least 1.5 years old whose parent expresses a wish for this. If a local authority has failed to comply with this requirement, the Chancellor will explain to parents their right and how they can defend their rights in court, if necessary.

Many parents have had recourse to court with a complaint about having been deprived of a kindergarten place, and extensive case-law has developed based on these cases. According to the courts, a family must generally be given a kindergarten place within two months of submission of an application. The courts have ordered local authorities to provide kindergarten places, and local authorities have also complied with court decisions. The courts have also ordered local authorities to pay compensation for the costs incurred by the family because the local authority had failed to give them a kindergarten place within a reasonable time.

In her opinion to the Supreme Court, the Chancellor emphasised that, according to the Constitution, local authorities may not refuse to comply with the law. Through the population register, cities and rural municipalities can generally find out how many children of kindergarten and school age live in their territory and how many children will soon reach kindergarten age. A local authority can also give a family a kindergarten place in cooperation with a neighbouring municipality or a private kindergarten.

In view of this, the Chancellor concluded that the provision in a regulation of Rae rural municipality, which made obtaining a kindergarten place dependent on the availability of a vacancy in the relevant age group in the kindergarten, was unconstitutional. The Supreme Court agreed with the Chancellor and acknowledged that the provision in question was

unconstitutional and invalid (judgment in case No 5-22-10).

In its decision, the Supreme Court noted that both the state and local authorities are responsible for access to preschool education. They both have a responsibility to find a systemic solution to the problem that will enable children to receive preschool education and help families reconcile their professional and family lives. In the opinion of the judicial panel, a situation cannot be allowed in which the availability of public services largely depends on the extent to which a city or rural municipality decides to fulfil the obligations imposed on it by law (judgment No 5-22-10, para. 58).

The Chancellor is convinced (reply to a question by a member of the Riigikogu) that the state as a whole is ultimately responsible for access to education, including preschool education. Under the Constitution, provision of education falls under state supervision. Consequently, the state must be active in case it is found that a service that is so important for children and families is not provided as prescribed by law. The fact that it is possible for parents to claim compensation from the local authority directly or through the court, or that in some places social benefits are paid if the local authority violates the law and fails to offer a kindergarten place, does not solve the problem and does not comply with the principle of the rule of law. Laws must be complied with.

Availability of a kindergarten place

Many parents have considered a kindergarten place offered to them as unsuitable, since in the family's opinion, the kindergarten is located unreasonably far from home.

According to the Chancellor's assessment, the law does not give a parent the right to get a kindergarten place in the specific kindergarten that the parent prefers or that is closest to their residence or place of work. It is important that the child has a reasonable opportunity to attend kindergarten, taking into account public transport timetables or the time required for a car trip and related costs (see Tallinn Court of Appeal judgment in case No 3-21-336).

When resolving a petition concerning this issue, the Chancellor concluded that the particular municipal council had not acted manifestly unreasonably when designating kindergarten service areas. What is important is that the kindergarten service should be available to a family.

In another case, the Chancellor explained that a travel time between 10 and 15 minutes cannot be considered excessively tiring or burdensome for a child. However, since the child

cannot go to the kindergarten on foot, the parent has the right to assume that the local authority will arrange a transport opportunity for the family, if necessary. It should be borne in mind that a kindergarten day, which also includes going to the kindergarten and time spent on the trip home, should not be excessively long and tiring for a child.

The amount of kindergarten fees and seasonal closure of a kindergarten

The Chancellor was also asked about kindergarten fees. Parents were concerned about the increase in place fees as well as the differential treatment of families, and the summer place fee.

The Chancellor found that, as long as the municipal council does not exceed the statutory decision-making limits when increasing the kindergarten fee, the Chancellor cannot interfere in determining the fee. The city council may decide how to divide the maintenance burden of kindergartens between the city budget and families, i.e. service recipients.

It is certain that the kindergarten fee may not exceed 20 per cent of the minimum wage established by the Government of the Republic. However, the law allows the municipal council to differentiate the kindergarten fee, taking into account a child's age, the management costs of the childcare institution, or other circumstances. The Chancellor considered the grounds for differentiation established by a regulation of Pärnu City Council (existence of a swimming pool, location of a childcare institution in the city) to be reasonable and permissible.

The Chancellor further explained that families who cannot afford to pay the fee can apply for assistance from the city or social benefit from the state to pay it, or ask to be exempted from the place fee, if the municipality has laid down such a possibility.

Analysing the procedure for paying kindergarten fees in Saku rural municipality, the Chancellor came to the conclusion that the municipal council may also decide that families pay the same amount of fee every month. That way, the fee is not higher in winter months, nor is it lower in summer. Although this solution may seem unfair to parents, it fits within the frame of the law.

One parent asked why the kindergarten was closed after the Christmas holidays, i.e. from 27 to 31 December. The Chancellor explained that, although a child is entitled to attend kindergarten throughout the school year, the kindergarten may still be seasonally closed if the rural municipality or city government so decides on the basis of a proposal from the

board of trustees. This decision was not arbitrary and it was announced early on so that parents could reckon with the temporary closure of the kindergarten. The municipality offered childcare as a replacement service for families during that period.

A petitioner enquired whether a provision in Keila City Council regulation, according to which the rate of the kindergarten fee is lower if both parents are registered as residents of Keila city, and higher if only one parent is registered as a resident of Keila, was compatible with the principle of equal treatment. The Chancellor concluded that a local government has a constitutional right to give preference to residents of its community when granting voluntary benefits and support. However, in no case (including when only one parent is the city resident) may the kindergarten fee exceed the upper limit set for the place fee.

A petitioner also asked about the difference in the kindergarten fee established by Saue Rural Municipal Council. According to the procedure set by the council, the kindergarten fee for children over three years of age is two times lower than the fee for younger children. The Chancellor maintained her earlier opinion and explained that introducing a more favourable fee for children over three years of age can be considered a voluntary benefit or support offered by the municipality. Such a benefit does lead to differential treatment, but a reasonable and relevant justification exists for this: to motivate parents of children between the ages of three and seven to put their children in kindergarten in order to support the child's development.

Cooperation of a kindergarten with parents

Complaints from several parents revealed that some kindergartens continued to enforce restrictions imposed due to the Covid-19 epidemic and did not allow parents into kindergarten premises if parents wanted to take a closer look at life in kindergarten groups.

The Chancellor explained to the parents that the kindergarten cannot impose such a blanket ban. Parents have the legal right to see the conditions in which the child spends a large part of their day, since the child's well-being is primarily the responsibility of the parent. Nor can state supervision replace observations by parents. How parents can get the best overview of the conditions in kindergarten should be decided by the kindergarten together with the parents.

The laws do not regulate how the process of getting used to the kindergarten should take place. The presence of a parent can give the child a greater sense of security and help the

child adapt to kindergarten life faster. A parent may wish to evaluate how a particular kindergarten and group suit the child and how the parent can help the child adapt. If parents and kindergarten staff do not reach an agreement on arrangements for adapting a child to the kindergarten, it is worth seeking advice from a child psychologist or educational scientists.

Kindergartens have asked the Chancellor for recommendations on how to interact with a parent who behaves aggressively. The kindergarten must ensure a safe working environment for its staff. Internal rules may regulate how to organise communication between a parent and the childcare institution. It is possible to use several communication channels, but none of them can be completely excluded for security reasons. A kindergarten teacher should receive mental support to cope with conflicts or other difficult situations, for example, from a psychologist.

The Chancellor was also asked about outdoor activities of kindergarten children, specifically how many times a day children should go outside in kindergarten. According to the regulation laying down the health protection requirements for a kindergarten, a child must go outdoors once or twice a day, depending on the weather; and, in good weather, as many activities as possible must be organised outdoors. The Chancellor explained that the statutory ratio of kindergarten staff to children must be guaranteed both indoors and outdoors, i.e. during the entire working time of the group.

The issue of the midday nap of children was raised. Based on her earlier opinion, the Chancellor explained to both the parent and the kindergarten concerned that a child over the age of four should be able to choose between sleep and quiet activities. On the other hand, the daily schedule of childcare (including the time of a midday nap) is determined by agreement between the childcare facility and the parent. Whether a child needs any daytime sleep is primarily for the parent to assess. If childcare staff notice that a child needs a midday nap and wishes to sleep during resting time, but the parent believes that the child does not need such a long sleep period as prescribed by the daily schedule, the parent should discuss the child's need for sleep with the childcare staff and the best solution for the child should be found together.

A child with special needs in a kindergarten

Under the law, all children from the age of one-and-a-half to seven years must receive a kindergarten place if their parents so wish. No distinction is made with regard to children with poorer health or those needing additional support at a kindergarten. Although legislation and

sectoral development plans have deemed it important that a child's special need is noticed at an early stage and the child is quickly offered effective assistance, the actual situation is often different. It still happens that a parent must battle to obtain a support service or a place in an adaptation or special group for their child.

The Chancellor was approached by a parent to whom the rural municipality refused to reimburse expenses incurred in connection with the child's speech therapy. The pre-school counselling team had identified that the child needed the help of a speech therapist, but this was not provided in kindergarten. The Chancellor explained that a child is entitled to receive free speech therapy in kindergarten. Timely treatment increases the likelihood that the child's need for assistance will decrease when going to school. A municipality cannot refuse to provide support to a child due to the fact that there is no speech therapist in the kindergarten. If a local authority places performance of its task on a parent, the local authority must at least reimburse the expenses incurred by the parent.

In another similar case as well, the Chancellor had to explain to the local authority that, although the child receives speech therapy on a small scale within the frame of a rehabilitation service, has a support person in the kindergarten and the kindergarten staff support the child, this does not give the kindergarten the right not to arrange assistance by a speech therapist and a special education teacher for the child. The kindergarten must follow the recommendation of the external advisory team (Rajaleidja).

The Chancellor was also approached by a parent whose child with diabetes could not attend kindergarten because no sufficient support was provided there. The Chancellor's advisers contacted the local authority, and subsequently the city, in cooperation with the kindergarten, found a solution to the problem: a support person was appointed for the child, the procedure for substituting the support person was agreed, and the kindergarten prepared itself to support the child diagnosed with diabetes.

The Chancellor also had to investigate a case where kindergarten teachers restricted the interaction and play together of children with special needs, as parents of children with special needs feared that interaction between children with different levels of development might have a negative impact on some children.

The Chancellor emphasised that the kindergarten management and teachers must proceed in their work from the best interests of the child. If a decision concerns several children, this principle requires that the interests of each child should be ascertained before a decision is

taken and a solution must be found that best meets the interests of all children.

According to an expert who assessed the situation, studies suggest that if meetings between children with different levels of development are well organised then no negative consequences have been observed in the interaction among children. On the contrary, interaction between kindergarten groups with different levels of development can be beneficial for all children. Teachers need to think through such joint activities taking into account the specific needs of children, and to guide and support children. The expert also noted that a disparaging attitude is often caused by parents' own fears and ignorance. Kindergarten teachers can dispel those fears.

Compensation for childcare service

The Chancellor made a proposal to Tallinn City Council to bring the first sentence of § 2(5) of the council regulation on the "Procedure for financing the childcare service" into line with the principle of equal treatment set out in § 12 of the Constitution. Under that provision, an application for childcare service compensation may be made only as of the day following termination of parental benefit for the child for whom childcare is purchased.

When setting the conditions for the childcare service, the council failed to take into account that a family may also use parental benefit in parts, on a single-day basis, until the child reaches the age of three.

According to the regulation, parents who are not paid parental benefit or who receive parental benefit for another child who does not attend childcare are entitled to childcare service compensation. However, parents who need a place in childcare but who continue to be entitled to parental benefit are not entitled to childcare service compensation. This means that parents of children between the ages of one-and-a-half and three years old are treated differently when granting childcare service compensation. No relevant reason exists for such a difference in treatment.

School

Compliance with the duty to attend school

The Chancellor of Justice was asked whether a Ukrainian child residing in Estonia can be exempted from the duty to attend school in Estonia if the child studies at a Ukrainian school online. The Chancellor explained that, according to Estonian law, a child residing in Estonia

and subject to the duty to attend school must attend an Estonian school. This also applies to children who moved to Estonia from Ukraine due to the war. The Chancellor added that, understandably, the duty to attend school does not extend to those who have come to Estonia for a short period. However, if a child lives in Estonia, they must also attend school here.

Compliance with the duty to attend school also arose in connection with a petition in which the parent expressed a wish to homeschool their child permanently residing in Estonia, as no school had been found for the children that would organise homeschooling in English. The Chancellor was asked whether children could study at home under the study programme of a school in the United States.

The Chancellor explained that the Constitution and laws support the view that a child subject to the duty to attend school who is permanently residing in Estonia must study at a school located in Estonia. The state must ensure that all children subject to the duty to attend school living in Estonia can attend school and acquire education of such quality and content that is in accordance with the Constitution and laws of Estonia.

Exclusion from school

The Chancellor received a letter from a pupil asking whether a pupil who had created an Instagram account could be expelled from school because another pupil considered a comment published about them on the account as bullying.

The Chancellor explained that if pupils encounter problems at school, an attempt should be made first of all to find solutions within the school. Social media is mostly not a suitable tool for this. An anonymous account opener must consider the consequences of posting offensive information on social media. Under the Law of Obligations Act (LOA), defamation – including by passing undue value judgments, the unjustified use of a person's name or image – is a violation of privacy or another personality right (§ 1046(1)). Defamation or insult may result in an obligation to compensate for harm caused (§ 1043 LOA).

The school must ensure the safety of all pupils, as prescribed by the internal school rules (§ 44 Basic Schools and Upper Secondary Schools Act (BSUSSA)), and the head of the school is responsible for this. The school’s internal rules must state how situations that threaten safety are prevented and cases of bullying resolved. An incident of bullying or violence at school must be reported to the school as soon as possible as well as to the parents of the children

involved in the incident.

The head of school is responsible for provision of necessary support to pupils at school. The school may implement support measures and sanctions laid down by the school's internal rules to ensure that pupils behave in accordance with the internal rules and respect others. Internal rules should prevent the emergence of situations jeopardising safety at school (§ 58(1) BSUSSA). Before taking support measures or imposing sanctions, the pupil's explanations are heard and the reasons for the choice of the particular support measure or sanction are explained to the pupil. In that case, the pupil and their parent must be given an opportunity to express their opinion regarding the pupil's behaviour and imposition of the sanction (§ 58(2) BSUSSA).

Exclusion from school is regulated by § 28 of the Basic Schools and Upper Secondary Schools Act. Under that provision, a pupil is excluded from school if, by their behaviour, the pupil jeopardises the security of others at school or repeatedly violates the internal rules, except a pupil subject to the duty to attend school (§ 28(1) clause 4). The law allows the internal rules of upper secondary schools to stipulate additional grounds for exclusion from upper secondary school (§ 28(2)). These additional conditions may also be stricter than those laid down by law.

Exclusion from school is an extreme measure that a school may not apply arbitrarily. It would be reasonable first of all to try and resolve cases of bullying at the school itself. This can best be done in cooperation between pupils, the school and parents, based on dialogue and mutual respect. A school psychologist can help with hearing the parties. Practical advice on what to do in case of bullying can be found on the websites of the Chancellor of Justice and the Foundation Kiusamisvaba Kool.

Restrictions on leaving the school building

A disgruntled parent wrote to the Chancellor that a school security guard had not allowed their child out of the school building on the basis of a notice of absence written by the parent but required confirmation from the class teacher for the pupil to be able to leave.

The Chancellor explained to the parent that the school must ensure the safety of the child and may therefore restrict a basic school pupil from leaving the school building. The school's internal rules stated that the parent would submit a notice of absence to the class teacher, who would write permission to leave the school, which the child would give to the security

guard.

The head of the school explained that the security guard is not part of the school staff and does not have access to information published in the e-school application, so that when allowing children out of the building the guard will rely on permission given by the class teacher. At the same time, the head of the school conceded that the situation described in the petition could have been resolved better, so the child should not have felt uneasy.

Graduating from basic school

The Chancellor was approached by a person in the final year (pre-graduation) at basic school with a concern that due to distance learning it was difficult for pupils to reach at least the 50 per cent threshold required to pass the final exam.

However, the Chancellor of Justice cannot assess education policy decisions. The Chancellor explained that it is also possible to graduate from basic school if a pupil receives less than 50 per cent of the highest possible number of points in one or two final exams. In that case, the pupil can take a re-examination as a school exam. Even if one or two marks in the school examination are unsatisfactory, the pupil can still graduate from basic school and get a school leaving certificate – if the pupil themselves, their parent and the teachers' council agree.

Help for final-year pupils at basic school in preparing for exams is also available from universities that offer free e-courses for this purpose.

Determination of the place of study

The Chancellor was also approached with an accusation that the school had constantly violated a pupil's rights. Among other things, the parent and the school did not reach consensus on determining the child's place of study.

The Chancellor found that organisation of studies outside the school could be carried out on the basis of an individual curriculum. The individual curriculum had to be approved by decree of the head of the school. The head of the school also had to approve an amendment to the individual curriculum that terminated studies outside the school. According to the law, parent(s) must be involved in preparing an individual curriculum, but if no agreement is reached, the head of the school may still approve the curriculum. The parent may challenge the approved curriculum.

The Chancellor recommended that, in the future, the school should proceed from the legal

bases laid down by law and the conditions for implementation of those bases when organising studies outside the school for a pupil. The Chancellor also recommended that the school should by decree approve an individual curriculum and changes to the place of study provided therein.

The parent also asked for the position of the teachers' council of the school on whether and how their child's instruction for an additional year could be organised in the form of homeschooling. The Chancellor noted that the school had not responded to that request, although it should have done so. The Chancellor recommended that, in the future, the school should respond to parents' requests as required by law.

Organisation of the route to school

The Chancellor was asked to assess whether a rural municipality government had acted lawfully in organising school transport for a 12-year-old child. The Chancellor concluded that the rural municipality government had failed to follow the principle of good administration (§ 14 Constitution) when organising the child's school route because it had failed to assess whether the school route was sufficiently safe for the child (§ 16, § 28(1) Constitution) and how this affected the child's ability and will to learn (§ 37(1) Constitution). The municipality had failed to ascertain the child's best interests (§ 21 Child Protection Act) or all the relevant circumstances (§ 6 Administrative Procedure Act).

The local authority must organise a pupil's transport to and back from the school assigned to the pupil based on their place of residence. In this respect, it should be taken into account that the length of walking distance for a child should not be more than three kilometres. The purpose of these requirements is to give an opportunity for the child to receive basic education at the school in their place of residence. When considering transport options, the local authority must also assess how the way to school affects a child's ability and will to learn. The route to school must not endanger the child's life and health, nor should it be too tiring. Once at school, the child must be able to learn.

If circumstances change and the transport arrangements no longer meet the needs and best interests of the child, the local authority must reassess the situation.

Depositing smart devices at school

A parent asked the Chancellor if a school may take and deposit a child's phone without notifying the child's parent.

The Chancellor explained to the petitioner that the law allows a smart device to be taken and kept in deposit if a pupil violates the school's internal rules by using it. The legal basis for depositing the device is laid down by the Basic Schools and Upper Secondary Schools Act. Section 58(3) of the Act sets out sanctions which the school may impose on a pupil who violates the school's internal rules. Under clause 6 of this provision, the school may take and deposit objects (including smart devices) which a pupil uses in a manner incompatible with the school's internal rules. Smart devices and other objects are stored and returned in accordance with the school's internal rules (§ 58(5) of the Act).

The Chancellor has explained that the right granted to schools to temporarily take and deposit a smart device or other object complies with the Constitution. The internal rules of the school in question did not include the requirement to notify the parent that the child's telephone had been taken and deposited.

Quality of school meals

Some parents have expressed dissatisfaction with the quality of school meals. Provision of meals for pupils at school is organised by the local government as owner of the school in accordance with the health protection requirements established on the basis of the Public Health Act (§ 7(2) clause 8 of the Education Act of the Republic of Estonia). Compliance with the requirements for handling food is checked by the Agriculture and Food Board (§ 47(1) Food Act), while the Health Board, in turn, monitors compliance with the health protection requirements at school (§ 15(1) Public Health Act).

The Chancellor has said that a parent can report their concerns to both the school and the caterer. If the problem is not resolved, parents can discuss the issue with the school board of trustees. The board of trustees may make proposals to the owner of the school to resolve issues related to the school (§ 73(1^1) clause 17 Basic Schools and Upper Secondary Schools Act).

Hobby education

Sports and children's safety

Prompted by an increasing number of cases in recent years in which a trainer has allegedly ill-treated a pupil during training, the Chancellor's advisers thoroughly studied the requirements imposed on work as a trainer. Potential problems were analysed with trainers, athletes, federations and experts in sports ethics. During the discussions, it was found that safe sport for children is supported if the parent, child and trainer have a uniform and clear understanding among themselves of the aims of engaging in sport. It would be best if the child, parent and trainer discussed together all the rules applicable at a training session, including rules aimed at maintaining order. Agreements help prevent misunderstandings, conflicts and ill-treatment of the child.

The parent should also closely monitor how the child feels. The training load and expectations for athletic performance, as well as school absenteeism due to competitions and concerns about coping at school, can affect a child's mental health. The parent must support the child and, together with the school and the trainer, help to find the necessary balance between sports, studies and family life.

The parent also makes sure that the child develops healthy eating, sleep and hygiene habits. The parent should also educate themselves about how to recognise a child's possible ill-treatment and whom to contact with such a suspicion. At the same time, offering guidance during training and competitions should be left to the trainer.

These and many other recommendations were aggregated in the safe sporting guide "Turvaline sport" (Safe sports), about which an information leaflet for children was also prepared.

Discussions with sport experts showed a lack of clear and binding rules in sport as to what kind of behaviour should be considered abuse. It is important to agree on what will be done in the event of a violation of rules and agreements. The Constitution requires that proceedings should always be fair, which also presumes respect for the dignity of all parties.

Supporting hobby education

Parents asked the Chancellor about support for hobby education. For example, the Chancellor had to assess the provisions of the procedure for supporting hobby education in Jõgeva rural municipality. Under this procedure, only young people aged 7–19 who live and study in Jõgeva rural municipality are eligible for support.

In the Chancellor's opinion, the regulation is not unconstitutional, as the provisions of the regulation can be interpreted constitutionally and support can be paid both to those who study at the schools in Jõgeva rural municipality as well as those who study, for example, at a school in a neighbouring municipality. The Chancellor finds it understandable that the municipality wants to encourage young people to attend the municipality's own schools. At the same time, several objective reasons may exist why a young person still chooses a school in another local authority (e.g. young people with special needs, young people acquiring a vocation).

In her position, the Chancellor emphasised that acquiring hobby education and engaging in hobby activities are not only an opportunity for a child or young person to spend their free time, but also affect their studies (formal education) and subsequent life. For this reason, it is extremely important that the municipality should guarantee children and young people opportunities to acquire hobby education and participate in hobby activities.

People also asked about the financing of hobby education and hobby activities for children from Rapla rural municipality in the hobby schools of a neighbouring municipality. According to the municipality's regulation on payment of support, Rapla rural municipality pays a place fee for children attending hobby schools in the neighbouring municipalities. The municipality itself explained the regulation in the same way. The Chancellor noted that, from the point of view of parents, nothing is changed by the fact that part of the money comes from the state budget and part from the municipality's own budget.

The Chancellor was asked why Saue rural municipality does not support acquisition of hobby education by children of kindergarten age in a hobby school in another local authority, although some local authorities do so. It was explained to the parent that local authorities have different possibilities for supporting children's hobby education and hobby activities. Local authorities are also fairly free to decide on the conditions under which they will pay support. Therefore, Saue rural municipality cannot be required to support children of kindergarten age in acquiring hobby education in another municipality.

Children and health

In recent years, healthcare professionals have begun to ask more frequently about whether and in what circumstances they are allowed to provide child health data to child protection workers or the police.

In response to a request from general practitioners in this regard, the Chancellor of Justice explained that, under the Law of Obligations Act, a healthcare professional is obliged to maintain patient confidentiality, which includes all personal data that the doctor has become aware of in the course of their work. This means that information concerning health, as well as the family and financial situation, must be protected. Any breach of patient confidentiality is unlawful without either the patient's consent or a clear legal basis for doing so.

Under the Child Protection Act, everyone must report a child in need or in danger. This means that a child in need or in danger must also be reported by doctors. The obligation is to report not only an abused or a neglected child, but also a child whose well-being is otherwise endangered or whose behaviour endangers others. In addition, healthcare professionals may reasonably deviate from the obligation to maintain patient confidentiality if a failure to disclose data may result in the patient causing significant harm to themselves or others.

In any other cases, a child protection worker is not entitled to request data about the patient, and the doctor is not obliged to disclose professional secrets. The Ministry of Social Affairs is analysing whether it is necessary to amend the Child Protection Act so that child protection workers would have the right to ask a doctor for more data about a patient.

Patient confidentiality must also be protected in criminal proceedings (i.e. including in the case of procedural measures carried out by the police). The Supreme Court has emphasised that, although the Code of Criminal Procedure stipulates that a doctor may refuse to testify about facts that they have learned in the course of their work, in the context of patient confidentiality this must be understood as an obligation: the doctor may not give such testimony.

Prevention and promotion

The Chancellor's task as Ombudsman for Children involves raising awareness of the rights of children and ensuring that children can actively participate in the society. The Ombudsman for Children initiates analytical studies and surveys and, on that basis, makes recommendations for improving the situation of children. The Ombudsman for Children

represents the rights of children in the law-making process and organises a variety of training events and seminars on the rights of the child.

Meetings of the Ombudsman for Children with children and young people have traditionally played an important promotional role regarding the rights of children. During the previous reporting year as well, pupils from several upper secondary schools visited the Chancellor's Office. Pupils from Miina Härma Upper Secondary School and Kaarli School were able to participate in a civics class organised by the Chancellor of Justice, and final-year pupils at the Tallinn Secondary School of Science (Tallinna Reaalkool) were given an overview of the duties of the Chancellor of Justice and the Ombudsman for Children.

Children and young people help to select films for the programme on the rights of children featured in the frame of the youth and children's film festival (Just Film), held as part of the Black Nights Film Festival (PÖFF); and they also participate in the jury of the merit awards "Lastega ja lastele" (With and For Children), as well as in the work of the Advisory Committee on Human Rights set up by the Chancellor.

International cooperation in protecting the rights of the child

The Office of the Chancellor of Justice once again participated in the project "Let's Talk Young" organised under the auspices of the European Network of Ombudspersons for Children (ENOC). Eleven young people from Estonia aged 13-16 years participated in the project. This time young people discussed how the Ombudsman for Children can best promote and protect the rights of children and young people while acting together with children and young people. During the meetings, the Chancellor's advisers introduced their work to young people and listened to young people's ideas, experiences and proposals. Young people had an opportunity to attend a meeting of Estonian, Latvian, Lithuanian and Polish ombudspersons for children and discuss about the work of ombudspersons with them.

Young people participating in the project also visited the Riigikogu. They were welcomed by Helmen Kütt, who introduced the work of the Riigikogu and spoke about cooperation between the Riigikogu and the Office of the Chancellor of Justice. As part of the project, young people met several other inspiring people. Keiu Telve from the Centre for Applied Anthropology spoke about accessibility, Roger Tibar from the Education and Youth Board about participation of young people, and Helen Noormets, who has been the leader of several social campaigns for young people, about promotional work.

Based on these meetings, young people made their recommendations to ombudspersons for children. Since, in the opinion of young people, adults often communicate with them from a position of power and do not accept them as equal partners, young people expect ombudspersons for children to explain to adults that the interests and views of children should be taken into account more in society and that young people must be heard more often. It was emphasised that, in order to understand a child, it is important to place yourself in the situation of the child. It is important for young people that every adult should take responsibility to listen to a child's or young person's concerns and personally try to help the child or young person, rather than immediately refer them to the next helper. According to young people, they need the support of someone reliable at the local level (e.g. at a youth centre) who would help resolve smaller problems and, in order to resolve larger problems, refer them further (for example, to the Chancellor of Justice).

Two young people attended the meeting of ENOC young advisors in Malta, where they could present the recommendations by young people in Estonia. European ombudspersons for children can now examine the proposals made by young people and, building on them, make their work even more child-friendly.

Graffiti on climate justice was also completed, which was the focus of young advisors of the Ombudsman for Children last year.

Information materials, training and debates

In recent years, the Chancellor has often been asked in which cases it is necessary to obtain the consent of the parents for medical treatment of a child.

In provision of healthcare services, the rule is that a patient may be examined and provided with a healthcare service only with their consent. If a child is not able to responsibly consider the arguments for and against, the child's parents have the right to decide. However, if a healthcare professional deems that a child has the capacity to reason (§ 766(4) Law of Obligations Act), then the child themselves gives consent to treatment or a medical procedure. In that case, a parent cannot make the decision on the child's health instead of the child. This topic has been explained in more detail in the guidance materials "Lapspatsiendi teavitatud nõusolek" (Informed consent of the child patient), "Lapsesõbralik tervishoid. Infoleht lapsele" (Child-friendly healthcare. Information leaflet for the child), and "Lapsesõbralik tervishoid. Infoleht täiskasvanule" (Child-friendly healthcare. Information

leaflet for the adult).

Healthcare professionals find it quite difficult to assess a child's capacity to reason because they are not trained for this nor are there enough explanatory writings published on the subject.

In order to find a solution to the problem, the Office of the Chancellor of Justice convened delegates from representative organisations of healthcare professionals, health colleges and the Ministry of Social Affairs. Discussions at the meetings focused on what could be done together to clarify the right of discretion and to train healthcare professionals. It was noted that teaching current and future healthcare professionals the necessary skills should be part of higher education and further training in health. Thus, educational institutions, the Ministry of Education and Research and the Ministry of Social Affairs play an important role in training healthcare professionals.

It was agreed that participants would discuss in their own organisations the issues about which healthcare professionals need more detailed guidance and, under the leadership of the Chancellor of Justice, guidelines would be supplemented explaining assessment of a child's capacity to reason.

The Chancellor's advisers will continue to introduce the rights of the child patient. During the reporting year, a Chancellor's adviser gave a presentation on "The rights of a child patient in theory and practice" at a conference of the Association of Pharmacists. The topic of patient autonomy and decision-making competence was explained by a Chancellor's adviser in the general practitioners' journal *Perearst*.

The Chancellor's advisers help to prepare video and printed materials introducing the rights of the child. During the year, a guide on safe sport was prepared, and in cooperation with the youth information service *Teeviit Juunior* a video podcast was produced in which young hosts debated with a Chancellor's adviser about what the child's rights and duties are and why they are necessary.

The Chancellor of Justice participated in several online discussions organised by the Social Insurance Board. Together with leaders of the youth guarantee support system, intended for young people who are not in education or employment, it was discussed how best to support young people, while with leaders of the child helpline website discussions were held about what can be done for children. The Chancellor of Justice also spoke at the hobby education

conference "Hobby Education Without Borders" in Narva, at a seminar introducing child protection reform held in Tallinn, and at the conference “Õnnelik laps – kuulatud, kaasatud ja mõistetud” (A happy child – heard, engaged and understood) organised by the Estonian Union for Child Welfare.

The Chancellor’s advisers also regularly train specialists working with children. During the past year, training was offered to child protection workers, judges, judicial clerks, doctors, nurses, psychologists, and people working with children in non-profit organisations and children’s institutions. The Chancellor’s advisers participated in discussions on safe sports and ethical prevention at the Opinion Festival.

Report by the Chancellor of Justice to the UN Committee on the Rights of the Child

Implementation of the UN Convention on the Rights of the Child is monitored by the UN Committee on the Rights of the Child to which countries must submit regular reports about the situation of the rights of children. Based on these reports, the Committee assesses how the rights of the child are guaranteed and makes recommendations to the country for improving the situation.

The Estonian government submitted its report on implementation of the Convention to the UN Committee on the Rights of the Child in May 2023. The Chancellor of Justice also prepared an overview of the situation of children’s rights in Estonia. The Chancellor submitted its report to the Committee on the Rights of the Child in August 2023.

Children’s report to the UN Committee on the Rights of the Child

This autumn Estonian children and young people will also submit their overview to the Committee on the Rights of the Child. The children’s report was drawn up by ambassadors for the rights of the child from the Estonian Union for Child Welfare. They were assisted by advisers from the Children’s and Youth Rights Department of the Chancellor’s Office and staff of the Union for Child Welfare. Young people themselves were able to decide how to gather thoughts and opinions for the report from as many children as possible, and in what form to present their messages to the UN Committee on the Rights of the Child.

To that end, young people participating in the project decided to organise workshops where they introduced the rights of the child to children of different ages and enquired what could be improved in their lives. The workshops were led by children’s rights ambassadors. The suggestions and thoughts expressed by the children participating in the workshops were

collected anonymously. It was also explained to children and young people whom they can approach in case of questions about the rights of the child or if they wish to talk about their concerns (school psychologists, a child helpline, a child protection worker, the Chancellor of Justice). Information materials about the rights of the child were also distributed.

Children's rights ambassadors also helped children create an online questionnaire. Schools and youth centres were informed about the possibility to fill out the questionnaire, a call was published on social media, and the event was also presented at the annual conference of the Union for Child Welfare, as well as in the frame of the special programme on the rights of the child featured at the Black Nights Film Festival. In workshops and through the online survey, nearly a thousand children and young people shared their thoughts on the situation of children. Based on the responses received, children's rights ambassadors will submit a summary of children's messages to the UN Committee on the Rights of the Child in autumn 2023.

Programme on the rights of the child at the Black Nights Film Festival

The children's rights programme as part of the youth and children's films (Just Film) featured at the Black Nights Film Festival was once again prepared in cooperation between several organisations (the Chancellor of Justice, the Ministry of Justice, the Social Insurance Board, and the Estonian Union for Child Welfare), and as has become a tradition, children and young people were also invited to help and select the films.

Screening of the opening film was followed by a discussion on safe sports. Indrek Vaheoja, the ambassador of the children's rights programme, Kristel Kiens, a sports psychologist, and Natalja Inno, the Secretary General of the Estonian Gymnastics Federation, spoke with viewers about the film.

The Office of the Chancellor of Justice prepared worksheets to support discussions on three of the films screened in the programme. In addition, schools were able to invite programme makers to schools to carry out discussions about a film. This time, two schools took advantage of this opportunity. Three debates were held in those schools.

A total of 2125 cinema lovers went to see the films within the special programme on the rights of children.

Merit awards event "Lastega ja lastele"

The Ombudsman for Children can further contribute to making society more child-friendly by recognising good people who have done something remarkable either together with children or for children.

The merit awards event "Lastega ja lastele" (With and For Children), which was brought to life by organisations championing the interests of children, was held for the tenth time in 2023. At the family day in Kadriorg, the President of the Republic and the Chancellor of Justice recognised those who have significantly contributed to the well-being of children through their new initiatives or long-term activities. A television programme was also made featuring this year's merit awards event and the activities of the award winners, screened on 1 June, the International Day for Protection of Children, on the public *ETV* channel.

International cooperation

International cooperation also plays an important role in promoting the rights of the child. Meetings and discussions with colleagues from other countries offer an opportunity to learn from colleagues and exchange knowledge.

During the reporting year, the Chancellor hosted ombudspersons for children from Latvia, Lithuania and Poland. Among other matters, children's rights in sport and supervision of child protection work, as well as data protection issues were discussed. A visit to the Ukrainian School was carried out and discussions held about organising the life of children who arrived in different countries from Ukraine.

The Chancellor of Justice also received the Finnish Ombudsman for Children and her advisers. The Children's and Youth Rights Department of the Chancellor's Office was visited by the heads of the Finnish Central Union for Child Welfare and five other organisations working for children and families. An exchange of experiences and a discussion on the situation of children in Estonia and Finland took place.

Andres Aru, the Head of the Children's and Youth Rights Department of the Office of the Chancellor of Justice was elected as a member of the Bureau of the European Network of Ombudspersons for Children (ENOC). This will allow the Office of the Chancellor of Justice to be even more actively involved in the activities of the network than before.

Inspection visits

One of the duties of the Chancellor of Justice is regularly inspecting places of detention in order to check whether people there are treated with dignity. This means, among other things, that a person must get clean clothes, a place to sleep and enough food in a place of detention. Torture and any other cruel or degrading treatment is prohibited. Estonia undertook the obligation to comply with these principles when acceding to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

In a place of detention, persons are or may be deprived of their liberty, either by virtue of an order by a public authority or at its instigation or with its consent or acquiescence. Thus, places of detention include not just prisons and police detention centres but also hospitals providing involuntary psychiatric care, closed childcare institutions and care homes which people cannot leave at will. Several hundred places of detention operate in Estonia.

The aim of inspecting a place of detention is to collect information about how people there are treated. Inspecting rooms, talking with people and examining documents offers the Chancellor a possibility to assess whether people are provided enough and regular food, whether they have clean clothes and a bed, whether their living rooms are warm and clean and whether people are offered meaningful recreational activities. The Chancellor's advisers assess these living conditions by relying on the requirements defined in Estonian legislation and international conventions accepted by Estonia.

Living conditions in places of detention have greatly improved over the years. A number of new and renovated care homes and hospitals are operational. There are not many countries in the world where the oldest prison facilities currently in use date back only 20 years.

However, some problems have remained unresolved over the years. Both prisons and care homes are confronted with shortage of labour. This work requires dedication and proper training from people. The issue lies primarily in resources: money and people. As long as no additional resources are found, for example, the quality of service in care homes cannot improve substantially.

The Chancellor's visits and recommendations are helpful both to people in detention and to staff, as by taking into account the recommendations the living and working environment in these institutions can be made more decent. Through summaries of inspection visits, those entitled to allocate resources and generally organise the sphere can also be made aware

about problems – addressees include local authorities, government agencies, the government, and the parliament.

Care homes and hospitals

During the reporting year, the Chancellor inspected three welfare institutions providing the general care service (Rae Social Centre, Iru Care Home and Marta Home OÜ) and three care homes providing the 24-hour special care service (Rapla Alu tee unit of AS Hoolekandeteenused, Pariisi Special Care Centre OÜ and Haraka Home Foundation). Wismari Hospital was the only psychiatric hospital visited during the reporting year.

The 24-hour special care service is intended for people with mental disorders in need of guidance, counselling, assistance and supervision in their everyday life. Residents of general care homes are mostly people who are no longer able to cope on their own at home, due either to poor health or an unsuitable living environment, and therefore need constant support in their everyday activities. However, among general care home residents are also younger people who cannot cope on their own at home as a result of illness or injury, or who are waiting there to be able to get a place in a special care home.

Care reform

During the reporting year, the most significant change in the field of social welfare was undoubtedly the care reform taking effect on 1 July. According to plans, the reform should, above all, reduce the fee that people have to pay for a care home place. At the same time, the state establishes more precise requirements for the content of the general care service and also regulates the ratio of staff directly providing care services to residents. Hopefully, under pressure from the new requirements, more care workers will be hired by care homes. This way, it is possible to reduce the burden on staff, and staff will be able to devote more time than before to each person under care. The requirement for staffing numbers must be fulfilled by general care service providers by 1 July 2026 at the latest.

The Chancellor has constantly stressed that a care home providing the general care service must have enough carers. Therefore, the introduction of minimum requirements is undoubtedly a step in the right direction.

Shortage of well-trained staff has been a major concern in all welfare institutions for many years. It is extremely important that a care home providing both general care services and 24-

hour special care services should have enough staff who directly deal with residents and who have received the necessary training (carers, activity supervisors). Even if minimum requirements have been set for staffing levels, compliance with those requirements does not necessarily mean that staff numbers are sufficient and that all people are always provided with the necessary care and supervision. The Chancellor recommended that all the welfare institutions visited during the year should hire more staff directly dealing with residents.

Special preparation requirements have been laid down for care workers providing the general care service, as well as for activity supervisors providing the 24-hour special care service, and welfare institutions must ensure that people receive the necessary training. An employee who has not yet received full training cannot be left alone (unsupervised) to take care of people. Unfortunately, however, this happens quite often.

Shortage of staff is probably also one reason why many care homes do not manage to offer a whole-body wash under running water at least once a week to all residents, and why people with challenged mobility are not taken outside often enough.

Living conditions

The living conditions in most care homes have improved considerably over time. New, well-accessible and cosy buildings have been built, such as Haraka Home, Rapla Alu tee unit of AS Hoolekandeteenused, or Iru Care Home. Old buildings have been gradually renovated. Thus, the mobility of people in care homes has also improved. It is rare to see rooms that are difficult to access for a person moving with a wheelchair or a walking frame because the doorway is too narrow or the door threshold is high.

Unfortunately, however, every year the Chancellor sees care homes where residents' freedom of movement is unlawfully restricted. To prevent people from moving around, doors of departments are locked and bed rails are raised.

The law allows the freedom of a person in a welfare institution to be restricted only if the person is receiving the 24-hour special care service under a court order and if a person receiving the 24-hour special care service is placed in a seclusion room for a brief period. Of course, the difficulties faced by carers who have to cope with residents with challenging behaviour cannot be underestimated, but a care home must nevertheless ensure a safe environment for all residents in a lawful and safe manner.

The Chancellor has consistently stressed that multiple-occupancy rooms in a care home must

be fitted with screens or partition curtains to protect people's privacy if any of the occupants of the room use a commode chair, or if a person is being washed in bed or is having diapers changed. This requirement is often ignored. Privacy is also not guaranteed in toilets that cannot be locked from the inside.

Care home residents often tend to lack interesting and diverse activities. People spend their days watching TV, listening to the radio, or lying in bed. Not many hobby groups or courses providing dynamic activities are offered. The Chancellor urged care homes to pay more attention to offering meaningful recreational activities to residents.

Treatment and medication

Access to healthcare services is increasingly improving in general care homes. Above all, this means that several days a week medical nurses are present at a care home, monitoring people's health, dealing with medicines and arranging doctor's visits. At Iru Care Home, a medical nurse is present round the clock, which is extremely important.

The Social Welfare Act sets out specific requirements as to the extent to which nursing services must be offered in a care home providing the 24-hour special care service. The Chancellor has found that this requirement is not complied with. Care homes inspected during the reporting year have also ignored these requirements. According to the law, a 24-hour special care service provider may also itself provide nursing care, but in that case it must have an operating licence to provide independent nursing care.

Storage and handling of medicines in welfare institutions has improved. Nevertheless, expired medication could be seen in some care homes. In one care home, the Chancellor's advisers found that a carer administered a drug (Diazepam) to a resident that was not included in the person's treatment regime. The Chancellor emphasises that a person can only be given prescription medicines that a doctor has prescribed for the person.

Many care home residents are unable to understand the consequences of misuse of medicines. Thus, easily accessible medicines can end up in the hands of someone to whom they had not been prescribed and whose health the medicines may endanger if administered irresponsibly. For this reason, it is important that medicines should be stored in care homes so that they are not freely accessible.

The Social Welfare Act obliges a care home providing the general care service to draw up a care plan for each person under care. This is a document assessing what care and health

services a person needs. A care plan must describe the purpose of the care service and the activities that help to maintain and improve the condition of the person.

There are care homes (for example, Iru Care Home) that follow the law and draw up a comprehensive care plan immediately after a person arrives in a care home, involving the person themselves and a healthcare professional in this process. For a care plan to be useful, it should also be available to carers who carry out the necessary care procedures. As required by law, these care homes review the care plan at least once every six months. It seems that several care homes have realised that a care plan is not just an obligation enshrined in law but an effective tool for assessing a person's condition and setting the objectives of the care service. The Chancellor has also reminded care homes of this if they have been too superficial in drawing up and updating care plans.

Wismari Hospital is focused on treating patients with alcohol and drug addiction. Treatment periods are short. Even so, the hospital should provide patients with more therapies and a variety of recreational activities. The Chancellor found that hospital rooms need to be repaired and updated. The Chancellor also recommended that patients should be better informed about video surveillance and the reasons for using it. The Chancellor stressed that the hospital's medical treatment contract and internal rules should not leave a patient with the false impression that they may voluntarily abandon treatment and leave the hospital only with a doctor's permission.

Organisation of voting in welfare institutions

During the 2023 Riigikogu elections, the Chancellor's advisers visited five care homes for the elderly and monitored the conduct of voting there.

Under the Constitution, the right to vote is a fundamental right of every citizen of the Republic of Estonia. Those who, for example, due to age, poor health or any other reason, are unable to cast their vote at a polling station or to vote by e-voting, must also be able to perform their civic duty. In cooperation between election organisers and welfare institutions, elections are also held in care homes. To do this, on-site election organisers go to a care home with a ballot box, paraphernalia, voter lists, and other necessary means.

The practical details of organising elections (including statutory requirements) are set out in the election manual prepared by the State Electoral Office, which is also used as a guide by election organisers, i.e. district and divisional polling committees formed in the run-up to

elections.

During inspection visits, the Chancellor's advisers monitored in particular whether the voting process was secret and whether the identity document required for voting was checked. No significant violations of electoral law that would have provided grounds to challenge the election results were identified during the inspection visits. However, based on observations, a memorandum to the State Electoral Office was prepared. Observations offered in the memorandum can be used to supplement and clarify the election manual and to train staff for the next elections.

Ill-treatment of children in a closed childcare institution

In January 2023, three former employees of Lille Home of AS Hoolekandeteenused were convicted of ill-treatment of disabled children. All the defendants were sentenced to a term of imprisonment on probation. Such a light sentence for this criminal offence breached people's sense of justice and raised many questions among the public. The Estonian Chamber of People with Disabilities asked the Chancellor to assess the proceedings of the case.

The Chancellor concluded that, in this particular case, existing legal provisions and the internal control systems of the institutions did not sufficiently protect the rights of particularly vulnerable children. The Chancellor asked the Riigikogu to consider establishing supplementary rules in order to be able to protect people in a vulnerable or helpless situation against ill-treatment or against degradation of their human dignity. This concerns care for both children with disabilities and adults with disabilities, as well as care for people in need of assistance and support due to age or illness (e.g. failure to help a person in need of support when eating and degrading treatment of those in need).

The Chancellor also called on the Riigikogu to consider whether it is necessary to introduce a lifetime ban on working with children if physical abuse of a child has been repeated or systematic. Under § 121 of the Penal Code currently in force, a convicted person may resume work involving children after deletion of the person's criminal record from the criminal records database. In the Lille Home case, this is three years after the end of the probation period imposed by the court judgment.

Police and Border Guard Board detention facilities

During the reporting year, the Chancellor carried out unannounced inspection visits to the police detention centres of Kuressaare and Kärdla police stations

and the police detention centre of Pärnu police station under the West Prefecture of the Police and Border Guard Board (PBGB). The Chancellor's advisers also visited short-term detention cells of the South Prefecture's border guard bureau at the Koidula road border crossing point, Koidula railway border crossing point, Luhamaa road border crossing point, as well as at Värska and Piusa border guard stations and the Luhamaa service of Piusa border guard station.

Although Kuressaare and Pärnu police detention centres were built recently, there is not enough natural light in the cells there. The cell windows are placed high, are small and covered with either plastic film or wire mesh, which prevents daylight from reaching the cell. The Chancellor asked both police detention centres to find an appropriate solution for the windows which would ensure the safety of detainees as well as protection of the property of the detention centre, while not preventing daylight from reaching the cells.

There is constant video surveillance in the cells of the police detention centres inspected. The Chancellor emphasised that use of round-the-clock video surveillance in all the cells is not justified. A police detention centre should make a well-considered decision on use of video surveillance in each individual case. This may be justified, for example, to monitor an intoxicated person, whose health may suddenly deteriorate.

Sanitary corners in cells of police detention centres were not always sufficiently partitioned from the rest of the cell and could also be monitored from the door hatch and via the surveillance camera. The Chancellor stressed that curtains separating the sanitary corner must be wide enough and properly fastened to provide the necessary cover. An officer may observe what is happening in the sanitary corner only in exceptional circumstances and for a compelling reason (for example, to check the state of health of a detainee).

Strip searches of detainees in police detention centres must be exceptional and always based on the degree of risk a detainee poses. Written instructions must be followed to determine when a strip search may be carried out. The search may not remain in the field of vision of a surveillance camera.

For years, the PBGB has failed to comply with the clear and unambiguous requirement laid down by the Imprisonment Act that detainees must be able to read fresh national daily newspapers at a police detention centre. For a long time, Kuressaare police detention centre has not had an exercise yard and detainees are taken for a walk to a cell with an open window. This does not comply with the requirements of the Imprisonment Act.

The Chancellor pointed out that if breakfast, lunch and supper are ordered and brought to detainees in a police detention centre the day before, then detainees arriving later that evening may not be able to eat until noon the next day, as they have not been taken into account when ordering breakfast for the next day. This situation does not comply with the catering requirements applicable in places of detention. Therefore, it would be reasonable to keep some food supplies in a police detention centre, which could be distributed to people if necessary.

The detention conditions of minors must be improved in Pärnu police detention centre. Until the arrival of the parents, juvenile detainees are placed in waiting rooms with closed doors. These rooms do not have a sanitary corner or toilet, and in order to call for assistance the detainee must signal with a hand in front of the surveillance camera or knock on the door. The Chancellor recalled that there must be an assistance call button in the waiting room for minors, and officers must respond as a matter of priority if the button is activated. The detainee must have access to drinking water and be able to use the toilet. Young men and girls should be placed in separate waiting rooms.

All border crossing points and border guard stations inspected by the Chancellor's advisers had a stock of clothes and shoes that could be given, if necessary, to people who came to the border or were detained at the border. Food for detainees is also available, but of course the shelf life of food parcels given to people must be observed.

Detainees must have access to the toilet. A person may be monitored with a surveillance camera in the cell only in justified cases where strictly necessary. People waiting at the border for a long time for permission to enter the country are within the sphere of influence of the authorities and are *de facto* detained. It is important that in this case, too, people's basic needs are met, that they are offered food and drink and the opportunity to rest.

Accommodation Centre for Asylum Applicants

The Chancellor inspected Vägeva unit of Vao Centre of the AS Hoolekandeteenused Accommodation Centre for Asylum Applicants, which accommodates foreigners applying for international protection. The staff of the centre are helpful and quickly resolve residents' everyday practical issues. Residents of the centre can communicate with doctors in privacy and, if necessary, with the help of an interpreter. The Social Insurance Board helps with finding interpreters.

The Chancellor urged the centre to improve the availability of the wireless data network in the centre's building. Residents of the centre were concerned that children at the centre had to walk more than a kilometre along an unlit road to the nearest bus stop to get to school. After the Chancellor had drawn attention to the situation, Jõgeva County Public Transport Centre announced that, from 1 September, the bus will also stop in the courtyard of the centre in the mornings.

The Chancellor also dealt with a complaint by an applicant for international protection who was dissatisfied that they had been placed overnight in a locked room at Narva border crossing point. The PBGB explained that since the proceedings for international protection in respect of the petitioner were completed at night, the person was offered an opportunity to stay overnight at the border crossing point. The person was given a specially designated room, the door of which was locked. The person was also given a phone number so that they could contact the officers if necessary.

In her recommendation sent to the PBGB, the Chancellor emphasised that a person staying at a border crossing point must be able to contact the officers immediately if they wish. In order to avoid disputes, it must be clearly explained to the person that the overnight stay is voluntary, and written confirmation of this should also be taken.

The Supreme Court asked the opinion of the Chancellor of Justice on the legal rules regarding use of the internet and mobile phones in the detention centre for foreigners. In the Chancellor's opinion, detained foreigners must be able to use the internet since the law does not prohibit this. A total ban on use of the internet would restrict the fundamental right to protection of family life and the right to freely receive information disseminated for public use.

However, the Minister of the Interior regulation on "The internal rules of the detention centre" contravenes the Constitution insofar as it prohibits foreigners in the detention centre from using mobile phones and does not enable the situation of a particular person and the

circumstances related to them to be taken into account. The Chancellor of Justice found that the law obliges the Minister of the Interior to establish arrangements for use of means of communication in the detention centre, but does not allow the Minister to completely prohibit use of a mobile telephone as a public communication channel. The Supreme Court reached the same conclusion in its judgment.

Prisons

In 2023, a Draft Act on Amending the Imprisonment Act was completed, which takes into account several recommendations given by the Chancellor of Justice. The amendments concern, among other things, the length of a disciplinary confinement punishment, the ban on meetings with next of kin while in disciplinary confinement or while staying in the reception unit, as well as creation of possibilities to communicate with family and next of kin via a video link.

However, the provisions governing detention of remand prisoners have not been changed, although the Chancellor has been drawing attention to this since 2014. Without exception, all remand prisoners are locked in their cell round the clock (except for the possibility of exercise for one hour in the fresh air). This does not enable taking into account the interests of criminal proceedings at a particular point in time or the fact that the reason for remand in custody might not necessarily be the mere need to prevent compromising criminal proceedings.

During the reporting year, the Chancellor also directed focus on the conditions of detention in the open prison departments in Tartu Prison and Viru Prison. The main purpose of an open prison is to give a prisoner the opportunity to practice law-abiding behaviour before release. To that end, a prisoner is allowed to go to work or study outside the prison so that they can restore and strengthen social ties with society and family. If, after release, a person has a place to live and work and has healthy human relationships, there is considerably more hope that they will lead a law-abiding life in the future. Prisoners who have already convinced prison officers to some extent that they are able to behave in a law-abiding manner in a prison environment are placed in an open prison unit.

Although prisons have taken into account a number of the Chancellor's earlier recommendations, some problems in open prisons have remained unresolved for a long time. For example, prisoners in open prisons still do not have the opportunity to use the

internet to look for work or study. The Chancellor recommended allowing prisoners to use the internet in the summary of the inspection visit carried out in 2016 as well as 2020.

Use of information and communication technology was also dealt with in the Chancellor's opinion submitted to the Supreme Court. In its judgment of 15 March 2023 (No 3-18-477, para. 93), the Supreme Court concluded that the issue of the right to access the internet needs a systematic and comprehensive solution. In 2023, the Ministry of Justice completed a Draft Act to update the Imprisonment Act.

In Viru Prison, it was revealed that after a prisoner has been placed in the open prison unit, they are not immediately allowed to go to work outside the prison but have to carry out maintenance work in the open prison (for example, cleaning and distributing food) until a new inmate is placed in the open prison and takes over the relevant line of work. The Chancellor asked that possibilities be sought that would enable Viru Prison not to have to delay allowing prisoners to go to work for this reason.

Tallinn Prison did not allow prisoners to go on a prison leave to visit home if they did not have a workplace outside the prison at the moment. The Chancellor stressed that a prisoner cannot be denied a visit home merely because of temporary lack of a job. The Chancellor appealed to Tallinn Prison that a prisoner be given enough time to go home and that this time should be at least as long as a long-term visit in a closed prison.

In the Viru and Tartu open prison departments, urine tests were used to detect the use of narcotic substances. It was found that a urine sample should be given in the toilet and the procedure is monitored by a guard. This is a strong violation of the inmate's privacy, nor is it particularly pleasant for the prison officer overseeing the procedure. The Chancellor found that both prisons could use saliva tests to detect consumption of narcotic substances.

It would also help to protect people's privacy if roller blinds were placed in windows in prisoners' rooms so as to prevent people from looking into the room from outside. In addition, a roller blind shields against the light which can interfere with falling asleep.

The Chancellor recommended that the walking area in Viru open prison be furnished with benches and functioning training equipment. For children staying with their mothers in Tallinn open prison, age-appropriate play equipment (e.g. a swing) could be brought to the outdoor area.

In the summary of the inspection visit, the Chancellor specifically mentioned the good

atmosphere in Tartu open prison. Interaction between staff and prisoners was open and relaxed. The same cannot be said about the department of female prisoners in Tallinn open prison. The Chancellor also pointed out the tense atmosphere in that department during the inspection visit in 2020. The Chancellor asked that the women's department be closely monitored and that the prison take measures to prevent development of power relationships among female prisoners.

Time and again, the Chancellor had to remind prisons that, even in prison, medical practitioners should ensure the relationship of trust between a doctor and patient and respect the principle of confidentiality and privacy while providing healthcare services (including during appointments with a medical practitioner). A prisoner's health data, diagnoses or information about what medicine a person is taking may not be disclosed to unauthorised persons.

During the inspection visit to Tartu Prison, the Chancellor paid particular attention to the situation of people in solitary confinement, the elderly sentenced and remand prisoners, and patients in the psychiatric department of prisons.

Tartu Prison has taken into account the Chancellor's earlier recommendations, but several problems already identified in 2020 have still not been resolved. It is worrying that the prison has not fully analysed how to help prisoners in solitary confinement to return to the ordinary regime and that the health of prisoners in solitary confinement is not monitored daily. Nor was it confirmed that the prison provides opportunities for prisoners in an isolated locked cell for meaningful daily communication.

In recent years, the Chancellor has been closely monitoring how meetings of sentenced and remand prisoners with family and children are organised. A pleasant experience gained from visits supports prisoners' return to society and is also important for their families. Unfortunately, in Tartu Prison, short-term visits with family and children usually take place in a room where a glass partition separates visitors from the prisoner. The prison has only one room where a prisoner can meet with their next of kin directly, but of course this one room is not enough for the whole prison. Problems have also been caused by the fee charged for using rooms for long-term visits. Unfortunately, this fee is not affordable for all families, so that families cannot afford long-term visits.

In the Chancellor's opinion, Tartu Prison should pay more attention to the needs of elderly sentenced and remand prisoners and make the conditions of detention more suitable for

them. This may mean that the living environment in the prison needs to be adapted, but also that elderly people need to be offered more activities and opportunities for communication.

Regrettably, the situation in the psychiatric department of prisons has remained the same for years. Patients in the department are in conditions similar to solitary confinement. The patient rooms are bleak and have scanty furnishings. There is no occupational therapist or activity supervisor in the department, there is no space for joint pastime or for therapeutic activities.

Deaths in prisons

The Chancellor assessed how the prison service has investigated the circumstances of deaths occurring in prisons during the year (1 September 2021 − 1 September 2022). The prison internal audit service investigated incidents of death and offered pertinent recommendations to prisons for avoiding deaths. The prison service has prepared guidelines on how to prevent deaths.

The incidents of death analysed nevertheless indicate a shortage of officers and the need for existing staff to be trained regularly in order to prevent deaths. There is a great need for mental health professionals in prisons. The Chancellor noted that, in addition to safe clothing, prisons must also procure tear-proof bedding which can be given to a suicidal person if necessary.

Examination of death data revealed that one terminally ill person died in prison before a decision could be made on their release from prison. The Chancellor emphasised that the decision to release a terminally ill person from prison should not be delayed due to the actions of either the prison or other institutions administered by the Ministry of Justice (e.g. the Estonian Forensic Science Institute). The Ministry of Justice, in cooperation with prisons, must consider how a person who is terminally ill can be guaranteed a dignified and peaceful departure at the end of their life, even in prison conditions.

The Chancellor drew the attention of the Ministry of Justice to the need to improve the possibilities for making phone calls for financially vulnerable persons in custody. The Chancellor once again reminded the Ministry of Justice and prisons that a search of both the prisoners' next of kin coming for a visit in prison as well as the search of prisoners themselves must respect human dignity and the principle of proportionality. A decision to conduct a strip search must rely on a risk assessment based on specific circumstances. If a prison has a

justified need to strip-search someone, then this must be done in a way that preserves the person's dignity, and conducted gradually, so that part of the body is always covered. Viru Prison was also guided by these principles when routine searches that had been the norm for nearly ten years in the prison's youth unit were discontinued. Under the previous procedure, all young people had to expose at least their upper body for a daily search during the morning and evening roll-call.

Equal treatment

Under the Estonian Constitution, everyone is equal before the law. No one may be discriminated against on the basis of ethnicity, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds.

Under the Chancellor of Justice Act, the Chancellor carries out checks over conformity of legislation with the Constitution and laws as well as over the activities of representatives of public authority. The Chancellor also carries out conciliation proceedings where persons in private law have a dispute about discrimination.

During the reporting year, the Chancellor received in total seven petitions with complaints against discrimination. Two of the petitions concerned discrimination on grounds of belonging to the LGBTI+ community, one on grounds of disability, one on age, one on language, one on ethnicity, and one on grounds of beliefs. As a rule, the Chancellor gave explanations in these cases, and on one occasion also made a recommendation on compliance with the principles of good administration. No initiation of conciliation proceedings was requested during the reporting year.

At the same time, the Chancellor resolved several petitions complaining about violation of the general fundamental right to equality. The Chancellor also gave her opinion on draft laws concerning the fundamental right to equality and to the Supreme Court in constitutional review cases.

Social rights

Paying sickness benefit to pregnant women

In the event of an employee's illness, initially their replacement income is guaranteed by the

employer and then by the Health Insurance Fund. Sickness benefit paid by the employer can be conditionally divided into two parts. The first part is mandatory sickness benefit (70 per cent of the employee's average wage) and the second part is voluntary sickness benefit, which the employer can pay up to the employee's average wage beginning from the second day of illness until the day when the Health Insurance Fund starts paying compensation to the sick person.

There is a special scheme for payment of sickness benefit to pregnant women. From the second day of illness, they will be paid sickness benefit by the Health Insurance Fund. The amount of sickness benefit is 70 per cent of the income subject to social tax in the previous calendar year. An employer cannot pay sickness benefit to an employee who has fallen ill during pregnancy. If an employer were to pay sickness benefit to a pregnant employee at the same time as the Health Insurance Fund, the employer would have to pay social tax on this remuneration. It should also be taken into account that if a woman were to receive income subject to social tax at the same time as the Health Insurance Fund sickness benefit, she would lose her right to health insurance benefit. This places a pregnant employee in a worse position in comparison to other employees.

No reason exists for worse treatment of a pregnant employee. If the state has decided to build the system of sickness benefits so that, in certain cases, it allows maintaining an average income for the sick worker, then all employees who have fallen ill must be able to take advantage of this opportunity.

The Chancellor made a proposal to the Riigikogu to amend the law and allow pregnant workers to maintain proportionally the same amount of replacement income as the rest of the insured persons to whom the employer pays voluntary sickness benefit. The Riigikogu supported the Chancellor's proposal.

Compensation for childcare service

The Chancellor made a proposal to Tallinn City Council to bring the first sentence of § 2(5) of the council regulation on the "Procedure for financing the childcare service" into line with the principle of equal treatment set out in § 12 of the Constitution. Under that provision, an application for childcare service compensation may be made only as of the day following termination of parental benefit for the child for whom childcare is purchased.

When setting the conditions for the childcare service, the council failed to take into account

that a family may also use parental benefit in parts, on a single-day basis, until the child reaches the age of three.

According to the regulation, parents who are not paid parental benefit or who receive parental benefit for another child who does not attend childcare are entitled to childcare service compensation. However, parents who need a place in childcare but who continue to be entitled to parental benefit are not entitled to childcare service compensation. This means that parents of children between the ages of one-and-a-half and three years old are treated differently when granting childcare service compensation. No relevant reason exists for such differential treatment.

Registration as unemployed

The Chancellor was asked why it was not possible for upper secondary school pupils enrolled in full-time study to use all the labour market measures stipulated for vocational school pupils. For example, upper secondary school pupils cannot register as unemployed.

The Chancellor approached the Riigikogu Social Affairs Committee with this question. On a proposal by the Social Affairs Committee, the Draft Labour Market Measures Act pending in the Riigikogu was supplemented. The parliament amended the law and, as a result, upper secondary school pupils can also be registered as unemployed in the future.

At the same time, the law was also supplemented so that a student acquiring higher education in full-time study can also be registered as unemployed. The Labour Market Measures Act enters into force on 1 January 2024.

Ethnicity and citizenship

The Chancellor of Justice was approached by a European Union citizen whose partner with Russian citizenship was not granted an Estonian visa. A representative of the Embassy of the Republic of Estonia in Moscow had replied to the petitioner that only the spouse of a citizen of the European Union, and not a registered partner, could apply for a visa. The petitioner found the situation to be discriminatory.

The Chancellor explained that it is possible for a registered partner of a citizen of the European Union to apply for a visa despite the fact that the government has imposed sanctions on citizens of the Russian Federation. According to the government regulation, sanctions do not apply to people who apply for a visa and who enjoy the right of free

movement under European Union law. The legal status of a European Union citizen and their family member is regulated by the Citizen of the European Union Act. Under this law, the registered partner of a European Union citizen is also considered to be their family member.

The Chancellor was also contacted by a person who had married a same-sex partner abroad. The problem was that, even though Estonia does not recognise such marriage, Estonian notaries did not allow the couple to enter into a registered partnership contract either. For this reason, the person could not apply for a residence permit to settle with their same-sex partner.

The Chancellor explained that it must be possible to enter into a registered partnership contract even if same-sex partners have registered their marriage in a foreign country. Such cases have been heard in Estonian courts. It is quite common for people of the same sex to marry in a foreign country, but this marriage is not recognised in their country of residence. In this case, these people can legitimately formalise their relationship in Estonia only through a registered partnership contract. After conclusion of a registered partnership contract, it is possible to apply for a residence permit to settle with a same-sex partner.

Protection of the rights of people with disabilities

The Riigikogu ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 21 March 2012. In doing so, Estonia assumed the obligation to promote opportunities for persons with disabilities to participate fully and independently in society.

Under Article 4 of the Convention, States Parties must undertake all appropriate legislative, administrative, and other measures for implementation of the rights of people with disabilities. The Chancellor of Justice Act contains a provision according to which, as of 1 January 2019, the Chancellor fulfils the role of promoter and supervisor of the obligations and aims set out in the Convention on the Rights of Persons with Disabilities. The Chancellor helps to ensure that people with disabilities can exercise fundamental rights and freedoms on an equal basis with others.

In spring 2023, the first composition of the Advisory Chamber of People with Disabilities, convened by the Chancellor of Justice in 2019, finished its work. The purpose of the Advisory Chamber is to advise the Chancellor of Justice in carrying out her tasks of protecting, promoting and monitoring the rights of people with disabilities. The new composition of the Advisory Chamber will start its work in autumn 2023.

During the reporting year, the Advisory Chamber analysed how people with disabilities can participate in cultural events. The final report of the Accessibility Task Force, which had already been completed a couple of years ago, sets out proposals that should be implemented in order to achieve accessibility. Unfortunately, no progress has been made in this matter. Therefore, the Chancellor of Justice reminded the Minister of Culture of her responsibilities in this area and asked her to consider ways in which the Ministry could speed up implementation of proposals made by the Task Force.

At the end of the year, the Chancellor was approached by Jüri Jaanson, a member of the Riigikogu, who pointed out that the end-of-year interview with the President that aired on the Estonian Public Broadcasting (ERR) television channel was inaccessible to hearing impaired people as it was not subtitled. The Chancellor contacted the management of the ERR for clarification.

For several years, the Chancellor has drawn attention to accessibility of broadcasts of significant national anniversary events by Estonian Public Broadcasting. Although, for example, the concert ceremony of the anniversary of the Republic of Estonia has been broadcast with an audio description for some time, the decision to include an audio description is made every year only after reminders from representative organisations of disabled people and the Chancellor of Justice. Thus, when planning the television broadcasts of the celebrations of the 105th anniversary of the Republic of Estonia in 2023, it was found once again that ensuring accessibility was not the responsibility of either the organiser of the event or the broadcaster. The broadcast of the concert performance was nevertheless provided with an audio description, which was also supported by the Office of the Chancellor of Justice. The Chancellor asked the Minister of Culture to take into account the costs of ensuring accessibility when making proposals for allocating money from the state budget to the ERR.

In spring, the Advisory Chamber of People with Disabilities also discussed the impact of the changes proposed by the new civil contingencies law on people with disabilities. The

Chancellor sent the Advisory Chamber's proposals to the Government Office.

Supporting people with no capacity for work

The Chancellor was also asked to justify why only old-age pensioners can receive the single pensioner allowance. The Estonian Association for the Blind proposed that people with no capacity for work should be paid the same one-off benefit as pensioners living alone.

The Chancellor explained that the conditions for payment of the allowance depend on political choices, which the Chancellor of Justice cannot assess. However, people may propose to the Riigikogu to amend the law.

The petition by the Estonian Association for the Blind prompted the Chancellor to draw the attention of the Riigikogu (see presentation, page 2 para. 5) to the fact that the current work ability allowance is not sufficient.

Under § 28 of the Constitution, people have the right to assistance from the state in the case of incapacity for work. The Constitution also stipulates that persons with disabilities are under the special care of the state. This means that in the event of loss of capacity for work (and the resulting loss of income), a person must be offered financial support in an amount that protects them from poverty and maintains a reasonable proportion to their previous income.

In Estonia, people with reduced capacity for work are paid work ability allowance, the amount of which is calculated on the basis of the daily rate of work ability allowance established by law, which is indexed similarly to the state pension. As of April 2023, the indexed daily rate is 18.60 euros, which makes the amount of allowance paid to a person with no capacity for work 558 euros a month on average.

Under the European Social Charter, it has been agreed that if someone is deprived of income due to loss of capacity for work then the state must ensure them income that should not be lower than 50 per cent of the median equivalised net income of a member of household. If a person additionally also receives other benefits, adequate compensation paid in case of a decrease in the capacity for work may be 40-50 per cent of the median. Compensation of less than 40 per cent cannot under any circumstances be considered sufficient. Since the latest data on the median equivalised net income in Estonia is from 2021, we can only make a comparison for that year. The median equivalised net income in 2021 was 14 826.67 euros. Work ability allowance accounts for only 37.1% of this. Although the calculations have been made for 2021, there is no reason to believe that the situation has improved significantly by

now. This means that the daily rate of work ability allowance should be raised.

The Chancellor's assistance was sought by a person with no capacity for work whose work ability allowance in one month was reduced so much that in that particular month they only received 35.28 euros. The person found themselves in this situation because, in the month of termination of their employment, they had been simultaneously paid the last month's salary along with the salary for the month of termination of employment, as well as remuneration for unused vacation days.

The employer declared the social tax payable on these amounts to the Tax and Customs Board at the beginning of the next month, so that the Estonian Unemployment Insurance Fund considered these amounts to be income for this month. The Unemployment Insurance Fund reduced the person's work ability allowance in the second month following termination of employment so much that the person was essentially left without any income in that month. If the person had left work at the beginning of the calendar month and not at the end of the month, their work ability allowance would not have been reduced.

It is clear that the person was caught in the cogwheels of the system. Therefore, the Chancellor approached the Riigikogu Social Affairs Committee. The Social Affairs Committee discussed the Chancellor's application in two sessions in January 2023, but no solution was reached in the Riigikogu. The Chancellor drew attention to the problem once again in a written presentation (see page 3 para. 6) sent to the Social Affairs Committee of the new composition of the Riigikogu at the end of May. (See also the chapter on "Social protection".)

The Estonian Unemployment Insurance Fund estimates that currently about 20 per cent of people with no capacity for work are engaged in work (the total number of people with no capacity for work is approximately 38 000). The Chancellor has been asked why it is not possible for people with no capacity for work to apply for occupational rehabilitation services. The overall aim of the work ability reform was to help people who are prevented from working due to health problems to find work within their abilities.

The state should not deprive people of necessary assistance if, with such support, they could work even a little and thereby improve their material and mental well-being.

The Chancellor informed the Riigikogu Social Affairs Committee of the concerns of people with no capacity for work, so that the Riigikogu could consider the possibility of granting the right to occupational rehabilitation also to those people with no capacity for work who wish to

continue working or find new work within their abilities.

Paying for special care services

The guardian of a person receiving special care services wanted to know if a care home is entitled to charge from a resident a higher fee for a place in the care home than laid down by law. The Minister of Social Protection has established the conditions for provision of special care services. However, if the service is provided in better conditions than prescribed, the Social Welfare Act allows charging a higher fee for the service than normally.

The Chancellor found that the conditions for payment of expenses for accommodation and meals for people living in better conditions, as well as annual changes to payment conditions, may remain incomprehensible to care home residents and their representatives. For this reason, the Chancellor proposed that the Social Insurance Board should include a clause against unexpected price increases in future contracts concluded between the Social Insurance Board and a service provider. This would help to better protect people's rights and interests. The Social Insurance Board promised to do so.

The Chancellor was also approached with a concern that Tallinn did not sufficiently support the people receiving the supported daily living service in paying the expenses for special care service. The Chancellor explained that Tallinn city has helped to pay the own contribution of those people receiving 24-hour special care services in better conditions than required by law. The city pays them support on the basis of the procedure for the provision of social assistance laid down by the municipal council. Under this provision, assistance may be given in the case of emergence of exceptional circumstances or an urgent problem.

The Chancellor asked Tallinn City Council to consider whether and under what conditions the city could permanently pay support to those people receiving special care services who do not have enough money to pay their own contribution.

The personal care assistant service for a ward

The Chancellor was also asked whether a personal care assistant could be appointed for the ward.

The aim of the personal care assistant service is to increase the self-sufficiency of an adult who needs physical assistance due to disability, as well as to reduce the burden of care for the person's legal carers. A personal care assistant helps a person with their daily activities,

such as moving around, eating, preparing food, dressing, household chores and other activities (§ 27(1) and (2) Social Welfare Act). Thus, it is important that due to disability the person needs physical external assistance in their everyday activities.

The Chancellor explained that if a person with intellectual disability in need of physical assistance is able to communicate what they want within the limits of their communication skills (for example, asking to be supported when moving from one room to another), there is no reasonable justification why the possibility of using a personal care assistant should be restricted only because the person in need has an intellectual disability or that, for example, in financial matters their legal capacity is limited. Failure to provide a personal care assistant to someone with restricted legal capacity would be contrary to international agreements. The Revised European Social Charter (Art 15 para. 3), as well as the UN Convention on the Rights of Persons with Disabilities (Art 19), stipulate that people with disabilities have the right to independent living (General Comment by the Committee on the Rights of Persons with Disabilities, No 5 (2017), paras 8, 16 (c, iv), 17, 21).

Ill-treatment of children in a closed childcare institution

In January 2023, three former employees of Lille Home of AS Hoolekandeteenused were convicted of ill-treatment of disabled children. All the defendants were sentenced to a term of imprisonment on probation. Such a light sentence for this criminal offence breached people's sense of justice and raised many questions among the public. The Estonian Chamber of People with Disabilities asked the Chancellor to assess the proceedings of the case.

The Chancellor concluded that, in this particular case, existing legal provisions and the internal control systems of the institutions did not sufficiently protect the rights of particularly vulnerable children. The Chancellor asked the Riigikogu to consider establishing supplementary rules in order to be able to protect people in a vulnerable or helpless situation against ill-treatment or against degradation of their human dignity. This concerns care for both children with disabilities and adults with disabilities, as well as care for people in need of assistance and support due to age or illness (e.g. failure to help a person in need of support when eating and degrading treatment of those in need).

The Chancellor also called on the Riigikogu to consider whether it is necessary to introduce a lifetime ban on working with children if physical abuse of a child has been repeated or systematic. Under § 121 of the Penal Code currently in force, a convicted person may resume work involving children after deletion of the person's criminal record from the criminal

records database. In the Lille Home case, this is three years after the end of the probation period imposed by the court judgment.

Supporting children with special needs in kindergarten

Children with special needs have the same right to attend kindergarten as all other children. If necessary, the local authority must appoint a support person for a child and the kindergarten must organise a speech therapist or other support service for a child if the child needs it.

The Chancellor was approached by a parent to whom the rural municipality refused to reimburse expenses incurred in connection with the child's speech therapy. The pre-school counselling team had recognised that the child needed the help of a speech therapist, but this was not provided in kindergarten. The Chancellor explained that a child is entitled to receive free speech therapy in kindergarten. If a child is receiving speech therapy already in kindergarten, it is possible that when the child goes to school they no longer need the help of a speech therapist or need it much less.

Speech therapy options in a kindergarten must be created by the owner of the kindergarten, i.e. a rural municipality or city, and the help of a speech therapist must be organised by the director of the kindergarten. A municipality cannot refuse to provide support to a child due to the fact that there is no speech therapist in the kindergarten. If a local authority places performance of its task on a parent, the local authority must at least reimburse the expenses incurred by the parent.

The Chancellor of Justice noted that a child must be provided with the necessary assistance even if the family is economically well-off or if the child has not been found to have a disability. Regardless, the local authority must fulfil the duties imposed on it by law.

The Chancellor's assistance was also sought by a parent whose child with diabetes could not attend kindergarten because sufficient support was not provided there. The Chancellor's advisers contacted the local authority, and subsequently the city, in cooperation with the kindergarten, found a solution to the problem: a support person was appointed for the child, the procedure for replacing the support person was agreed, and the kindergarten prepared itself to support a child diagnosed with diabetes.

The status of sign language

The Chancellor of Justice was asked whether Estonian sign language is an official language of

Estonia and whether the state has an obligation to develop sign language and enable its use. The Chancellor explained that, within the meaning of the Constitution, Estonian sign language probably cannot be an official language. Sign language is not a sign system that is uniformly used throughout the country and that unites the nation, and knowledge of which can be required from all public authorities and service providers.

Although sign language cannot be regarded as an official language within the meaning of the Constitution, both the Constitution and international law instruments stipulate a number of obligations relating to sign language. Estonia must recognise sign language and deaf culture and ensure sign language interpretation services so that hearing-impaired people can participate in society on an equal basis with others. Of course, hearing- impaired people must also be guaranteed access to education.

The Chancellor explained that the state needs to develop sign language and promote opportunities for its use. Clearly, quite a lot still needs to be done in this area.