CHANCELLOR'S YEAR IN REVIEW

Ülle Madise summarises the main issues; plus the activities of the Chancellor's Office in international life and as the NHRI.

PROTECTION OF PRIVACY

Section 26 of the Constitution protects the right to the inviolability of private and family life, which includes the right to protection of personal data.

EDUCATION AND WORK

In the Chancellor's opinion, a legal basis must exist in school internal rules or the curriculum in order to apply distance learning.

ENVIRONMENT

Issues related to the environment and public space ranged from laying down the height of a lawn to clear cutting. Most prominent were issues involving local life: waste transport, property maintenance, and construction.

INSPECTION VISITS

The Chancellor monitors dignified treatment of people in hospitals, prisons and police detention facilities.

CHILDREN AND YOUNG PEOPLE

The Chancellor helps to ensure that all decisions concerning children respect the rights of children and proceed from the interests of children.

RULE OF LAW

A large part of the Chancellor's work consists of supervising the activities of state agencies.

MONEY

Money is a topic that leaves nobody indifferent. Issues arose in connection with justifiability of taxes and fees as well as the principles of national aid measures.

POPULATION

When deciding on citizenship and residence permits, state agencies must demonstrate thoroughness and empathy.

EQUAL TREATMENT

Section 12(1) of the Constitution lays down the grounds for prohibition of discrimination; everyone is equal before the law.

Chancellor’s year in review

Dear Reader

During this reporting year, i.e. from 1 September 2020 to 31 August 2021, the Chancellor received 5018 different petitions, requests and letters. The year before, their number was about a thousand less, i.e. 4026. Of the 5000 and more messages received this year, 3045 required a substantive solution (2473 a year earlier).

Over six years, the volume of the Chancellor’s work, i.e. the number of cases resolved, has grown as much as twofold, along with similar growth in the number of petitions. At the same time, the number of staff in the Chancellor’s Office has remained almost as big, or rather, as small, since in terms of staffing and budget we are still one of the smallest state agencies and have the smallest budget among independent constitutional institutions.

If at all within our capacity, we try to help fellow citizens who have expressed their concerns to us, by exploiting the shortest possible lawful avenue to do so. We leave readers of this annual report to decide whether and to what extent we succeeded.

The advantage of the Chancellor’s Office consists of independent, effective and creative action in all areas of work entrusted to us. We can focus on a solution which is fair and reasonable in substance – finding a solution and not merely processing a matter. Many thanks to members of the Riigikogu and the Government as well as state and local government officials who have shared the same principle. Preventing and resolving needless conflicts, helping people and making Estonia better overall can succeed only through cooperation between different branches of government.

Even during the most difficult crisis, constitutional institutions, including the Chancellor of Justice, must proceed from the Constitution and the laws. Public opinion and political will cannot be ignored in a democratic country but one must remain faithful to one's oath of office. This, by the way, holds true for everyone. And it is particularly important during a crisis because it is then that "simple" ideas tend to come hastily to one's mind, and it is then that people themselves tend to call for a heavy hand and violation of fundamental rights. The core principles of the Constitution come precisely in this order: freedom, justice, and only then legal norms. Always, even during a pandemic, restrictions and removal of liberties must be justified, and not vice versa.

Jurisprudence is not and may not involve mere formal study of norms. When assessing the constitutionality of restrictions on fundamental rights – including during a pandemic – first of all the facts and essential circumstances must be ascertained, the results of research in different areas studied, and experts from other fields involved. That way, assessment of constitutionality is the result of logical interdisciplinary argumentation.

Corona restrictions have been established by a general order, which looks like a law but can only be contested as an individual precept – only each person themselves may have recourse to the administrative court. The Chancellor would be ready to contest problematic rules in the Supreme Court, which would be swift and free of charge for people. In the interests of fairness, I emphasise that in most cases the Government itself has resolved many problems even in the process of work at the request of the Chancellor.

After all, no one means any harm, and if a mistake is found it can mostly be smoothly rectified. Let the court resolve differences of opinion if necessary. The same could be the case with corona restrictions. However, people themselves do not wish to enter into long and costly judicial disputes, so they ask the Chancellor to go to the court instead. Perhaps it would be useful for Estonia to follow the example of countries where the orders and prohibitions necessary for combating the pandemic are established by a parliamentary Act. This would ensure both public debate and effective constitutional review.

During the reporting year, the issue of separation of the Riigikogu from management of the state often had to be dealt with as well. The state budget is incomprehensible to the parliament nor can the parliament amend it meaningfully. The budget is so general that, according to colleagues from the National Audit Office, it is actually impossible to violate. This proves that the role of the representative assembly in directing national issues has been

relegated to almost complete insignificance. Yet the Constitution stipulates that the state budget must contain all the state's most important items of expenditure and revenue.

Systemic mistakes and shortcomings caused by probable oversight can also be found in laws dealing with collection and use of people's data. In particular, with respect to sensitive databases, which in the event of abuse could even turn out to be dangerous, the laws only contain, figuratively speaking, a frame into which any picture can be inserted without much effort and hidden from public view. Only an insignificant part is written into the law while the significant details are fixed elsewhere. This should not be so.

According to the Constitution, all issues important in terms of people's rights, freedoms and duties must be decided by the Riigikogu, and the format of those decisions is a law. It is the representative assembly that must determine what data are to be collected on people, where, how, and for how long the data are kept, what they are used for, and how security as well as effective internal and external control is guaranteed. Substantive restrictions on entrepreneurship have also silently slipped from laws into governmental regulations and other acts. Many complaints are raised and the procedure for protecting rights is often unclear to the public.

Estonia's governance must be through the Riigikogu, says the Constitution. The Chancellor's experience affirms that there is no reason to consider the role of members of the Riigikogu – be they from the coalition or from the opposition – as merely following instructions or giving decisions their required form. It is not seldom that in the course of debates errors have been found and corrected and drafts submitted by the Government rejected. Different life experience among the 101 members of the Riigikogu should actually help to identify the best solutions to advance Estonia, and most voters should also notice representation of their interests and views in parliamentary debates. Issues of justice compete in elections and finally the Riigikogu decides.

We view every complaint first of all from the angle of constitutional review: whether the origin of a person's concern was an unconstitutional norm. This year we found most of such norms in local authority regulations.

If a norm is constitutional, the fault may lie in the work of an official or, put more elaborately, in the implementing practice of a norm. However, the hope that careful proceedings in a matter would provide the best result regrettably tends to be rather widespread. Life is much more diverse than any creator of norms can ever imagine, so that room should be left for

discretion in applying norms. I have actually often observed that a frontline official fails to familiarise themselves with real-life circumstances, does not try to resolve a person's concern but simply somehow do something. In part, this is also due to long-term management errors as well as excessive workload.

This problem, which has unfortunately become increasingly painful over the years, could be resolved by acknowledging so-called frontline workers in terms of wages, trust, as well as attention and the accompanying responsibility. For this, we need professional state agencies: boards and inspectorates.

People's well-being depends on frontline officials perhaps even more than on ministries. Hospitals should not be optimised to the extreme so that a nurse is forced to run between several places of work, worn out through overwork. Diseases and accidents may happen and we must be prepared for this. The same holds true for the police, rescue workers and many other vital occupations.

With my colleagues in the Chancellor's Office, I try to offer reasonable and feasible solutions, to alleviate tensions in society and reduce conflicts. We need to inject, in each other and – as much as we can – in the whole population as well, the confidence that in Estonia actually everyone is equally cared for, equally precious, even when something has gone wrong in someone's life or luck has left them.

To keep informed of the daily work of the Chancellor's Office, you can access the Chancellor of Justice website. I also post Facebook summaries of selected debates I personally consider important and interesting.

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Ülle Madise

Chancellor of Justice of the Republic of Estonia

Chancellor of Justice as the National Human Rights Institution

Accreditation: granting A-status, i.e. the highest level

Under the Act supplementing the Chancellor of Justice Act passed on 13 June 2018, the Riigikogu imposed new duties on the Chancellor: as of 1 January 2019 the institution of the Chancellor of Justice is simultaneously the National Human Rights Institution (NHRI).

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 Global Alliance of National Human Rights Institutions, more specifically its Sub-Committee on Accreditation.

In January 2019, the Chancellor submitted to the Sub-Committee on Accreditation an official request to start the accreditation process. In October 2019, the process moved swiftly forward and the Chancellor sent all the necessary documentation to the Sub-Committee on Accreditation. The documents contained a detailed overview of the Chancellor's work (examples of protecting and promoting human rights) and mandate, as well as explanations as to how the Chancellor's institution meets the Paris Principles laid down by UN General Assembly resolution.

The last step of accreditation, i.e. an interview with the SCA, was to have taken place in March 2020. Due to the Covid-19 pandemic, this was postponed and took place online in December 2020. The Chancellor sent to the Sub-Committee on Accreditation a summary of the activities having taken place in the meanwhile and an overview of the effect of the Covid-19 pandemic on protecting and promoting human rights in Estonia. In the interview, the Sub-Committee asked questions about the functioning (budget, election of the Chancellor, immunity) as well as the practice of the Chancellor's Office. For instance, the Sub-Committee asked for examples of the Chancellor's activities in promoting human rights (campaigns, training) and protecting social and economic rights.

Based on the documents submitted and the interview, the Sub-Committee on Accreditation decided that the institution of the Chancellor of Justice meets the Paris Principles and conferred on the Chancellor the highest, i.e. A-status. An institution with A-status may

participate in sessions of the UN Human Rights Council and make oral presentations under any agenda item, participate in plenary debates through a video message, submit documentation and written opinions, and organise events in the areas of activity of the Human Rights Council. An institution with A-status may also submit comments on Estonia's Universal Periodic Review (UPR) report, or in other words, give an assessment of the human rights situation in Estonia. That is, opinions submitted by the Government and non-governmental organisations would be complemented by analysis from the Chancellor of Justice as the Estonian National Human Rights Institution.

Advisory Committee on Human Rights

The Advisory Committee on Human Rights advising the Chancellor met twice during the reporting year: in October 2020 and March 2021. The meeting in October focused on issues of the rights and well-being of children. During the meeting, presentations were made by members of the Advisory Committee, the Chancellor's advisers, and external experts. A broad range of issues was covered: the Covid-19 pandemic and the impact of the spring 2020 emergency situation on children and young people, asking for the consent of children in healthcare, children and access to spaces, the right to family life of children whose parents are in prison, the safety of LGBT+ young people and children in general education schools in Estonia.

The Advisory Committee chose domestic violence against the elderly as the topic for the meeting in March 2021. Presentations were given by experts from the Social Insurance Board, the police, the prosecutor's office, and non-governmental organisations. For example, the Advisory Committee discussed how to notice domestic violence against the elderly as a concealed type of violence, the awareness of local authority social workers and healthcare professionals, existing services and assistance to people suffering from violence, and what studies would help to increase awareness of this kind of violence.

International report

The Chancellor participated in Estonia's third universal periodic human rights review (UPR). In October 2020, the Chancellor submitted a brief written report to the UN, to which reference was made in the summary drawn up by the UN and on which other countries relied during the oral examination of Estonia in May 2021. In her report, the Chancellor highlighted concerns related to protecting the rights of children, accessibility of social services in rural

areas, access to public buildings and transport, and the need to amend the Equal Treatment Act. The third cycle of UPR will continue in the second half of 2021, when a regular session of the Human Rights Council will take place and where additional questions can also be put by the Chancellor of Justice as the national human rights institution with A-status.

Human rights education

In the autumn semester of the academic year 2020/2021, the Chancellor's advisers taught a unique interdisciplinary subject "Human rights and design: an introduction" at the Estonian Academy of Arts, the substance and structure of which had been developed at the Office of the Chancellor of Justice. This is an optional subject that explores the meaning of a human rights based approach to design and the role and responsibility that designers have or could have in protecting and promoting human rights. During the course, students deal with various issues: for instance, how to design healthcare services so that patient privacy is better protected; what would a code of ethics of Estonian designers look like; how to take gender-based violence better into account in urban planning; how to design a playground by taking into account the rights of children with disabilities; what kind of prison (space) prevents degrading treatment? The subject has been extremely popular among students and has inspired smart course papers.

The Office of the Chancellor is preparing the first original volume on human rights. The book will be published in February 2022 as an online version where it can be read by all those interested. The book comprises 28 chapters dealing with the main human rights topics: such as the history of human rights, the UN human rights protection system, the methodology of the study of human rights, freedom of religion, the environment and human rights, freedom of speech, the rights of children, the rights of people with disabilities. The authors include the Chancellor's advisers, researchers from Estonian and foreign universities, judges, attorneys, experts from other state agencies and non-governmental organisations. This is an interdisciplinary volume intended for use in higher educational institutions as well as by practitioners. The book provides an overview of the theory of protection of human rights and Estonian as well as international practice with references to the most up-to-date scientific literature.

International cooperation

Since 2001, the Estonian Chancellor of Justice has been a member of the International Ombudsman Institute

(IOI). The Institute was established in 1978 and includes over 200 national and regional ombudsmen from over a hundred countries worldwide. The IOI operates in six regions – Africa, Asia, Australasia and the Pacific, Europe, the Caribbean and Latin America, and North America – and is governed through worldwide and regional Boards.

The Chancellor of Justice, Ülle Madise, was elected to the seven-member Board of the IOI European region on 30 September 2015 and was re-elected on 27 July 2016. From November 2017, Ülle Madise was also a member of the IOI Worldwide Board. Ülle Madise's mandate on the Boards ended in May 2021.

Chancellor of Justice Ülle Madise also represents Estonia in the Council of Europe Commission against Racism and Intolerance (ECRI). The Head of the International Relations and Organisational Development of the Chancellor's Office, Kertti Pilvik, participates as Estonian representative in the work of the Management Board of the EU Agency of Fundamental Rights (FRA).

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), International Conference of Ombuds Institutions for the Armed Forces (ICOAF), police ombudsmen (IPCAN) and National Preventive Mechanisms (NPM).

Cooperation and meetings

Due to the corona pandemic, many planned international meetings and events were postponed to following years or were carried out online. For example, for the first time the IOI World Conference and the General Assembly, the conference and seminars of the European Network of Ombudsmen, meetings of the UN Committee on the Rights of Persons with Disabilities, accreditation interviews of the human rights institutions, and meetings of several other international organisations took place online. Cooperation among ombudsmen, NHRIs and NPMs also continued online.

In September 2020, the Chancellor of Justice received a visit by judges from several countries in the frame of the exchange programme of the European Judicial Training Network. In December, the Chancellor's accreditation interview with the UN Sub-Committee on Accreditation (SCA) of national human rights institutions took place. On the basis of the accreditation application and the interview, in January the Sub-Committee granted the

Chancellor of Justice the highest status (“A”) as the national human rights institution.

In spring 2021, the Chancellor participated online as an independent monitoring body in meetings of Estonia’s review by the UN Committee on the Rights of Persons with Disabilities and, as the human rights institution, in Estonia’s third universal periodic review (UPR) in the UN Human Rights Council. In spring, monitoring visits by the Executive Directorate of the UN Counter-Terrorism Committee (CTED), the Council of Europe Commission against Racism and Intolerance (ECRI) and the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) also took place online.

UN resolution on ombudsmen

On 16 December 2020, the UN General Assembly adopted a resolution on ombudsman and mediator institutions. The resolution supports the main principles of ombudsman institutions, such as independence, objectivity, transparency, fairness and impartiality, and emphasises their importance in ensuring good governance, protecting human rights and promoting the rule of law.

Protection of privacy

Section 26 of the Constitution protects the right to the inviolability of private and family life, an inseparable part of which is the right to protection of personal data. The state may interfere with a person’s private life, inclusive of processing their personal data, only in cases laid down by legislation. Any interference must be justified and it must be limited to what is strictly necessary. The stronger the state’s interference with a person’s private life, the more compelling the arguments justifying it must be.

In addition to the Constitution, processing of personal data is regulated by the European Union General Data Protection Regulation. Its principles are further developed by the Estonian Data Protection Act which entered into force in January 2019.

The Chancellor receives many petitions concerning processing of personal data. During the reporting year, many petitions were concerned with the coronavirus. People complained that their personal data had been processed under the pretext of combating the virus. Unfortunately, people’s health data had often been disclosed. As a rule, no justification can exist for this.

Restrictions related to the corona pandemic

The Chancellor was contacted by a kindergarten teacher who had become infected with the coronavirus and had also notified the management of the kindergarten about their positive test result. The director decided that the children in the group of the infected teacher should be sent home. At the same time, the director informed the parents of the infected teacher's name. This, in turn, caused irritation among the parents although the teacher had acted responsibly.

In the Chancellor's opinion, nothing justifies disclosing the personal data of infected people. Fear of the virus is understandable but stigmatising the infected does not help to beat the virus. Such stigmatising disclosure may encourage people to hide their disease. Disclosure of sensitive health data is unequivocally prohibited. In this case, there was also no reason for disclosing that the kindergarten employee was infected.

The Chancellor received a petition from a visitor to a sports club who was dissatisfied that the sports club wanted to measure their body temperature and register their name for each visit. The client of the sports club interpreted this as inadmissible processing of personal data. The club justified the measures with the extensive spread of the coronavirus.

The Chancellor is not entitled to intervene in the activities of private establishments. If someone believes that a sports club or other private establishment (a shop, hospital, etc) has unlawfully processed their data, they must notify the Data Protection Inspectorate about this. Under § 56(1) of the Personal Data Protection Act, the duty of monitoring compliance with the requirements for processing personal data lies with the Data Protection Inspectorate.

The Chancellor also had to reply to the question whether the Republic of Latvia may ask people arriving in Latvia about their health data for the purpose of combating the coronavirus. The Chancellor is not competent to supervise the activities of the authorities of another country. Therefore, the Chancellor recommended that the person should bring their complaint to the Latvian ombudsman who supervises how the principle of good administration is complied with and whether the activities of the Republic of Latvia − including collection of personal data at the border − are lawful.

Issues which the Chancellor is not competent to resolve

The Chancellor is often asked for advice when the media have published information about a

person's private life. For instance, information about a past offence which is no longer relevant, or an unjustified value judgement or a false claim may be annoying.

The media may disclose someone's personal data without their consent if three criteria are fulfilled simultaneously: public interest exists for disclosure of the data of the particular person, principles of journalism ethics are observed in disclosure, and disclosure of personal data does not cause excessive damage to the rights of the person. Such public coverage must concern an important public issue, not merely serve the aim of satisfying people's curiosity or serve the business interests of a media publication.

Supervision over private media publications is not within the Chancellor's competence. To such petitioners, the Chancellor can explain alternative ways to protect their rights.

Media related disputes with civil law substance should be resolved by agreement between the parties. If no agreement is reached, the dispute may be resolved by a county court. Under § 15 of the Constitution, everyone has the right of recourse to the court. It is appropriate also to use this right when someone believes that their honour or good name has been damaged. In this regard, it is not important whether inappropriate or false judgments or data have been disclosed by a private individual (e.g. in an anonymous comment) or by the press. Protecting one's rights helps to remind society that even when making statements online one must respect others and bear responsibility for one's words.

Someone who believes that a media publication has violated the requirements of journalism ethics may apply to the Press Council. This media self-regulation body also provides an opportunity to find extra-judicial solutions to disagreements with the media.

On the state level, compliance with the requirements of the Personal Data Protection Act is monitored by the Data Protection Inspectorate. If someone feels that their rights have been violated in processing personal data, the Chancellor recommends them to send a complaint to the Data Protection Inspectorate. Summaries of proceedings and observations on processing personal data are available in the yearbook of the Data Protection Inspectorate.

The Chancellor has also been contacted concerning a wish to remove data available in search engines. For instance, where court decisions on a person are freely accessible via a search engine and the person disclosing the data (a legal person in private law) cannot be contacted.

The Chancellor is not competent to supervise the activities of legal persons in private law. However, for example a web portal must have a legal basis if it wishes to process disclosed

personal data. Prior disclosure of data (e.g. a court decision accessible through the *Riigi Teataja* gazette) does not automatically entitle someone to arbitrarily re-disclose the data. Unlimited disclosure of personal data is not allowed.

If a web portal unlawfully processes personal data, a justified application about this should also be submitted to the Data Protection Inspectorate.

If a search engine displays links to websites which include data about a person (e.g. a court decision containing personal data), the person should contact the search engine directly and seek removal of the link containing personal data from the list of search results. The removed link does not affect the content of the web portal but only the list of search results that are displayed. The Chancellor also cannot intervene in resolving such a request.

Often information about someone is disclosed by so-called information portals whose activities are supervised by the Data Protection Inspectorate. During the reporting year, the Inspectorate sent a legal analysis and proposals to economic information portals to ensure that they operate in compliance with the requirements laid down by the General Data Protection Regulation.

Disclosure and use of data

The Chancellor's assistance was sought by a person who felt annoyed because they had received an invitation to a cancer screening study from the National Institute for Health Development. According to the petitioner, that invitation caused them stress since previously they had had to undergo a complicated operation.

In carrying out screening, the National Institute for Health Development proceeds from the law and the statute of the cancer screening registry. The cancer screening registry collects data from other databases through the data exchange layer of state information systems. Queries by the Institute as the controller of the screening registry are mass queries which are sent to everyone in the target group on the basis of their personal identification code and the screening code.

Excluded from the cancer screening target group are people who, for example, have been diagnosed with a malignant tumour in the previous 60 months (more precise reasons are set out in § 7(2) clauses 1−3 of the statute of the cancer screening registry). All the reasons for exclusion from the target group are medical, so that the Chancellor cannot assess them.

The overall aim of screening is prevention and early detection of tumours. Screening contributes to timely start of treatment and saving lives. Health is a person's most precious asset and the Chancellor recommends that all those invited should participate in the screening. In this specific case, the Institute took the person's wish into account and no repeat invitation was sent to them.

Under § 34(1) of the Chancellor of Justice Act, the Chancellor may also check compliance with the principle of guarantee of fundamental rights and freedoms and the principle of good administration on her own initiative.

The Chancellor's attention was caught by the fact that the data of people wishing to move into a municipal apartment in Raadiku were public on the websites of the city district administrations. The data had been disclosed on the websites of Pirita, Lasnamäe (including an Excel table with 400 young families), Kristiine and Haabersti city districts. Disclosure is regulated by the Tallinn City Government regulation. Provisions in the annexes to the regulation are outdated and misleading in terms of the data protection law currently in force.

According to the Chancellor's assessment, no substantive reason existed for disclosing those data. After the Chancellor's intervention, the lists were removed from the website. Currently, apartment applicants receive information about their application from the relevant city district administration. However, the city government regulation along with its annexes, which caused the unlawful situation, has still not been updated.

The Chancellor has also drawn attention to problems related to disclosure of personal data of sole proprietors in the commercial register and register of economic activities. The commercial register and register of economic activities do not require that a sole proprietor should note their home address as the undertaking's address, but some undertakings might not have a reasonable alternative.

If a sole proprietor enters their residence data in the register, the data become publicly available and may be linked to a specific person. On the basis of an undertaking's registered address, with a relatively high probability a conclusion can be drawn as to the soleproprietor's residence (e.g. an apartment or private house). Some undertakings may beannoyed by this. In a similar situation are private limited companies with a single shareholderand non-profit associations with a single member of the board who do not need an office orbusiness premises for their operation.

Disclosure of personal data in registries is dealt with by the Ministry of Justice in the course of a review that it commissioned. Unfortunately, the deadline for review has been repeatedly postponed and it is not clear whether the review will resolve this problem.

Surveillance

The Chancellor monitors whether security and law enforcement agencies carry out covert processing of personal data lawfully.

In 2021, the Chancellor mostly checked surveillance agencies which, under the norms and rules of the Code of Criminal Procedure, organise interception of phone calls and conversations, surveillance of correspondence, and otherwise covertly collect, process and use personal data.

With the help of supervision, it is possible to ensure that covert measures are taken with justification, i.e. in conformity with legislation and the aim sought, at the same time respecting people's fundamental rights. Even when the actions of the relevant agencies are formally lawful, the Chancellor ensures that people's fundamental rights are reckoned with to the maximum possible extent. This helps to alleviate uncertainty and fear of unjustified surveillance. Regular, effective and independent follow-up supervision of surveillance is an important guarantee of people's rights.

In 2020−2021, the Chancellor's advisers checked how the Police and Border Guard Board and the Tax and Customs Board respected the fundamental rights of individuals when carrying out surveillance. Inspection visits were carried out to the Internal Control Bureau of the Police and Border Guard Board, the criminal bureau of the East Prefecture, the criminal bureau of the West Prefecture, the criminal bureau of the South Prefecture, the criminal bureau of the North Prefecture, the Central Criminal Police, and the investigation department of the Tax

and Customs Board.

In addition to the Code of Criminal Procedure, carrying out certain surveillance measures is also regulated by several special laws. Under § 126^{2}(10) of the Code of Criminal Procedure, surveillance measures may also be carried out on bases not laid down in the Code of Criminal Procedure, including in cases listed in § 33^{2} of the Imprisonment Act, § 81^{2} of the Taxation Act, § 10 of the Customs Act, §§ 7^{50} and 7^{52} of the Police and Border Guard Act, § 35^{2} of the Weapons Act, § 18^{1} of the Witness Protection Act, and § 46^{1} of the Security Act. The Chancellor's adviser checked how often surveillance measures had been carried out under these bases since 2013.

Detailed summaries of inspection visits to security and surveillance agencies are not public since they contain information classified as state secrets or for internal use only. The addressees of the summaries are supervised agencies as well as public authorities (Security Authorities Surveillance Select Committee of the Riigikogu, the court, the prosecutor's office) which are also responsible for the legality of activities of security agencies.

Control of surveillance files

During the inspection visits, the Chancellor's advisers examined surveillance files of the Police and Border Guard Board and the Tax and Customs Board where active proceedings had ended by the time of inspection. A total of 135 surveillance files were inspected.

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' (including by chance). The inspection focused primarily on whether, in each specific case, conducting the surveillance measure while collecting information about a criminal offence had been lawful (including unavoidable and necessary), and how the surveillance agencies complied with requirements to notify people about a surveillance measure.

In order to ensure better protection of fundamental rights, the Chancellor made several proposals to the surveillance agencies and the prosecutor's office primarily about notifying people and the reasoning for surveillance authorisations.

Surveillance authorisations

A surveillance measure is lawful only if statutory requirements were complied with when

applying for a surveillance authorisation and carrying out the surveillance measure. A surveillance authorisation can be granted by the court or the prosecutor's office and the authorisation must always include substantive reasons. That is, an authorisation for each surveillance measure must be linked to the circumstances of specific criminal proceedings and fact-based reasoning as to why, in the specific criminal case, collecting evidence without significant difficulty or in a timely manner would be impossible without surveillance.

A surveillance authorisation which is not properly reasoned leads to inadmissibility of evidence collected through surveillance, i.e. the court will not take that evidence into account.

The inspections revealed that, as a rule, surveillance authorisations were reasoned and surveillance was necessary to verify suspicion of a criminal offence. Unfortunately, examination of some surveillance files still raised doubts as to whether the information available at that moment (i.e. reasonable suspicion of a criminal offence) was indeed sufficient to warrant collecting evidentiary information through surveillance and thus restrict people's fundamental rights.

Reasoning for surveillance authorisations is improving

Special mention should be made of those authorisations containing reasons for the necessity of a surveillance measure, the principle of *ultima ratio*, i.e. a measure of last resort, as well as the effect of measures on the subject of surveillance and third parties linked to them.

Preliminary investigation judges generally with very few exceptions observe the opinion repeatedly expressed in case-law in recent years that reasoning contained in a court order authorising surveillance must also include clear and understandable arguments by the court with regard to the necessity for surveillance.

Unfortunately, some surveillance authorisations issued by the prosecutor's office had not been reasoned in line with the above requirements. Since a surveillance authorisation which is not properly reasoned leads to inadmissibility of evidence collected through the relevant surveillance measure, surveillance on the basis of such an authorisation essentially amounts to an unnecessary waste of resources which also unlawfully interferes with people's fundamental rights.

Carrying out surveillance

In previous years, the Chancellor's advisers did not find any surveillance measures that had

been carried out without authorisation by a preliminary investigation judge or a prosecutor and without compliance with the conditions set out in the authorisation.

However, during this reporting year the Chancellor's advisers found that in the frame of one surveillance file telephone conversations of (a) person(s) were intercepted in respect of whom no surveillance authorisation had been granted. The Internal Control Bureau of the Police and Border Guard Board was notified about the finding, and criminal proceedings have been initiated to ascertain the facts of the incident.

In the frame of surveillance files inspected, surveillance had generally been carried out in line with the purpose. However, inspection of some surveillance files raised doubts as to whether preparatory actions by the surveillance agency and the prosecutor's office had always been carefully considered, so as to warrant opening a surveillance file to collect evidentiary information through surveillance and thereby restrict people's fundamental rights.

With a view to protecting fundamental rights, the Chancellor deems it highly important that substantive summaries be added to surveillance files. This helps both the person inspecting the file as well as the person conducting the proceedings to subsequently assess whether a surveillance measure was indeed fit for the purpose and justified. A substantive summary also provides a better overview of the circumstances of restricting fundamental rights.

Largely thanks to the Chancellor's recommendations, this good practice is also increasingly prevalent in the majority of surveillance agencies. Nevertheless, not all surveillance files contain a substantive summary.

Notifying a surveillance measure

Under the Code of Criminal Procedure, a surveillance measure is notified to the persons with respect to whom the surveillance measure was carried out, as well as other persons identified during the proceedings whose right to inviolability of private or family life was significantly interfered with by the measure. This constitutes an important guarantee of a person's rights. Notification may be postponed or waived only if permission for this by a prosecutor or the court is given where a specific basis exists laid down by law.

Surveillance measures should remain hidden from a person whose inviolability of family or private life was interfered with only as long as and to the extent necessary and compatible with the law. Timely notification protects people's fundamental rights and also ensures the right for suspects and the accused to contest the lawfulness of surveillance measures.

A surveillance agency must fulfil the duty of notification immediately upon expiry of the term of authorisation for a surveillance measure. The term "immediately" is an undefined legal concept and its temporal meaning may depend on any circumstances related to carrying out surveillance.

In some cases, if a person is notified only several months after expiry of the surveillance authorisation, this may also be considered immediate notification. In that case, usually the number of people whose rights were interfered with is very large, large amounts of data were collected, or the measures take time. What is important is that a person's notification is not delayed without justified and substantive need.

Notifying people about surveillance has consistently improved, yet some unjustified delays occasionally occur. In a summary of an inspection visit, the Chancellor persistently draws attention to such cases.

Regrettably, on the basis of one surveillance file, a situation was revealed where a person had not been notified about surveillance nor was there a decision justifying this.

The Chancellor has repeatedly noted that, both in documenting surveillance measures and notifying people, a clear distinction should be drawn between people in respect of whom surveillance was carried out and people whose rights were significantly interfered with by that activity. Such a clear distinction provides a good overview for the body in charge of a surveillance file and for controllers, but even more significantly it clarifies the matter for the addressee of notification. In other words, a person receiving notification should understand without additional explanation whether they were the subject of surveillance or whether for some reason they were simply caught in the sphere of interest of surveillance agents in connection with someone else's activity.

It cannot be considered justified to identify and notify people whose inviolability of family or private life was not significantly restricted in the course of surveillance. This should only be done in the case of clear and justified need since identifying such a person (for example by collecting additional data on them from an information system or database) in turn interferes

with their fundamental rights.

Surveillance on other lawful grounds

Under § 126^{2}(10) of the Code of Criminal Procedure, surveillance measures may also be carried out on bases not laid down in the Code of Criminal Procedure, including in cases listed in § 33^{2} of the Imprisonment Act, § 81^{2} of the Taxation Act, § 10 of the Customs Act, §§ 7^{50} and 7^{52} of the Police and Border Guard Act, § 35^{2} of the Weapons Act, § 18^{1} of the Witness Protection Act, and § 46^{1} of the Security Act. The Chancellor's adviser checked how often such surveillance measures had been carried out (since 2013).

The majority of cases (except surveillance carried out under the Witness Protection Act) involve situations where surveillance proceedings were carried out with a person's prior written consent for the purpose of checking their credibility. Admissible surveillance measures usually include covert surveillance of a person; under the Witness Protection Act covert examination of postal items and covert audio and video interception are also possible.

Information received from the relevant agencies demonstrates that collection of data for this purpose through surveillance tends to be rare, and under some special laws no collection of data through surveillance has occurred at all in the period 2013–2021. The majority of surveillance measures have been carried out under the Witness Protection Act.

Cooperation with the Security Authorities Surveillance Select Committee of the Riigikogu

During the Chancellor's regular meetings with the Security Authorities Surveillance Select Committee of the Riigikogu, members of the Riigikogu receive a direct overview of the results of inspection visits and other problems found in the course of supervision (including in resolving petitions). In turn, members of the Committee can make observations on issues of surveillance.

Education and work

General education

The Chancellor has received many letters concerning problems in kindergartens and schools.

Several questions recur from year to year. For example, questions are asked about school food or what rules are relied on when prohibiting smart devices at school.

During the reporting period, questions arose in connection with distance learning and other corona restrictions imposed in schools. A number of petitions did concern organisation of study in the conditions of combating the spread of the virus.

Distance learning

Distance learning − when a pupil communicates with teachers only online during instruction – is nothing unprecedented in itself. It can be seen as a different and enriching way of study, which also helps pupils to develop skills for independent work. While distance learning was applied on a small scale before the emergency situation in force in spring 2020 − for instance, project days were organised based on e-learning − then during the second wave of the corona outbreak distance learning lasted for a week or several weeks without interruption, and sometimes even for a month or two.

Despite the experience gained during the emergency situation, many questions this year concerned the lawfulness of applying distance learning and its quality. For instance, the Chancellor had to form an opinion whether distance learning lasting for weeks and months is in conformity with legislation (see e.g. distance learning at Jüri Upper Secondary School, distance learning at Oru School, distance learning at Tallinn Järveotsa Upper Secondary School).

The Chancellor explained to parents, schools and local authorities that, in order to apply distance learning, a relevant legal basis must have been established in school internal rules or the curriculum. If distance learning is applied to combat the spread of the coronavirus, then the measures taken to protect everyone at school, as well as the organisation of those measures, must be reflected in school internal rules.

Distance learning for protection of health cannot be imposed if no such measure is laid down in school internal rules. Nor, of course, can distance learning be applied if it has been laid down as a health protection measure in school internal rules but, in view of the actual situation, use of such a measure is not justified.

The legal basis for distance learning may also be laid down in the school curriculum. Regulating distance learning in the school curriculum would be especially useful in those cases where the school intends to apply e-learning as part of ordinary instruction. In the

curriculum, the school can lay down the essential conditions and procedure for organising e-learning, which is carefully planned and discussed with everyone at school.

A legal basis should be understood as the right to act provided by a law or a regulation. Consequently, a school may not base its decision on legally non-binding guidelines or recommendations (see distance learning at Rahumäe Basic School). Recommendations are intended for practical organisation of distance learning. Orders given by the owner of a school − as a rule a local authority − can be seen as orders given in the frame of the school's internal relations, compliance with which may be mandatory for the head of the school as a local authority employee. However, such orders cannot be applied directly in respect of persons outside the administration, i.e. pupils. For this, a decision by the school is needed, and the school, in turn, proceeds from a law or a regulation when adopting that decision.

In one case, the Chancellor had to assess whether the school was allowed to refer pupils to distance learning because there were not enough teachers at school (see "Distance learning at Järveküla School"). It was decided to apply distance learning not for protection of those staying in the school building but because a large number of teachers could not work in the school building due to national restrictions on movement. The Chancellor found that the law does not allow all pupils to be referred to distance learning for this reason. When making this decision, the school cannot rely on an emergency plan because under the Basic Schools and Upper Secondary Schools Act temporary absence of teachers from school cannot be interpreted as an emergency. Nor had the school declared an emergency under the Emergency Act.

In most cases, the Chancellor assessed the application of distance learning on the basis of a petition, but in one case she also initiated proceedings herself (see distance learning at schools in Jõgeva rural municipality). The Chancellor found that two-day (in one school three-day) distance learning immediately before the school holidays did not breach pupils' rights.

Assessment of distance learning also revealed that it is unclear who is actually competent to decide on applying distance learning (see "Distance learning at Tabasalu Ühisgümnaasium").

The Chancellor explained that, in order to combat an infectious disease, the law allows imposition only of those restrictions which are unavoidably necessary to prevent the spread of the infection. It is necessary to assess each restriction individually as well as the aggregate of all the restrictions simultaneously imposed. Prohibitions and orders must have a causallink to decrease of the infection in view of their anticipated effect.

Decisions on the risk arising due to the epidemic spread of the coronavirus are made by the Health Board relying on epidemiological, laboratory and clinical data. Depending on the situation, the Health Board or the Government of the Republic may impose measures laid down by law: for instance, temporarily closing a school or restricting freedom of movement in a school. However, neither the Health Board nor the Government can decide that a school should (partially) transfer to distance learning. The school itself must decide on the best educational organisational measure in the conditions of the spread of the virus. For example, if the Health Board temporarily closes a school, in principle the possibility of referring all or some pupils to distance learning may need to be considered.

There was also a case where the decision on transfer to distance learning was made by the owner of the school (see distance learning at Kuusalu Secondary School). The Chancellor explained to the owner of the school that making such a decision is not within the competence of the school owner, so that it was void. A decision to apply distance learning may be made by the school director if the possibility of distance learning is stipulated by school internal rules. Even if the owner of the school gives guidelines for action to a school as its establishment, ultimately the school (director) is responsible for the lawfulness of the decision to transfer to distance learning.

The Chancellor has been asked whether education was accessible during distance learning in the manner required by law. Legislation does not regulate what extent of instruction provided by a school may be made up of e-learning. It is also unclear how exactly e-learning must be carried out. Even during distance learning, schools must ensure that teachers provide sufficient guidance and instruction to pupils. This means that a subject is explained and pupils have an opportunity to ask the teacher for clarification when they do not understand the study material. A parent must not take a teacher's place (see e.g. "Distance learning in schools in Tallinn").

On several occasions, the Chancellor had to assess whether a school's decision to refer a specific pupil to distance learning was lawful.

In one case, a school prohibited a child who had returned from a trip to Greece to take up studies at the school even though under the Government of the Republic Order in force at the relevant time people arriving from Greece did not have to self-isolate. The Chancellor explained to the school that a school may neither disregard the Government Order nor impose restrictions other than those established by the Government on people arriving from abroad. The Chancellor recommended that the school should allow the child to attend classes taking place in the school building.

In another case, a school referred the children of a family to distance learning although on the day when the family returned from abroad no restriction of movement was imposed in Estonia on travellers arriving from the country in question. Thus, there was no need for the children to self-isolate. The Chancellor found that no legal basis existed for referral of these pupils to distance learning and the school's decision was based on mistaken circumstances. The school should have established the conditions for referral to distance learning beforehand in school internal rules or the curriculum. The school should also have first contacted the parents of the children and not started to ascertain the potential need for self-isolation through a child as intermediary.

The Chancellor also had to explain whether a(n) (upper secondary school) pupil is entitled to demand the possibility of distance learning if by doing so they wish to avoid infection of their family members with the coronavirus.

The Chancellor explained that studying in a school building is still the standard form of instruction for schools. Thus, a pupil must attend instruction taking place in a school building. However, a school should be understanding as to a pupil's problem and try to resolve it. In the specific case, the school's decision would have been correct in either case: both when allowing a pupil to use distance learning or when obliging them to attend instruction taking place in the school building.

Thus, a need has arisen to apply distance learning to combat the spread of the coronavirus(or some other virus in the future), but several schools also plan to increase the share ofdistance learning in so-called ordinary study. Instruction might no longer take place mostly inthe school building.

In any case the quality of education must be guaranteed, no matter what form of instruction the school uses. For this, the Riigikogu must establish by law all the essential norms and set the limits within which a school and the owner of a school may operate. Under rule of law, no situation may arise where the public power acts without a legal basis even though that action may be motivated by the best intentions. That is, not every individual step necessarily amounts to a violation but in a combination of several factors high-quality education may become inaccessible. The limits for action by schools and school owners should be so precise and clear that pupils and parents understand what a school may and what it may not do.

Schools and school owners must be left sufficient autonomy for organising instruction. This means that too detailed regulation should be avoided. Nevertheless, the necessity to amend and supplement the law and the national curricula should be considered, so that nationwide understanding exists as to what e-learning is and under what rules it may be applied. Education must be uniformly accessible everywhere in Estonia, and the rights and duties of pupils and parents must be laid down comprehensibly and clearly.

In that light, the Chancellor sent her opinions on distance learning both to the Riigikogu Cultural Affairs Committee and the Ministry of Education and Research.

Preparatory course for state examination

The Association of Estonian Student Representative Bodies asked the Chancellor to assess whether, in provision of free preparatory courses for the state examination in mathematics, pupils are treated equally if those courses are only organised in Estonian.

The Chancellor found that the state has relatively broad freedom in deciding how to offer preparatory courses to pupils as long as equal opportunities for school leavers are providedin this. Pupils must receive support first and foremost from their school. A secondary school leaver must understand Estonian at least at proficiency level B2.1, which means that they should be able to follow the course in Estonian. Since this was a review course, it means the pupils already had to be familiar with the material beforehand. Thus, the state is not obliged to offer all school leavers preparatory courses in Russian as well.

Smart devices at school

The Chancellor was asked once again what rules a school relies on when it prohibits the use of smart devices during the school day. A parent asked whether a school may lay down in its internal rules that at the beginning of a lesson all children must place their mobile phones in a depository in the classroom and refusal to do so is interpreted as a violation of internal rules.

The Chancellor found that school internal rules which oblige all pupils to deposit their mobile phone before a lesson, and treat refusal to do so as violation of internal rules, are not compatible with the Basic Schools and Upper Secondary Schools Act. The law allows a school to request deposit of items (including smart devices) if a pupil uses them in violation of internal rules. However, preventively depositing the phones of all pupils is not compatible with the letter or the spirit of the law, nor is it fair in respect of those pupils who do not violate internal rules.

Since restriction on the use of smart devices is also a topical issue in other schools, the Chancellor's adviser wrote an article on this for the teachers' newspaper *Õpetajete Leht*.

Grouping of pupils in a physical education lesson

The Chancellor was asked whether a school may divide pupils into stronger and weaker groups in a physical education lesson and give different tasks to those groups.

The national curriculum allows differentiation of physical education learning tasks according to substance and level of difficulty. This enables taking into account pupils' abilities and increasing their learning motivation. At the same time, the substance of learning and the results sought are uniform for all pupils (except pupils with special educational needs).

When organising instruction, a school must also proceed from the needs and interests of

pupils and, where possible, take into account proposals by pupils and parents. Each child must be treated with respect, regardless of their abilities in one or another field of sport. No child may be disparaged or degraded. Learning tasks should be differentiated so as to increase a child's motivation to study, and not reduce it.

School transport

Jõhvi rural municipality changed a bus route in the middle of the school year, so that a child from a neighbouring municipality attending the school was 10–15 minutes late for school every day. Although planning of bus routes cannot take into account the interests of all passengers, when introducing changes a local authority must nevertheless analyse their impact on families.

Where a local authority has given a child a place in a school based on the child's residence, it is not required to organise transport of pupils to school in a neighbouring local authority and back. If a local authority does not ensure a place in a school, the rural municipality, town or city must organise a possibility for a pupil's transport to and back from a school outside its boundaries or compensate the pupil's transport expenses.

Narva City Government organised a pupil's transport to school and back home on the basis of a schedule. In the event of a trip outside the schedule, the city government compensated expenses related to public transport tickets or use of a personal car. The Chancellor found that the local authority must also find a solution where a pupil must travel to school or from school back home outside the schedule, for instance due to illness, but they cannot use public transport and the parent does not have a car. Narva City Government agreed with the Chancellor's assessment. In the future, in such a situation the inhabitants of Narva can apply, for example, for compensation of taxi expenses and social transport expenses.

School food

According to the law, school meals for pupils are organised by the local authority. Due to distance learning, some pupils were sometimes deprived of organised school food.

According to the Chancellor's assessment, provision of meals to pupils under distance learning is a voluntary decision by local authorities, and certainly such support to pupils and their families deserves recognition. However, when providing that benefit, cities, towns and rural municipalities must ensure that the rules for providing meals to those studying outside the school are established by a municipal council. All pupils must be treated equally when

providing school food. For example, it is difficult to justify why a local authority distributes food parcels to pupils under distance learning but not to pupils studying at home due to quarantine. However, pupils living further from the school may be deprived of school food because going to pick it up would take an unreasonably long time.

The Chancellor explained that cities, towns and rural municipalities must also organise an appropriate and varied school lunch for pupils needing different food for health reasons. If a local authority has decided to distribute a free school lunch to everyone, the greater expense related to special food must be borne by the local authority.

When setting the time of the meal break, schools must take into account the best interests of children and ascertain, assess and consider how best to organise meal breaks with a view to reasonable solutions.

Thermal cameras in school

Unlike the use of monitoring devices, the law does not regulate installation of thermal cameras in schools. In principle, a school is entitled to install and use a thermal camera but this must be previously regulated by internal school rules. A pupil can go to a school nurse and have them assess their health on the basis of the camera measurement results. If a pupil does not go to a school nurse or fails to observe the advice given by the nurse, then depending on circumstances the school, with the knowledge of a parent, may ask the pupil to leave the school building or ask a parent to pick up their child.

A thermal camera may be adjusted so that it also fulfils the function of a monitoring device. In that case, the school may use monitoring only to check entry and exit to the school building or school grounds and to prevent a situation endangering the safety of pupils and school staff. A dangerous situation must be resolved in accordance with the provisions of internal school rules. No parental consent is needed to monitor a child.

Kindergartens and childcare facilities

The epidemic spread of the coronavirus also affected the operation of kindergartens and the Chancellor received several petitions in this connection.

In one case, a kindergarten refused to let a child come to the kindergarten even though the child was not ill nor had been in close contact with staff who had fallen ill. The Chancellor considered it reasonable that a kindergarten advised not to bring children to the kindergarten

if possible. Nevertheless, the kindergarten had no right to refuse to let a child into the kindergarten because the child had no symptoms of disease nor was the child required to self-isolate. The Chancellor recommended that the kindergarten should avoid such a mistake in the future. If the teachers of the child's group could not go to work, the child should have been temporarily included in another group.

The Chancellor conceded that perhaps it would be reasonable to introduce a provision in the Preschool Childcare Institutions Act that would enable temporarily closing a kindergarten in exceptional cases. That decision can be made by the Riigikogu.

A petitioner wanted to know whether a kindergarten may ask a parent why they bring their child to a kindergarten where the Government of the Republic has strongly recommended that children should not be taken to a kindergarten or a childcare facility without absolute necessity. Another enquiry related to whether a kindergarten may ask about a child's health if there is reason to believe that someone in the child's immediate circle has become infected with the coronavirus.

The Chancellor explained that even though the Government has recommended that a child be taken into a kindergarten only in case of absolute necessity, doing so is not prohibited. This means that in such a situation a kindergarten may not refuse to let the child come to the kindergarten. A kindergarten is not competent to enquire about absolute necessity on the part of the parents, let alone make decisions on that basis.

The right to a kindergarten place

Many parents complained against local authorities who declined to give their child a place in a kindergarten.

Under the Preschool Childcare Institutions Act, a rural municipality, town 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, town or city and coincides with the residence of at least one of the parents. The law does not require that a child must receive a place in a kindergarten of their parents' choice, but a rural municipality, town or city must ensure a place in the kindergarten of its service district.

A rural municipality, town 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. In case-law, as a rule, a reasonable time has been considered to be two months

after applying for a kindergarten place.

Parents who contacted the Chancellor with concerns about a kindergarten place were given an explanation of how to protect their rights through the court. According to case-law, reference to rapid population growth, lack of money or other similar justifications do not relieve a local authority of the duty to ensure a kindergarten place. The court has stated that if a family is not given a kindergarten place in time and the family has incurred additional expenses for this reason (e.g. a higher fee in a private kindergarten in comparison to the municipal kindergarten, or a fee for childcare), the local authority must compensate those expenses to the family.

The Chancellor explained to parents that a rural municipality, town or city may replace a kindergarten place with a place in childcare only with parental consent. The activities of a rural municipality, town or city are not lawful if a parent is forced to find a place in childcare for their child because the local authority fails to ensure a kindergarten place to a family by breaching the law.

Many questions about the duty of ensuring a kindergarten place were received from Saue rural municipality, so that the Chancellor checked the regulations concerning kindergartens in that municipality. The Chancellor found that a provision in Saue Rural Municipal Government regulation on "The procedure for admission to and exclusion from preschool childcare institutions in Saue rural municipality, and the period of operation of a childcare institution", which links a child's right to use a kindergarten place to reaching three years of age, contravenes the law and the Constitution since, in the case of the parents' wish, a kindergarten place must be given to a child who is at least 1.5 years old. The regulation also lacked a procedure for applying for a kindergarten place for a child aged 1.5–3 years. The Chancellor asked that Saue Rural Municipal Government should bring the provisions of the regulation into line with the law and the Constitution. The rural municipal government said that it was prepared to amend the regulation.

The Chancellor also examined the procedure for ensuring a kindergarten place in Saku rural municipality. The basis for this was a complaint by a parent saying that Saku rural municipality had failed to give their child a place in a municipal kindergarten for the requested period. Because of this, the parent sought a place in childcare for their child. The Chancellor found that it is not lawful that a kindergarten place is first of all ensured to children aged 2–7 years. The law allows offering a place in childcare for a child aged 1.5–3 years, but if the parent does not consent to this a kindergarten place must be given to the

child. Therefore, the Chancellor proposed to Saku Rural Municipal Government that such a violation should be avoided in the future and a kindergarten place should be given to all the children who are entitled to it by law.

The Chancellor proposed to Saku Rural Municipal Government that some provisions of the regulation on "The procedure for provision of social welfare assistance" should be brought into line with the law and the Constitution. The Chancellor found unconstitutionality in the provision of the regulation under which the childcare service of a child aged 1.5–3 years is partially financed from the budget of Saku rural municipality if a parent has applied for a kindergarten place at a kindergarten in Saku rural municipality but, due to the absence of a place, agrees to childcare service. Apart from this, the Chancellor saw a problem in a provision under which the highest rate of that compensation is approved by the rural municipal government. The maximum rate of compensation or the criteria for paying compensation should be approved by the municipal council. Saku Rural Municipal Council amended the regulation in line with the Chancellor's proposal.

On several occasions, the concern of a person contacting the Chancellor was resolved in the course of proceedings. For example, in one case it was found that the local authority was able to offer a suitable kindergarten place to the family so that their child could start going to a kindergarten. The misunderstanding was caused by the complexity of the system of the queue for a kindergarten place and granting a kindergarten place. In another case, the kindergarten annulled the decision by which a child had been excluded from the kindergarten. The local authority also brought the provisions of its regulation concerning exclusion from a kindergarten into line with the law. Namely, the Preschool Childcare Institutions Act stipulates that a child may be excluded from a kindergarten only if the child goes to school, or on the basis of an application by a parent.

No other bases are stipulated by law, and a local authority may also not establish any such bases.

Suitability of a kindergarten place

In some cases, parents contacting the Chancellor saw a problem in the unsuitability of a kindergarten place offered by a rural municipality, town or city. If a local authority offers a kindergarten place, it must be accessible to the family in terms of its location, so that the family would be able to use the place in reality. In rapidly developing residential areas, the problem may be acute, so that in those places a local authority must find flexible solutions to

increase the number of kindergarten places.

For instance, the Chancellor assessed the distribution of kindergarten places in Harku rural municipality. The Chancellor found the activities of Harku rural municipality to be lawful in this case. The law requires that distributing kindergarten places should also involve taking into account, if possible, whether children of the same family already attend that kindergarten. Harku rural municipality had done so. The Chancellor explained that although the law does not require that a kindergarten place should be given as close to a family's residence as possible, the needs of a particular family must be taken into account when offering a place. For example, it cannot be considered lawful if a rural municipality, town or city offers a family a place in a kindergarten but reaching it takes unreasonably long and/or is too expensive.

The availability of a kindergarten place was also dealt with in a recommendation which the Chancellor sent to Häädemeeste rural municipality in connection with closing down the building of Kabli Kindergarten.

Kindergarten and school boards of trustees

The Chancellor was repeatedly asked to what extent a local authority or a director must take into account the opinion of school and kindergarten boards of trustees.

When assessing the facts of several complaints, the Chancellor found that the rights of a board of trustees had not been violated. For instance, a local authority may decide who and how establishes the conditions for waiving a meal. Thus, it may be considered justified that Tartu city wishes to regulate waiving a meal on a uniform basis in all the city's childcare institutions. A kindergarten board of trustees may propose to the city government to change the conditions, but this does not mean that changing the conditions lies within the competence of the board of trustees and that the city government must agree with proposals by the board of trustees.

No matter whether a decision concerns educational reform, reorganisation of schools, adoption of statutes of an establishment, transfer of instruction to another building, or reorganisation of the work of kindergarten teachers – that decision must be made by a local authority or school director. In any case, a local authority must fulfil the functions arising from law, for instance ensuring that education meets the national curriculum, that the learning environment is safe and that pupils in need of support do receive that support. A board of

trustees cannot assume responsibility for fulfilling the functions of a local authority, kindergarten or school. Many decisions have a monetary dimension, i.e. the choices must be made by the local authority.

Hobby education

The Chancellor was contacted by a parent with a concern that their child living in Toila rural municipality wanted to take up studies at Jõhvi music school but Toila rural municipality did not agree to cover the music school tuition costs. The municipality justified its refusal by asserting that the parent had been late in applying. At the same time, people had not been informed by what deadline they had to notify the municipal government of their wish.

The Chancellor found that support for hobby education by rural municipalities, towns and cities deserved recognition. However, a municipal council should establish rules for supporting hobby education, so that the inhabitants know who can receive support and on what conditions, and that distribution of public benefit is transparent.

Once again, problems for a child and their family were caused by the wish of the child's former football club to receive a thousand euros transfer fee from the new club. The problem of the specific family was resolved temporarily: the child was registered as a player for the new club for one year without the club having to pay the transfer fee claimed.

A few years ago, the Chancellor analysed the problems related to change of sports clubs and sent recommendations for proper dealings to sports clubs and federations. The majority of sports clubs are legal persons in private law, so that the Chancellor cannot intervene in their disputes. If necessary, these disputes are resolved in court.

The Chancellor was also asked to assess whether a school may restrict a pupil's participation in a camp. A school allowed a third-year pupil to participate in a language immersion camp organised by the school only together with a support person. The condition of a support person was imposed immediately before the camp was to take place. Prior to this, the school had advised the family that they should abandon the wish to attend the camp. According to the information available to the Chancellor, the school did not offer any adjustments to the child for participation in the camp, and justified its decision by the fact that the child was in need of special support during studies. In doing so, the school violated the child's rights both while preparing the camp and when deciding on the child's participation.

Organising a camp presumes offering equal opportunities. That is, a camp must be organised for as many children as possible; in case of necessity an individual approach must be considered and if the parent so requests then also reasonable adjustments. The child is also entitled to express their opinion as to what should be done so as to enable them to attend the camp. However, if the school still finds that the school's own adjustments would be too burdensome or would compromise the well-being of other children, the justifications by the school must be based on objective criteria. Since the school is responsible for the well-being of all the children in a camp, in that case it is entitled to refuse to allow a child to attend the camp.

Vocational education

To a question about protection of the rights of apprentices, the Chancellor replied that the rights of an apprentice can be protected in cooperation between apprentice, school and company, including through the conditions of apprenticeship written into the apprenticeship contract. In defining working and rest time, the parties must proceed from the nature and purpose of the contract and the principles of good faith and reasonableness. Apprenticeship during studies is regulated by the Occupational Health and Safety Act, which also sets out the physical and psycho-social risk factors.

Apprenticeship may be compared to working but the apprenticeship contract does not regulate an employment relationship. Apprenticeship is temporary by nature and no remuneration needs to be paid for an apprentice's work unless otherwise agreed. At the end of the apprenticeship contract, the student is not left without social guarantees or means of subsistence. The student is still guaranteed health insurance and termination of the apprenticeship contract does not lead to a student becoming unemployed.

Another issue concerning vocational education was whether a school is entitled to organise instruction in the school building during the corona pandemic. The aim of Rakvere Vocational School was to help students achieve the learning outcomes prescribed by the curriculum and graduate from the school. Instruction in the school building was also allowed during the spread of the coronavirus if a student was in need of educational support services or consultations or participated in practical study, sat for examinations or tests. The school was entitled to decide which students were in need of assistance on-site at the school.

Higher education

University admission conditions

Universities may determine their own admission conditions but these must be justified and comparable. Tallinn University of Technology and the University of Tartu in their admission conditions have equated the results of the state examinations in Estonian and Estonian as a second language as well as the Estonian proficiency examination. A university may do this if candidates are treated equally. The results of both state examinations help to assess the skills and knowledge (academic aptitude) of candidates but it should be kept in mind that different requirements have been set for those taking the state examination in Estonian than those taking the state examination in Estonian as a second language.

According to the Chancellor's assessment, Tallinn University of Technology did not treat the candidates unequally because everyone crossing the threshold could take up studies at the university. The knowledge and skills of students are not compared with each other. Since the University of Tartu prepares a ranking of candidates, the risk of unequal treatment of candidates exists. On that basis, the Chancellor recommended that the University of Tartu should analyse its admission conditions from the aspect of equal treatment and, if necessary, amend the conditions.

The right to a need-based study allowance

When granting a need-based study allowance, an adult child continuing studies at the upper secondary school is not taken into account as a family member. The Riigikogu is entitled to decide on what conditions the need-based study allowance is paid. Thus, it is not unconstitutional that in granting the allowance only the minor children of a studying parent are counted among their family members.

Nevertheless, the Chancellor considered it incomprehensible why, in granting a study allowance, a student up to 24 years old is deemed to be a member of their parents' family while at the same time a student parent's own adult child attending upper secondary school is not deemed a member of the student's family. The Ministry of Education and Research agreed that differently defining a family member in law is not logical and agreed to make a proposal to amend the law.

Use of a software application in studies

Some universities use the software application Proctorio that can be used to invigilate examinations taking place outside the classroom. Justification given for use of this software is the need to ascertain academic cheating during distance learning.

This constitutes aggressive interference with a person's privacy since the software also enables monitoring a person's behaviour and what takes place in their computer during the examination. Such aggressive interference might not be acceptable to all students. At the University of Tartu and Tallinn University of Technology, use of the software application is only possible with student consent. If a student does not wish or cannot use the application, the university must enable them to take the examination differently, for example in an auditorium.

Qualification and profession

Issues still arise in connection with compliance with the qualification requirements for teachers. For instance, a teacher working at a school asked for an assessment whether the Ministry of Education and Research had grounds to ask them to acquire a teacher's professional qualification even though the Estonian Teachers Association as the body awarding the professional qualification was of the opinion that the petitioner's qualification met the established requirements.

The Chancellor's inquiry affirmed that in the opinion of both the body awarding the professional qualification and specialists of the Ministry of Education and Research the petitioner held the required qualification. Therefore, the Chancellor asked that the Ministry should also send its opinion to the teacher's current employer and resolve the precept issued to the school.

Since there was a lot of confusion, the Chancellor recommended that the Ministry, in cooperation with the Estonian Teachers Association, should create a clear and unequivocal regulation for assessing teachers' professional qualifications. When reading legislation, it must be possible to understand whether and what requirements an employee must meet in order to obtain the necessary qualification.

By a legislative amendment in 2014, the occupation of veterinary technician was removed from the Veterinary Activities Organisation Act. The Chancellor was asked to enquire whether

it would be possible to restore the profession that once existed.

The Chancellor explained that she has no basis to request that the Riigikogu should restore the occupation of veterinary technician or medical assistant (*velsker*) in the law. The requirements for a specialist's education and activities have changed over time.

The Riigikogu has decided that specialist work mentioned in laws may be undertaken independently and on one's own responsibility only by a veterinarian with education (academic higher education) meeting the specific requirements. According to the Chancellor's assessment, this requirement cannot be considered arbitrary or excessive. Alongside a veterinarian and under their supervision, a veterinary specialist with a different level of education may operate whose occupational title may also be a veterinary technician even nowadays.

In connection with professional qualifications, during the reporting year the Chancellor submitted an opinion in two constitutional review cases pending in the Supreme Court.

In one case, an individual applied for the professional qualification of Diploma Civil Engineer in Road Engineering, Level 7, on the basis of a special case (re-certification) in the sub-speciality of road building and road maintenance in the line of construction management and construction activities. The Chancellor had to reply to the Supreme Court whether partial failure to issue a legislative act of general application mentioned in § 24(4) of the Building Code was compatible with the Constitution.

The Chancellor found that failure to lay down more precise professional qualification requirements corresponding to the areas of activity set out in the regulation contravenes the delegating norm granted by § 24(4) of the Building Code and thus also contravenes the Constitution. The Supreme Court *en banc* indeed declared unconstitutional the failure to lay down by ministerial regulation the qualification requirements mentioned in § 24(4) of the Building Code.

In another case, the Supreme Court asked for the Chancellor's opinion as to whether § 20(1¹) of the Child Protection Act was constitutional to the extent that the relevant provision with reference to § 202 of the former Criminal Code precludes awarding a trainer's professional qualification to a person who has been punished for inducing a minor to engage in crime, regardless of the circumstances of the criminal offence.

The Chancellor found that § 20(1¹) of the Child Protection Act cannot be a basis for refusal to

award the professional qualification of trainer nor for revocation of a trainer's qualification. Consequently, § 20(1¹) of the Child Protection Act is not a relevant norm within the meaning of the Constitutional Review Court Procedure Act whose constitutionality could be checked in the court case in question.

Similarly to the Chancellor, the Supreme Court found that § 20(1¹) of the Child Protection Act was not relevant for adjudicating the administrative case and the application by the administrative court for review of the constitutionality of that provision was not admissible. The Supreme Court declined to examine the application.

Work

The Chancellor was asked to analyse whether the duty to pay employees sickness benefit, imposed on employers by § 12^2 of the Occupational Health and Safety Act in 2009, was compatible with the constitutional principles of freedom of enterprise and the fundamental right to property (§§ 31 and 32 Constitution) and the fundamental right to equality (§ 12).

The Chancellor found that the Constitution does not prohibit imposing a duty on employers to compensate sickness days. The state may also design a scheme for compensation of temporary incapacity for work so that the employer participates in it. Organisation of the health insurance system is a social policy issue in the case of which the broad margin of appreciation enjoyed by the Riigikogu should be taken into account. Related to this is the issue of how to preserve the income of a person who has been required to quarantine as a close contact. During the debates in the Riigikogu it was found that some employers had not paid sickness benefit to employees who had been required to stay in quarantine as a close contact, because, in their opinion, the Occupational Health and Safety Act did not impose such a duty. The Chancellor asked that the Riigikogu should clearly express in the law its will regarding payment of sickness benefit during quarantine. The Riigikogu clarified the law.

Concerns were expressed about teachers' working conditions. A teacher noted that distance learning endangers teachers' health because during video classes it was constantly necessary to use a computer. After video classes a teacher begins to prepare for the next day's classes. The petitioner found that the health of teachers also needs protection alongside the well-being of pupils.

The Chancellor explained that an employer must protect an employee's health both during distance learning as well as ordinary instruction. However, whether and what school

management should do more specifically to protect the health of a teacher can only be determined on the basis of the circumstances of each individual case. The Chancellor also sent this opinion to the Labour Inspectorate, the Ministry of Social Affairs and the Ministry of Education and Research because large-scale application of distance learning even after the pandemic may lead to the need for a wider discussion of teachers' working conditions and problems of occupational health.

Teachers' working conditions were also raised in a petition asking the Chancellor to assess the decision of Viljandi Rural Municipal Government which allowed granting a longer vacation (56 calendar days) to a kindergarten teacher holding a master's degree than a teacher without a master's degree.

The Chancellor explained to the petitioner that the municipality was entitled to make that decision. The municipality justified it by the argument that granting a longer vacation to a kindergarten teacher holding a master's degree in pre-school education helps to ensure that the municipality has enough kindergarten teachers with a master's degree in pre-school education.

The Chancellor found that this can be considered a reasonable and relevant justification for different treatment.

During the reporting year, the issue of social protection of members of company management boards arose once again. The Chancellor was asked whether, under the Constitution, a company management board member having done salaried work is entitled to register themselves as unemployed and receive unemployment allowance.

The Chancellor explained that, under the Labour Market Services and Benefits Act, a company management board member who is a salaried employee is entitled to unemployment insurance benefit but not entitled to unemployment allowance.

The Chancellor conceded that it is difficult to find a justification why, in the event of discontinuation of work-related income, the status of a company management board member restricts the right to unemployment allowance. However, it cannot be said that the restriction is completely unconstitutional. Since salaried employees are guaranteed unemployment insurance benefit in the event of discontinuation of work-related income, the issue concerns more broadly social protection of people without work-related income. The conditions on which social protection measures should be implemented is for the Riigikogu to

decide. It is important that people should be ensured assistance in the event of deprivation. Subsistence benefit is intended for this purpose. The Chancellor has also previously drawn the attention of the Riigikogu and the Minister of Health and Labour to the fact that the nature of work and the situation of the labour market has changed, so that unemployment insurance needs more flexible solutions.

The Chancellor also found that the norms concerning payment of sickness allowance could be more flexible. Account should be taken of the fact that nowadays there are jobs which an employee can do part-time or continue working at another place of employment even when they are ill.

Also related to work is payment of carer's allowance. The Chancellor was contacted by several parents with the concern that the local authority did not pay them a disabled child carer's allowance because their child was not yet three years old.

By relying on random examination of local authority legislation, the Chancellor noted that a large number of local authorities had imposed a restriction that no carer's allowance is paid to the carer of a child under three years old. The reason given for imposing the age limit is that parents of a child under three years old receive childcare allowance. However, childcare allowance is no longer paid under the current law.

The Chancellor sent a circular to local authorities asking them to revise the underlying legislation for payment of social benefits and, if necessary, amend the legislation so that parents of children with disabilities are not deprived of the necessary social protection.

The Chancellor was contacted with a concern that a trustee in bankruptcy refused to compensate pecuniary loss incurred in an occupational accident occurring through the fault of an employer. The Chancellor explained that a trustee in bankruptcy has no legal basis to refuse a claim for compensation of health damage even if the person may in the future become entitled to obtain compensation for health damage through the Social Insurance Board.

The Social Insurance Board pays compensation for health damage only after the company liquidation process is complete and the company has been deleted from the commercial register. The Chancellor found that the practice of the Social Insurance Board is justified and compatible with the aim of taking over the duty of compensation of damage when the originally obligated person no longer exists.

Environment

Public space

Property maintenance encumbrance

According to good practice, people take care of the surroundings of their residence, including the area not belonging to them. For example, people also cut the lawn behind their fence or clean garbage from the street even though that area is in public use and belongs to the state or local authority.

The law allows a local authority to oblige landowners to also maintain an area in public use. These maintenance works may include, for instance, cleaning dust, sand, garbage, waste, snow and ice, sanding roads and pavements, cutting lawns, raking leaves, trimming a hedge, cutting the branches of trees and bushes that impede traffic on roads and pavements.

These works are not always excessively burdensome and, if possible, people would do them even if there was no such obligation. In some cases, however, a property maintenance encumbrance may turn out to be disproportionate. For example, because the area to be cleaned is very large or the work required is beyond a person's capacity.

The Constitution and laws enable – but do not require – imposition of a property maintenance encumbrance. If a property maintenance encumbrance is imposed, it should be necessary, appropriate and as little burdensome as possible. If local property maintenance rules do not enable resolving all individual cases uniformly, fairly and constitutionally, that legal act must include a possibility to find a solution based on specific circumstances (see letter about Paide property maintenance rules).

A local authority is responsible for maintenance of an area in public use regardless of whether it has obliged owners of neighbouring immovables to do so. A property maintenance

encumbrance is only one way of ensuring maintenance of property.

Setting up a special care home

In recent years, a community living service is also provided to people with mild and moderate special mental needs. For this, a separate building is constructed or adjusted. Residents of the house do not pose a danger to themselves or others but they need assistance and guidance to cope in everyday life. On several occasions, setting up such a care home has come to an impasse due to opposition from local inhabitants. The reason for this is first and foremost prejudice but also fear of deterioration of the living environment and loss of security.

This year, the Chancellor dealt with a case where due to opposition by local people the process of granting authorisation for constructing a care home was stuck and the statutory procedural deadlines were also exceeded. In her opinion the Chancellor emphasised that when granting building rights a local authority must proceed from the public interest and do it in a manner respecting everyone's rights. In some cases, public interest may outweigh opposition arising from the private interests of members of the community. A petition with many signatures does not always express either public or community interest. Sometimes, civil engineering works that displease some local inhabitants may also be in the public interest. Otherwise, it would be impossible to construct buildings necessary for society − in this case, for the most vulnerable members of society.

Building notice proceedings

According to law, a building permit is not always required for construction. In many cases, submitting a building notice is sufficient. A building notice is a new legal instrument enabling prior control of building activities, and implementing it in practice is still developing. An important role in the development of implementing practice is played by local authorities since it is their task to review the notices and decide within ten days whether additional requirements need to be imposed or a more thorough check is needed.

Some local authorities have laid down more precise rules in their administrative regulations on situations when building notices would definitely be checked. At the same time, these rules may lead to unjustifiably long procedural deadlines and so building notice proceedings may turn out to be more burdensome than building permit proceedings.

The Chancellor drew the attention of Tallinn City to the fact that by changing the procedural principles the city can reduce the amount of its work and speed up the proceedings. The city

does not have to limit itself only to the framework provided in the annex to the Building Code. The rules provided in the annexes to the Building Code must be taken into account but nothing prevents the city from developing its own more precise principles enabling more flexible proceedings.

Requirements for on-site wastewater treatment

The Water Act obliges rural municipalities, towns and cities to establish on-site wastewater treatment regulations but does not specify what exactly these should regulate. In any case, a local authority may not contravene the requirements that can be found in several laws or ministerial or Government regulations. This leaves local authorities a rather limited margin of manoeuvre. Therefore, in substance, local authorities' regulations concerning on-site treatment often repeat laws and state regulations. In turn, this leads to the risk that if a provision of a law or regulation changes, the local authority's regulations would be in conflict with both the law and the Constitution.

The Chancellor asked that Lääne-Harju rural municipality should amend the municipality's regulations on on-site wastewater treatment and bring them into line with laws. In drawing up specific regulations, a somewhat problematic example given by the Ministry of the Environment had been used as a basis. This provides grounds to believe that similar problems also exist in other local authorities.

Public debate of a spatial plan

Several important proceedings must be organised in line with the principle of public procedure, i.e. all interested parties must be given an opportunity to submit proposals and debate them publicly.

The law does not describe the manner of organising a public debate. Presumably, public meetings are meant to be used for this purpose. However, in view of the rules imposed to combat spread of the coronavirus, organising public meetings was complicated. At the same time, the law requires that a debate must take place within a specified time. Thus, many in Estonia were faced with the choice whether to violate the statutory procedural deadline requirement and postpone public debate or violate the ban on organising public debates while meeting procedural deadlines.

Several local authorities organised public debates online. The Chancellor had to assess whether the applicable norms allow this. In a situation where the Planning Act does not

explicitly prohibit it, it would not be reasonable to treat online debates as unlawful merely because of the manner of organisation.

In this respect, the organiser of a public debate has a broad margin of appreciation. For example, they may decide whether to organise one or several public debates and where and when to do it. The purpose and meaning of the debate should also be taken into account, i.e. whether the decision to be taken concerns the substance of a spatial plan and whether the spatial plan needs to be changed as a result of the debate. The law does not stipulate that during a public debate decisions are adopted which are binding on the body organising the drawing up of a spatial plan. Thus, first and foremost this is one form of inclusion which offers an opportunity to explain one's position orally and enter into a debate with other participants in public debate.

Statutory duty to tolerate a high voltage power line in the case of reconstruction

Landowners wanted to change the location of a high voltage power line during its reconstruction so as to reduce nuisance connected with the line. Primarily, they wanted to move the line farther from residential buildings. In connection with this case, it was also necessary to explain the duty to tolerate utility networks built and used in the public interest.

The Law of Property Act Implementation Act (§§ 15^{2}–15^{6}) lays down the statutory duty to tolerate utility networks which have been built on land prior to first registration of the land. The law also lays down a statutory minimum toleration fee. This is a transition norm which should guarantee that a previously built utility network that is necessary in the public interest could continue to operate. At the same time, the duty of toleration does not have to remain valid forever directly on the basis of the law. If a utility network (a high voltage power line) in its entirety is replaced with a new one, it is also relevant to transfer the duty of toleration to a new basis, which under §§ 158 and 158^{1} of the Law of Property Act is either compulsory possession or an agreement with the landowner.

Applying norms for road design in the case of building an exit

The Chancellor had to assess a case where, in the process of asphalting a gravel road, the previously established exits to plots next to the road were also removed. In the specific case, three plots were located side by side and each of them had a separate exit located closer than 150 metres from each other. While previously it was possible to exit the road at each spot suitable for doing so, after asphalting the road this would no longer have been possible

without ruining the road surface.

The Transport Administration did not agree to maintain the exits and only offered to build a temporary exit for the purpose of field or forest work. However, the owner of the plot was interested in building a permanent exit.

According to the norms for road design, when building a new road, exits may only be built so that their distance from each other is at least 150 metres. If exits need to be built closer to each other, then a speed limit of 50 km/h should be imposed. Another alternative would be to build a collector road in parallel with the main road. None of these solutions was suitable in the specific case.

Where legislation provides for a discretionary decision, the body enjoying discretion should also venture to use its margin of appreciation in order to obtain a fair solution. But in doing so no errors of discretion may occur. An error of discretion was made by rigidly applying the requirements for building a new road to replacement of the surface of the existing road and disregarding the margin of appreciation granted by the ministerial regulation establishing the norms for road design.

Forests

The Chancellor was asked to investigate whether the inclusion of inhabitants and communities in planning the management of state forest close to their residence had been lawful. The requirement of notifying the local people has been established because forest is part of their living environment.

According to the Riigikogu's assessment, everyone could know what changes are planned in the state forest close to their home. The law imposes on the manager of state forest the duty to communicate with the local community prior to beginning the work and to take account of the activities, needs and interests of the inhabitants. At the same time, the law does not restrict the right of the manager of state forest, i.e. the State Forest Management Centre, to also manage forest close to settlements. Nor does the State Forest Management Centre develop state forest policy but only implements it. The problem lies primarily in the debate and its quality: all the parties must know the rules based on which debates are organised, how proposals are weighed and decisions justified. By now, the State Forest Management Centre has clarified its procedure for inclusion.

In spring 2021, based on individual complaints the Environmental Board began to suspend forest notifications to protect nesting of birds. This practice may give competitive advantage to those forest companies whose cutting is not suspended since no complaint against it was raised.

Apart from the Nature Conservation Act, restriction on cutting for protection of animals and birds is also regulated by the Forest Act and the Animal Protection Act. The Forest Act allows the Minister of the Environment to restrict cutting in multi-layer stands and mixed stands from 15 April to 15 June for protection of fauna (including birds) during their reproduction period. However, the Minister has not made use of that possibility and has not established restrictions on cutting. Therefore, before registering a forest notification the Environmental Board must check whether the cutting planned on the basis of that notification is legal. Even prior to issuing authorisation, the Board must assess whether, when and with what cuttings and in which stands a risk may exist of disturbing birds during their nesting period.

The Riigikogu and the Minister of the Environment can analyse whether the current regulatory provisions and their implementation fulfil the aim of managing forests close to settlements and protecting birds.

Solar panels and agriculture

The Chancellor was asked to assess whether it is possible to apply for support for agricultural land under solar panels. As is known, several producers of solar energy also engage in agriculture on land under solar panels, for example by grazing sheep on it.

So far, the Agricultural Registers and Information Board has refused to pay agricultural support to solar energy producers because it automatically considers the land under solar panels as land unsuitable for agriculture. Producers of solar energy, however, consider grazing of sheep under and between solar panels to be possible and practise this in various places: simultaneously the panels offer suitable shelter for sheep.

According to the Chancellor's assessment, the interpretation by the Agricultural Registers and Information Board is not compatible with the principle of good administration. Administrative practice must be based on a clear legal basis; any arbitrariness should be avoided. The Ministry of Rural Affairs is preparing clearer rules on which the Agricultural Registers and Information Board can rely in the future.

Nature conservation related restrictions on property

The Chancellor prepared an opinion within constitutional review court proceedings concerning the constitutionality of the Nature Conservation Act and a regulation adopted on that basis. The dispute revolved around the issue at what price the state should acquire an immovable with nature conservation related restrictions. Should that price correspond to the market value of the immovable or can it be lower?

The Chancellor found that the price must proceed from the market value. The Constitution does not explicitly refer to market value but, in a society based on freedom and justice, compensation equal to the market value would primarily express the freedom to acquire an equivalent thing for the compensation obtained, as well as restorative justice. This helps to ensure that a person does not suffer material loss due to restrictions imposed on property in the public interest. Compensation based on market value also ensures that a landowner does not earn unwarranted profit at the expense of society. Disregarding the market value should remain an extremely well-justified exception. It is difficult to see a general justification for why the state should be able to acquire someone's property at a price other than the market value.

If compensation may remain below the market value, this creates a possibility and a motive for the state to acquire a person's property for compensation lower than its actual value. In the long-term perspective, this does not guarantee the principle of inviolability and protection of property (§ 32(1) Constitution).

The market value also reflects the exchange value of a thing, and a suitable method to determine this depends on the characteristics of the thing. In the case of certain property, fair compensation may primarily mean assessment and compensation of the value obtained from managing or using that property. In that case, the market value can be determined through the management value. For instance, in a situation where the main and immediate value of property is expressed in its active use and a relevant market for it exists (e.g. forest, leased real estate), assessing the value of property must take into account income from managing it which is lost as a result of expropriation. It is also possible to take into account nature conservation related restrictions applicable at the time of acquisition of an immovable, the resources spent on managing the property and the accompanying obligations (e.g. the obligation of forestation). This would ensure that, through compensation, a person receives monetary net income resulting from use of their property / ban on its management. In that case, however, assessing the value must also include additional compensation for that part of

the property which would be left to the person even if they were to exhaust their property in economic terms – e.g. by cutting the forest and selling the timber thus obtained. After that, the person would still retain the immovable, which, even if no other income can be obtained from it in the near future, can still be used, for example as collateral, and is therefore valuable.

In conclusion, it may be fair if assessment of property used in economic terms proceeds from the value obtained from using/managing it at the moment of assessment, and additionally the value of the land is also compensated to the person. Clearly, the value of property changes over time. Therefore, calculating the amount of compensation should rely on actual market prices applicable at the moment of assessment.

According to § 32(1) of the Constitution, fair compensation must be paid immediately. In linguistic terms, "immediately" means prompt action. In the event of expropriation, or transfer of an immovable subject to property restrictions imposed for purposes of nature conservation, paying compensation immediately in the ordinary sense of the word is not possible because even assessing and negotiating the value of property takes time. However, this does not mean that under § 32(1) of the Constitution it would not be important that a person receives compensation for expropriation of their property as quickly as possible. If a property has been *de facto* expropriated due to nature conservation related restrictions then the period reasonably required for procedures necessary for preparing the immovable for transfer, including for negotiations between the state and the landowner, could be considered as constituting immediate compensation with the meaning of § 32(1) of the Constitution. In individual cases, the length of proceedings, as well as whether negotiations were conducted in good faith, can be reviewed by the court.

Waste transport

Last year, the Chancellor received more petitions than previously about organised waste transport. These cases reveal that local authorities quite happily transfer their duties in the entirety to transporters, and sometimes even in violation of laws, or very extensively take the interests of transporters into account. This leads to a risk that waste transporters in similar circumstances are treated differently.

The Waste Act obliges a local authority to notify residents about having been made subscribers to organised waste transport. The explanatory memorandum to the Act also states that written notice must be sent to residents, and this must be done by the local

authority. However, it has happened that sometimes the relevant notice was sent to residents by the new waste transporter. In that case, a resident might not take a closer look at the information received because they might, for example, consider it to be an advertisement.

If a resident is not familiar with the new conditions of waste transport, they also do not know what rules apply to waste transport, for example on what days containers are emptied. This may often result in being invoiced for an 'empty run'.

Protection of valuable arable land

No one doubts that valuable arable land must be protected. However, in this context fundamental rights must also be respected and the approach must be measured.

The Chancellor already dealt with a Draft Act concerning protection of valuable arable land in 2019. Although formally the current Draft Act is new and amended, the restrictions envisaged are the same in substance and now the state is trying to achieve a result by restricting the planning autonomy of local authorities. This means that creating a hedge or a stone fence or growing forest on arable land would now be banned through spatial planning.

Quite often the claim is made that, once forest grows on a field, that area can no longer be put to use as a field. The Chancellor analysed the situation and found that turning old forest into a field is indeed complicated and might also not be particularly reasonable bearing in mind other interests. However, making a field instead of a young forest is possible. The relevant provisions of the Forest Act are not particularly clear, so that implementing those norms may prove to be complicated.

Environmental permit proceedings

The Chancellor does not receive many petitions concerning environmental permits. However, when it does happen, the petitioner invokes this possibility as a measure of last resort. As a rule, everyone tries to protect their interests themselves: people are afraid that having recourse to the Chancellor will ruin their relationship with environmental officials since it is their work that is being challenged.

The Chancellor investigated a case where a rural municipality refused to consent to exploration for mineral resources. Opposition by the municipality was not due to potential creation of a mine but the fact that the application had been submitted by a legal person in private law. The position of the municipality showed that the municipality itself might want to

organise mining in the future. In principle, this is possible even now. For example, if the municipality had applied for an exploration permit through its own company, then an auction between several interested parties would have been organised. However, it seemed that the municipality did not wish to participate in an auction and used its power of veto. In actuality, a rural municipality may base its decision only on whether exploration or mining is in the interests of the community or not.

The administrative proceedings concerning Linnamäe dam have lasted for almost ten years so far. Several parties have "contributed" to dragging out the proceedings, although ultimately this has no particular significance. Even in complicated proceedings, there should come a point where a substantive decision is made and either a permit or an administrative act with a refusal is issued.

The developer and the Environmental Board have not reached agreement on the results of the environmental impact assessment. Recently, it was revealed that the Environmental Board wishes to discontinue the environmental impact assessment proceedings. It is not known how the proceedings will continue and what this means for the parties to the proceedings.

Although § 49(2) of the Government of the Republic Act also allows complicated issues concerning several areas of government to be resolved by the Government of the Republic itself, so far this possibility has actually not been used. Such a situation is not compatible with the principle of good administration. The principle of good administration is also listed among the principles set out in the Administrative Procedure Act.

Administrative procedure must be purposeful and efficient, as well as straightforward and swift, so as to avoid superfluous costs and inconvenience to persons (§ 5(2) Administrative Procedure Act). Procedural acts must be performed promptly, but not later than within the term provided by law or a regulation (§ 5(4) Administrative Procedure Act). Thus, to meet the principle of good administration, parties to proceedings must be aware how the administrative procedure is conducted. The necessary decisions must be made as swiftly as possible by using all lawful measures to achieve the desired result.

Inspection visits

The Chancellor must monitor that people held in places of detention are treated with dignity

and their fundamental rights are protected. In a place of detention, it may be difficult for a person themselves to stand up for their rights, for example because they suffer from a mental disorder or cannot express themselves with sufficient clarity. Therefore, it is important that an independent monitor – the Chancellor of Justice – should make sure their rights are respected.

To protect people's rights, the Chancellor's advisers carry out mostly unannounced visits to places of detention. The duty of regular inspection of places of detention is laid down by of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

A place of detention means all places where a person may be deprived of their liberty and which they cannot leave at will. These include prisons, police detention facilities, psychiatric hospitals providing involuntary treatment, closed childcare institutions, care homes providing 24-hour special care services, etc.

For a second year already the spread of the coronavirus SARS-CoV-2 has affected life in Estonia as well as the Chancellor's inspection visits. During the last year, the Chancellor paid much attention to protection from the coronavirus of people in the places of detention inspected. Participants in inspection visits wore personal protective equipment, took corona tests and planned visits so that the risk of spreading the coronavirus would be minimal. This enabled inspection visits to continue even at a time when the spread of the virus was extremely wide.

Psychiatric hospitals

During the reporting period, the Chancellor inspected two psychiatric hospitals: the coercive treatment department at the psychiatric clinic of the Viljandi Hospital Foundation and the psychiatric department in Tartu Prison. A psychiatrist was involved as an expert in the inspection visits.

The coercive treatment department at the psychiatric clinic of Viljandi Hospital currently employs more activity supervisors and carers than during the Chancellor's previous visit in 2015. The department has well-organised documentation of extraordinary incidents and monitoring the condition of patients under restraint. Another positive change is that in the medical committee the condition of patients is assessed by doctors who are not affiliatedwith the coercive treatment department.

Unfortunately, the living conditions in the psychiatric department at Tartu Prison are the same as in 2016 when the Chancellor last inspected the department. The only positive change is that a more spacious walking area has been created for patients where they can also engage in sport. The Chancellor emphasised that if the prison is not capable of providing psychiatric care in line with statutory requirements, a patient should be transferred to a suitable medical institution.

The Chancellor noted that patients in both medical institutions had insufficient opportunities for meaningful leisure activities and therapy options. During both inspection visits, she also pointed out shortcomings in restraining patients. A hospital must ensure that restraint is not visible to other patients. In the future, the coercive treatment department must also enter all cases of restraint in a consolidated register. When assessing the need for continuation of restraint, a doctor in the department must always justify why a patient's continued restraint was considered necessary and how exactly the patient poses a danger. In the psychiatric department of Tartu Prison, the Chancellor asked that conditions be created enabling patients to be restrained safely and medical staff to monitor their condition.

Both in the coercive treatment department of Viljandi Hospital and the psychiatric department of Tartu Prison, extensive video surveillance is used to keep watch over patients. The Chancellor emphasised once again that patients must be ensured privacy in wards and during hygiene procedures. Video surveillance in patients' washrooms and toilets is only allowed in order to prevent a patient-specific risk. If video surveillance of a patient's toilet is nevertheless deemed unavoidably necessary, a technical solution should be found that enables blurring the area of hygiene procedures on the screen.

To ensure security, the staff of the coercive treatment department have established a number of rules for patients (such as restrictions on communication, a list of prohibited items, locking wards for the night) which are not compatible with the law. The Chancellor conceded that in view of the condition and long period of treatment of patients referred for coercive

treatment, such rules are probably necessary but they have to be laid down by law. The Chancellor asked the Ministry of Social Affairs to analyse the situation and find possible solutions.

Patients undergoing coercive treatment must be able to communicate with their loved ones in privacy. The Chancellor also asked that patients be allowed longer telephone conversations and meetings with their loved ones and that patients' leisure and therapy options be diversified.

Closed childcare institutions

The Chancellor inspected the Emajõe Study Centre of Maarjamaa Education College (*Maarjamaa Hariduskolleegium*) where the service of a closed childcare institution is provided to young people.

Group homes in the centre are cosy. Each young person has their own bedroom which they can decorate to their liking. The centre has very good sports and handicraft facilities. Pupils can meet their family in private in the family house. Young people are also guaranteed privacy during telephone conversations.

The Chancellor emphasised to the management of the school that reducing the minimum time for using the telephone and restricting home visits should not be used as a sanction. Many restrictions and punitive measures imposed on pupils in the group homes − such as collective punishments − are not lawful.

The Chancellor asked the school to consider different possible ways to deal with cases of bullying. A victim of bullying should not necessarily feel pressure to formally reconcile with the bully; for the victim it is sufficient to receive affirmation that their concern was noticed and bullying will be prevented. The staff of the centre must have profound knowledge about the group dynamics of young people and special needs arising from mental disorders of young people. In the event of a conflict, staff who have received comprehensive training as well as in-service training should be able to use measures that help to resolve a conflict instead of escalating it.

The Chancellor recommended that incidents where a pupil has stayed in a seclusion room with an unlocked door should also be documented by the school and entered in the general register on use of the seclusion room. The form on use of the seclusion room should include

a description of attempts to resolve the situation before the young person was taken to the seclusion room. Placing a young person in a seclusion room can be used as a solution only when no alternatives are left.

The expert participating in the inspection visit noted that young people arriving in the centre should immediately be offered individual therapy supporting their rehabilitation. Young people should also be given more information about their illness, so that those with a mental disorder would be able to cope better in everyday life.

The Chancellor asked that the centre should ensure that in the case of escorting girls the escort team should include at least one female employee.

Prisons

During the reporting year, the Chancellor focused attention on the situation of people in solitary confinement and examined the occurrence of deaths in prisons. Once again, it was necessary to deal with the issue of how to organise communication by children with a parent in prison.

During the reporting year, the Chancellor's advisers carried out an inspection visit to Tartu Prison. Worth following is the example of how the prison organised a video meeting with next of kin for a prisoner who due to their special need and restrictions imposed on visits had no other option to communicate with their next of kin. It is also good that Tartu Prison has changed its earlier practice and allows convicted and remand prisoners to observe dietary habits characteristic of their religion and worldview as long as this does not require considerable effort or expense from the prison.

Unfortunately, not everything in Tartu Prison complied with the laws and international requirements. Resolving many problems requires changes in legislation. On that account, the Chancellor sent recommendations both to the prison and the Ministry of Justice.

To date, no solution has been found to the very long-standing issue of expanding remand prisoners' opportunities for movement and communication. The Chancellor found that the health of persons in solitary confinement needs to be monitored constantly and they should be provided opportunities for meaningful communication with other people. Prisoners should not serve a disciplinary confinement punishment for a long uninterrupted period. Documents should clearly demonstrate why a person is placed in a separate locked cell.

Medication prescribed for a prisoner should only be given by healthcare professionals.

Living conditions in Tartu Prison need improvement and the disciplinary confinement regime needs to be revised. Problems exist with applying and documenting immediate coercion. Unfortunately, the situation in the psychiatric department of Tartu Prison has remained the same for years and several of the Chancellor's previous recommendations have not been complied with.

The Chancellor has consistently emphasised that the living arrangements and conditions in prison must contribute to a person being able to lead a law-abiding life after release. For this, a prisoner must have learning opportunities, they should be able to maintain family ties, and keep up to date with what is happening in society. Thus, the prison has a major role in making society safer, reducing recidivism, and at the same time reducing the cost of imprisonment.

Convicted and remand prisoners should also be able to communicate with their families and children via a video call, so as to maintain their family ties. The automatic ban on visits associated with placement in a disciplinary cell must be abolished and restrictions not facilitating meetings of convicted and remand prisoners with their next of kin should be removed. Books should again be made more readily accessible to prisoners.

The Chancellor investigated deaths in prisons. During the period under examination – from 1 September 2019 to 1 September 2020 − 17 people died in prisons in Estonia. Of these, 13 deaths were caused by health problems. Four people committed suicide. No killings have occurred in prisons since 2011.

Prisons and the Ministry of Justice effectively investigated deaths of prisoners and assessed the work of officers fulfilling their official duties at the time a death occurred. Deaths could be prevented even better if the health of people in solitary confinement were monitored daily, if the risk of self-injury and suicide of persons arriving in prison were assessed, and if the prison had enough officers using the principles of dynamic security in their everyday work. Changing cell furnishings that may hamper effective supervision would also help.

The Chancellor had to deal with a complaint from a prisoner asserting that the prison failed to resolve their applications by deadline. The Chancellor ascertained that it took Viru Prison more than a year to reply to applications by the prisoner. The Chancellor recommended that the prison, in cooperation with the Ministry of Justice, should analyse the situation and quickly and effectively resolve the problem: for example, create new job positions in the

prison, offer the prison temporary assistance from officials of the ministry, intensify hiring new staff, and the like.

Similarly to previous years, this year too the Chancellor received several complaints concerning communication between a child and their parent in prison. For example, Tartu Prison erroneously interpreted § 31(3) of internal prison rules, finding that it prohibits a minor from coming for a visit alone. The Chancellor explained that § 31(3) of the internal rules, in combination with § 40, regulates the number of people coming for a long-term visit but does not prohibit a minor from meeting with a prisoner alone. The Ministry of Justice reached the same opinion in its reply to the Chancellor.

Viru Prison allowed a prisoner to have a long-term visit with their child only on the basis of written consent of the other parent or guardian. The prison also required the consent of the other parent or guardian to be able to carry out a strip search of a child.

The Chancellor emphasised that the prison must also comply with the rules laid down by the Family Law Act, for instance that a child may maintain personal contact with their parent and a parent has the duty and the right to maintain personal contact with their child. The prison must ascertain essential facts to allow and organise a visit between a parent in prison and their child. For this, the prison may ask the parent with the right of custody raising the child, or the child's guardian, to submit an opinion about personal contact between the child and the parent in prison. When organising a visit between a child and their parent in prison, the parent or guardian taking care of the child and the prison must communicate and cooperate with each other. Asking merely for written consent may not necessarily provide sufficient information to the prison, for example about how best to arrange the visit and how to support the child before, during, and after the visit. If it is found that the parents or the guardian are of a different opinion regarding contact between the child and their parent in prison, the prison may refuse to allow a visit until the parties concerned reach agreement (§ 25(1^1) clause 4 of the Imprisonment Act). If a parent seeking a visit is unable to exercise their rights of access, they may apply to the court to determine the conditions of access (§ 143(2^1) and (3) of the Family Law Act).

The Chancellor emphasised that it is extremely important that parents or the guardian are provided with information about the visit, including any search. If a child comes for a visit together with the other parent and if the child consents, it is considered good practice that the parent is present during procedures carried out with the child. If a child comes for a visit

alone, prison officers and staff have a decisive role in guaranteeing the child's physical and mental well-being. The prison must make every effort to avoid searches where a child is forced to strip. Such a search is not allowed; alternative search methods must be used. Erroneous practice of searches is not rendered lawful even by the presence of a parent with the right of custody or the guardian, nor by written consent to this procedure.

Police and Border Guard Board detention facilities

Among the Police and Border Guard Board detention facilities, during the reporting year the Chancellor inspected premises used for short-term detention in Viljandi police station.

Immediately prior to the inspection visit, a police detention centre had operated in the same premises. Thus, persons in detention cells were ensured the opportunity to spend time outdoors and regular meals, which is commendable. The living conditions of detention cells are in need of improvement. Problems also occurred with handling medicines.

General care homes

In Estonia, increasing numbers of people are no longer able to cope on their own at home, due either to poor health or an unsuitable living environment. In general care homes, competent care and assistance is offered to them. Most residents in general care homes are elderly people, but there are also younger people who cannot cope on their own at home as a result of illness or injury.

According to data from the Ministry of Social Affairs, 13 247 people used the general care service in 2020. Estonia has more than 190 general care homes with approximately 10 000 places. At the end of 2020, 9025 people were living in general care homes. Protecting the rights of these people has been extremely important for the Chancellor.

During the reporting year the Chancellor's advisers inspected the activities of five care homes providing a general care service: the Karksi Home of the South-Estonian Care Centre, the care home of the Paju Pansionaadid non-profit association, the Nõlvaku care home of the Tartu Mental Health Care Centre, the Phoenix Boarding House of OÜ Zunt and Pandivere Boarding House. A general practitioner was involved as an expert in all inspection visits.

When inspecting a general care home, the Chancellor's advisers scrutinise whether people are treated with dignity, what the living conditions in a care home are, and whether people

are not locked in their rooms. The advisers also monitor that the care home does not pose a risk to people's life and health. Items checked include whether the care home has enough staff, whether people are cared for and fed properly, whether their health is monitored, and whether they receive medical treatment if necessary. Inspection visits also focused on compliance with precautionary measures for combating the spread of infectious disease.

Since last year, the Chancellor has been concerned whether healthcare services are sufficiently accessible to care home residents. It was found that only one of the care homes inspected did not have a medical nurse. The situation has thus significantly improved in a year. Due to the spread of the coronavirus, it is important to monitor the health of social welfare institution residents even more carefully than usual.

For a number of years, the main concern for general care homes has been shortage of staff, in particular staff with the necessary training. This results in staff not having time to carry out the necessary care procedures (e.g. washing and turning those lying in bed) with sufficient frequency, offer residents meaningful leisure opportunities, or help people to go for a walk outdoors. The law does not state how many carers a general care home must have. Nevertheless, staff numbers must be sufficient, so that in view of the preparation and workload of the staff it is possible to offer the necessary care and assistance to people. If there are not enough staff, it may be difficult for residents to call for assistance and staff might not notice each and every resident's need for assistance. This is so in particular if residents live in several buildings or on several floors.

Heads of the care homes inspected considered staff training and compliance with education requirements for carers to be important issues. Nonetheless, very many employees have unfortunately not received the required training. It is in the interests of both residents and staff that carers should have the necessary training. Properly qualified staff are able to prevent occurrence of many problems. Due to lack of knowledge, untrained staff might not know how to properly assess situations or how to act in anxious moments by taking account of a person's interests and choosing the right methods for ensuring their well-being and security.

One such wrong method is locking the door of a department or room in a general care home, so that residents are unable to move around freely. The law does not allow this and, moreover, it may pose a danger to the health of the secluded person. The general care home service is voluntary, it is provided at a person's own request and no-one may be held in a general care home against their will. Those locked into their rooms in care homes mostly

included people with problematic and unpredictable behaviour as well as those with a dementia diagnosis, who are difficult to handle. The living environment of elderly people with dementia who are receiving the general care home service should be adjusted to meet their needs, and guidance materials prepared by experts should be used to instruct staff.

Problems of compliance with health protection requirements, ensuring privacy, as well as handling and administering medicines could also be found in care homes. Many of those problems were known already in previous years. In some care homes, care plans were not properly filled out.

The coronavirus outbreak has significantly affected life in care homes: residents have been forced to spend more time in their room because many joint activities have been cancelled. Due to the spread of SARS-CoV-2, restrictions on visits were imposed in many care homes and for a long time residents could not meet their loved ones. Although it was possible to send parcels to loved ones, contacts by residents with their families were scarce. Recognition is due to those social welfare institutions which offered people alternative opportunities for communication, such as online meetings. For this, additional equipment was purchased and assistance was provided to people in using it. Unfortunately, not all the elderly are capable of using technical solutions (including for health reasons).

Care home residents consider communication with their loved ones extremely important and restricting visits from the next of kin may be a source of great stress and anxiety. The Chancellor also drew the attention of care homes to international recommendations according to which a complete ban on visits is not a reasonable solution in social welfare institutions. Rather, it is recommended to consider how to arrange safe meetings with next of kin by keeping a distance and using personal protective equipment if necessary.

Special care homes

The twenty-four-hour special care service is provided to people with mental disorders or severe or profound disability who are in need of daily guidance, counselling, assistance, and supervision due to their mental health disorders.

The 24-hour special care service is currently provided to 2277 people in 56 locations. During the reporting year, the Chancellor's advisers carried out an inspection visit to Valkla Home of AS Hoolekandeteenused and the special care department of the Welfare Centre of Viljandi Hospital. Inspection visits were also made to Karski Home of the South-Estonian Care Centre

and the non-profit association Paju Pansionaadid, which also provides a general care service in addition to the 24-hour special care service.

This year, many residents in special care homes moved to new residential buildings where the conditions are cosier. For example, many residents in the special care department of the Welfare Centre of Viljandi Hospital received a new home and have now moved into new buildings where the conditions are cosier than before, there is more light and also more privacy.

A persistent problem in special care homes in recent years is shortage of staff. Mostly, a care home has the statutorily required number of activity supervisors but often this is not sufficient. Since staff numbers are small, they have no time to deal with residents individually, and this also complicates supervision and ensuring a safe environment. Particularly worrying is shortage of staff in the evenings and at night. In some care homes, many residents need an individual approach, and in order to create an environment corresponding to their needs, more activity supervisors should be employed than prescribed by law.

Special training requirements have been established in view of the specific nature of care and assistance needed by residents of special care homes. Unfortunately, several activity supervisors in most of the institutions inspected had not completed the training required by law. Untrained staff might not know how to guide and support the development of people in their care or how to cope with agitated people. The Chancellor recommended that the necessary further staff training be quickly arranged. It is worth highlighting that care homes have begun to pay more attention to training than previously, and close cooperation with training institutions exists in organising training.

The Chancellor emphasised that the freedom of movement of a person receiving a 24-hour special care service without a court ruling may only be restricted for a brief period, and, for this, the person must be placed in a seclusion room compatible with requirements. The Chancellor also explained the requirements for documenting seclusion. Inspection visits revealed that agitated people had been taken to calm down in their own room or another room not adjusted for seclusion because the care home did not have a proper seclusion room. This is not safe. Freedom of movement of people with mental disorders undergoing an unstable remission was also restricted without a legal basis. Some care homes failed to document the required data based on which it is possible to check whether a justification existed for placing a person in a seclusion room.

Care homes still have problems with handling and administering medicines. Medicine cupboards contained medicines where it was not clear who they had been prescribed for. The Chancellor explained to care homes that strict rules for handling medicines must be complied with and a person may only be given medication prescribed by a doctor. Medicines left over due to change in the treatment scheme and other unnecessary medicines must be properly destroyed. The Chancellor reminded care homes that people should not be administered medication against their will or under threat. In several care homes, nursing care was not ensured to the extent required by law.

It is good to note that care homes increasingly try to think more about how residents could spend their time meaningfully. People are offered participation in various hobby groups and other activities (such as activities in the garden). Engaging in meaningful and developmental activities also helps to prevent conflicts.

Precautionary measures imposed due to the spread of the coronavirus also complicated the everyday life of special care home residents. For many people with mental disorders, daily routine is extremely important, so that restrictions on joint and hobby activities cause anxiety and discontent. Opportunities to meet next of kin were restricted.

It is good that several special care homes considered it important to offer alternative ways to communicate through technical solutions. New computer stations were set up and tablets were bought to make video calls. The Chancellor also drew the attention of special care homes to international recommendations according to which imposing a complete ban on visits in social welfare institutions is not reasonable. Preference should be given to arranging safe visits with next of kin by keeping a distance and using personal protective equipment if necessary.

The Chancellor received a letter from a representative of a person in a closed social welfare institution who was concerned whether the opinion of their ward would be taken intoaccount in vaccinating against the coronavirus. The Chancellor's advisers visited that socialwelfare institution on two days, and talked to residents as well as the staff of the care home,and examined documents. The Chancellor's advisers together with supervisory officials fromthe Health Board also monitored administering the second vaccine dose to residents of thecare home. They were satisfied that no force was used towards residents during vaccination.The ward of the person who had contacted the Chancellor also affirmed that their wish not to receive the second vaccine dose was taken into account.

The Chancellor's advisers explained to care home staff how to vaccinate residents in accordance with the law so that vaccination would be lawful and respect their human dignity. In Estonia, vaccination is voluntary. This means that no one should be forced to consent to vaccination, nor may anyone be swayed to give consent. Residents of a care home should be provided information about vaccines in a manner understandable to them. A healthcare professional vaccinating a person must assess whether that person is able to consider arguments for and against vaccination and give independent consent for vaccination. If a person with restricted active legal capacity is able to consider responsibly the arguments for and against vaccination, their guardian is not entitled to make the decision instead of them.

Children and young people

Estonia ratified the UN Convention on the Rights of the Child on 26 September 1991. Under Article 4 of the Convention, States Parties must undertake all appropriate legislative, administrative, and other measures to guarantee the rights recognised in the Convention.

In Estonia, the function of the independent ombudsman for children is performed by the Chancellor of Justice who monitors that all decisions concerning children proceed from the best interests of the child.

Imposing age limits

During the reporting period, on several occasions the Chancellor's opinion was sought on issues concerning a child's age and the related right to take independent decisions. The Convention on the Rights of the Child and the Constitution presume that a reasonable

balance is found between the child's right of participation and protecting the child. On the one hand, due to their physical and mental immaturity children need special protection and care. On the other hand, the child is an independent subject of law with the right to participate in decision-making concerning himself or herself. The underlying basis should be that a child develops and thus their decision-making ability and sense of responsibility also increase.

When imposing age limits, an adequate balance is sought between the need to protect a child and their right to decide. Current legal norms may cause astonishment: a 14-year old young person has capacity for guilt, a 16-year-old may participate in local elections, but still quite recently providing psychiatric care to an 18-year-old without a parent's consent was not allowed. On 3 April 2021, the Riigikogu, on a proposal by the Chancellor of Justice, amended the Mental Health Act so that an 18-year-old young person with sufficient capacity to reason may seek and receive psychiatric care.

During the reporting year, a debate in Estonian society was held over the age limit for sexual consent. Naturally, children need to be protected from any kind of sexual mistreatment and abuse. If studies and the practice of the prosecutor's office and the police show that laws do not enable sufficient protection of minors, then the law needs to be revised. However, when raising the age of sexual consent one should also not forget sincere relationships among young people, for the protection of which many countries have excluded from criminal liability cases where the age difference between the person below the age threshold and their partner is not big. The age difference suitable in the Estonian context must be decided by the Riigikogu. According to the Draft Act prepared by the Ministry of Justice, it is intended to raise the age of sexual consent from the previous 14 years to 16 years and the age for marriage from 15 years to 16 years.

Prior to the upcoming population census, the Archbishop of the Estonian Evangelical Lutheran Church, Urmas Viilma, asked for the Chancellor's opinion whether the census respects the principle of freedom of religion of children since no question about religious belief is asked from children under 15 years old.

The Chancellor did not find a violation of the freedom of religion of children in this case. The Estonian Constitution and international agreements guarantee children's freedom of religion. Its core is a person's inner conviction which they may but need not share with others. A parent cannot decide on behalf of their child whether to disclose to the state information about the child's beliefs. It should also be taken into account that the child's own response

may differ from the response given by their parent. However, a child might not understand what it means to disclose data about themselves to the state and why disclosing data about one's beliefs is voluntary. Thus, a response given by a child need not be a conscious response.

The Convention on the Rights of the Child emphasises the right of the child to participate in decision-making concerning their life. When making such decisions, the opinion of the child must always be ascertained if their level of maturity enables this even to some extent. The older a child and the better their capacity to reason, the stronger should be the weight given to their opinion. It is almost impossible to regulate each and every case through legal norms or require that a child's capacity to reason should be assessed when carrying out whatever measure. Therefore, setting a specific age limit is justified in some cases. For instance, a 15-year-old may apply for an identity document and participate in administrative court proceedings.

A specific age limit helps to ensure clarity in legal relationships. Nevertheless, whenever possible, flexible solutions should be preferred which take into consideration every child and their maturity.

A good example of a flexible solution can be found in the provisions of the Law of Obligations Act which regulate seeking a child's consent for provision of a healthcare service. When providing healthcare services, a child's right to decide independently depends on their capacity to reason, which is assessed by a healthcare professional (see, in more detail, the chapter "The child and health").

Children and parental care

The Chancellor often receives requests for assistance from 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 matters.

Of course, it would be best if parents would reach agreement between themselves on matters concerning their child. Indeed, no law or state coercion can mend human relationships. In the absence of agreement, a dispute is resolved by the court, which must take account in its judgment of the particular circumstances and reach a solution that is in the best interests of the child. Recourse to the court should be a measure of last resort.

National family mediation system

The Chancellor has said on several occasions that, in resolving a dispute, parents need counselling and intermediation concerning their agreements.

During the reporting period, the Ministry of Social Affairs completed the draft Family Mediation Act. Under the Draft Act, a national family mediation service will be created which should help separated parents to reach agreement with a view to the well-being of children. According to the Draft Act, parents can agree on the living arrangements of their child both extra-judicially as well as in the early stages of court proceedings. An impartial specialist would help in reaching agreement.

So long as the family mediation system is not yet available for everyone, many disputes concerning children unfortunately still end up in court. Possible solutions are not necessarily suitable for both parents.

Child maintenance and the child's right of personal contact

The Chancellor was asked about the compatibility with the Constitution and the interests of the child of a provision in the Family Law Act under which the parent with the right of custody must pay maintenance even if they wish to live together with the child and maintain the child but cannot do so.

The Chancellor found that, if assessed *in abstracto*, such a provision in the Family Law Act is compatible with the Constitution and the interests of the child.

No law prescribes that the court should grant access rights in favour of the parent with whom the child lives. Nor is it always possible to say that it would be in the interests of the child to live alternately with both parents. The child's best interests are always the decisive factor. What kind of access arrangements the court assigns for contact between the parents and children may, inter alia, depend on circumstances such as the child's age, the relationship between the child and the parents, the relationship between the parents themselves and their willingness to cooperate, the parents' place of residence, and the location of the kindergarten or school. The court must also take into consideration the child's opinion in line with the child's maturity. The court's conclusions might not coincide with a parent's opinion as to the best interests of the child. The court makes a decision as an impartial adjudicator.

It is in the interests of the child to receive maintenance at any time from both parents,

regardless of the relationship between the parents themselves. If a parent is dissatisfied with the amount of maintenance, they may ask the court to reduce or increase the maintenance payment. If a parent wishes greater participation in the life of their child and greater contact with the child, they may ask the court to establish access arrangements or change the existing arrangements. However, a parent must pay maintenance regardless of whether they are satisfied with the existing access arrangements. A parent's duty to maintain their child has been established in the interests of the child.

The Chancellor was asked to check whether § 143(3) of the Family Law Act was compatible with Articles 26, 29 and 31 of the Convention on Preventing and Combating Violence against Women and Domestic Violence. The petitioner asked whether, if a parent living separately who avoids paying maintenance for a long time and thus leaves to the other parent all the economic duties related to raising the child, this would amount to economic violence against the child and the other parent.

The Chancellor found that in some cases problems may arise with implementing the law but § 143(3) of the Family Law Act is not in conflict with Articles 26, 29 and 31 of the Convention.

Neither Estonian nor international law establishes interdependence between paying maintenance to a child and the access rights of a parent living separately. Both under the Convention on the Rights of the Child (Article 9 para. 3) and the Family Law Act (§ 143(1)) a child is entitled to have direct contact with both parents and, as a rule, maintaining direct contact and relations with both parents is in the interests of the child.

Although according to the Convention domestic violence may be expressed as economic violence, it does not follow from the Convention (including Articles 26, 29 and 31) or from any other international or national legal instrument that depriving a child of maintenance could always be equated to economic violence against the child.

Paying maintenance creates the necessary conditions for the child's growth and development. If a parent fails to pay maintenance, the child's needs may be left unsatisfied due to lack of money.

Even if a parent knowingly evades paying maintenance and lack of money may affect the child, banning contact between child and parent might not be in the child's best interests. The child might not perceive the meaning of the parent's action, but it is difficult for the child to bear if they cannot be in contact with the parent. Measures other than preventing contact

between child and parent have been established for sanctioning a parent who evades paying maintenance (e.g. § 169 of the Penal Code).

Failure to pay maintenance is not equivalent to economic violence but sometimes non-payment of maintenance may be a form of domestic violence.

When determining access arrangements between the child and the parent living separately, the court must primarily keep the child's best interests in mind. The child's will (opinion) must be ascertained during judicial examination, and that information is essential. Proceeding from the child's best interests also means that no such responsibility for deciding access arrangements is placed on a child that does not correspond to the child's age and maturity, especially if the relationship between parents is already tense. The final decision on access arrangements is made by adults and this may differ from the child's own opinion.

It should be taken into account that access arrangements can only be implemented if the child themselves wishes to be in direct contact with a separated parent. Thus, a child cannot be forced to be in direct contact with the parent living apart (see Supreme Court judgment No 3-2-1-95-14, para. 21).

Maintenance reform

The Ministry of Justice has prepared a Draft Act envisaging a change in granting maintenance to a minor child. It is intended to replace the currently applicable minimum maintenance amount with more flexible grounds for calculating maintenance.

The downside of the change seeking greater flexibility is an implementing provision attached to it, under which maintenance amounts set by the court prior to entry into force of the new law would also change automatically.

The Chancellor found that court decisions cannot be changed in this way through implementing provisions of a law. This is not compatible with the child's best interests since it fails to take account of essential circumstances ascertained in court or the child's actual needs. Such a change may also contravene the principle of the force of law of a court decision arising from § 10 of the Constitution, which protects the constancy of state decisions and guarantees that they cannot be arbitrarily changed retrospectively.

International child protection cases

In recent years, the Chancellor has received increasing numbers of petitions from parents

whose child has been separated from parents in a foreign country. Often, parents in such a situation expect more assistance from the Chancellor of Justice and the Estonian state. Unfortunately, neither the Chancellor nor other officials in Estonia can intervene in the work of foreign authorities and courts. Estonian officials can only give advice and clarify matters. Similarly, officials from other countries cannot intervene if a case of separating a child from the family is adjudicated by an Estonian court.

Everyone who has set up residence in a foreign country must observe all the laws of that country and keep in mind that disputes are resolved in line with the procedure applicable in that country. A person's country of origin cannot intervene in the activities of foreign officials or administration of justice there.

Contact between a child and a parent who is a prisoner

For many years, for children whose parent is in a place of detention a problem has been very limited opportunities for contact with their parent. For instance, a place of detention lacks child-friendly rooms to arrange visits, nor are a child's needs in line with their age taken into account in organising visits. Limited opportunities for contact and lack of child-friendly working methods and rooms in places of detention damages a child's relationship with their parent.

During this reporting year, the Chancellor again received complaints concerning limited opportunities for contact between a child and their parent who is a prisoner. For example, Tartu Prison erroneously interpreted § 31(3) of internal prison rules, finding that it prohibits a minor from coming for a visit alone. The Chancellor explained that § 31(3) of the internal rules, in combination with § 40, regulates the number of people coming for a long-term visit but does not prohibit a minor from meeting with a prisoner alone. The Ministry of Justice reached the same opinion in its reply to the Chancellor.

Viru Prison allowed a prisoner to have a long-term visit with their child only on the basis of written consent of the other parent or guardian. The prison also required the consent of the other parent or guardian to be able to carry out a strip search of a child.

The Chancellor emphasised that the prison must also comply with the rules laid down by the Family Law Act, for instance that a child may maintain personal contact with their parent and a parent has the duty and the right to maintain personal contact with their child. The prison must ascertain essential facts to allow and organise a visit between a parent in prison and

their child. For this, the prison may ask the parent with the right of custody raising the child, or the child's guardian, to submit an opinion about personal contact between the child and the parent in prison. When organising a visit between a child and their parent in prison, the parent or guardian taking care of the child and the prison must communicate and cooperate with each other. Asking merely for written consent may not necessarily provide sufficient information to the prison, for example about how best to arrange the visit and how to support the child before, during and after the visit. If it is found that the parents or the guardian are of a different opinion regarding contact between the child and their parent in prison, the prison may refuse to allow a visit until the parties concerned reach agreement (§ 25(1^1) clause 4 of the Imprisonment Act). If a parent seeking a visit is unable to exercise their rights of access, they may apply to the court to determine the conditions of access (§ 143(2^1) and (3) of the Family Law Act).

The Chancellor emphasised that it is extremely important that parents or the guardian are provided with information about the visit, including any search. If a child comes for a visit together with the other parent and if the child consents, it is considered good practice that the parent is present during procedures carried out with the child. If a child comes for a visit alone, prison officers and staff have a decisive role in guaranteeing the child's physical and mental well-being. The prison must make every effort to avoid searches where a child is forced to strip. Such a search is not allowed; alternative search methods must be used. Erroneous practice of searches is not rendered lawful even by the presence of a parent with the right of custody or the guardian, nor by written consent to this procedure.

Alternative care

A child's natural environment for growth and development is their family. In order for a child to be able to grow up in a family, the state must support parents in raising children. Unfortunately, even with state support not all parents are able to ensure a safe environment or parental care to their children. In those cases, the state must ensure suitable alternative care for a child outside their family.

Care for a child outside their birth family is called alternative care. Forms of alternative care include adoption, guardianship, and substitute care service (in a foster family, family house, and substitute home). After having received alternative care, a young person entering independent life is entitled to support in order to cope independently and continue their education. This assistance is called continuing care.

Many children under alternative care wish to maintain contact with their biological parents, relatives and other next of kin. This wish must be understood and respected and considered as the child's right which may only be restricted by the court.

Even if a child cannot communicate with their birth family, they still have the right to know about their origin and family. For a child growing up in a substitute family, such information is important for creating their identity. When giving a child information about their original family and arranging contact between them, the interests and rights of all parties must be taken into account and a solution found which is in the child's best interests.

The right of a child in a family house to contact with parents

The Chancellor was contacted by the mother of a child in a family house whose right of custody had been suspended by the court while her access rights had not been restricted. The mother was dissatisfied with the decision of Kohtla-Järve city authorities allowing her to meet with the child only in the presence of a specialist, nor was it allowed to leave the child in the care of the mother's cohabitant for the night.

The Chancellor found that Kohtla-Järve City Government had not violated the right of access between mother and child. The Family Law Act entitles the child to be in personal contact with the parent (§ 143(1) of the Act). The right of contact between a child under alternative care and their parent cannot be restricted by the local authority as the child's guardian unless the court has imposed such a restriction (§ 143(3) Family Law Act). At the same time, it is important that the guardian, family, parent and child should agree how to arrange contact. Rules which proceed from the child's everyday needs are reasonable. The child must be able to study and rest. In the interests of the child's mental security, the presence of a specialist during a meeting between parent and child should sometimes also be considered necessary: for instance, if the child themselves wishes it.

In this case, the city government enabled the mother to meet with the child in private. If a local authority is the child's guardian, it may decide on what conditions the child may communicate with the mother's cohabitant. The child staying in the care of the mother's cohabitant for the night would not have served the aim of contact between mother and child.

Confidentiality of adoption

The Chancellor was asked why an adoptive child may ask the Social Insurance Board for

information about their family of origin, but not vice versa.

The Chancellor explained that data on adoption are covered by the confidentiality of adoption with the aim of protecting primarily the child, adoptive parents and the child's biological parents from disclosure of adoption data against their will since their lives are most affected by adoption.

Previously, the Chancellor has found that in the case of constitutionally-conforming interpretation the Family Law Act does not prohibit an adoptive parent or an adopted child from sharing information on adoption. However, an official can obtain adoption data only if necessary for performing official duties: for instance, if an adopted child asks about their adoption. Nevertheless, even in that case the adopted child can be given information about their biological parents, grandparents and siblings only if these people consent to it.

In the case of disclosure of the data of an adopted child, the will of the adopted child is decisive because adoption is their story and the basis of their identity. Only an adopted child themselves can say whether they wish participation by biological relatives in their life or not. However, unless an adopted child has notified their wish to the Social Insurance Board, officials do not have the right or possibility to bring members of the family of origin into contact with them.

The right of the child to know their parents

The Chancellor was asked when is the right time to tell a child living with their mother who their father is. The Chancellor explained that no legislation lays down the 'right time' for this. Nor can the law determine the moment when a child should be told that they have been adopted.

The best solution for the child depends on the specific situation. As a rule, parents know their child best and can thus choose the right time and place when to tell the child. If parents fail to reach consensus on this matter, the dispute is resolved by the court and the court will make the best decision for the particular child and their family.

Kindergarten and school

The Chancellor has received many letters concerning problems of kindergartens and schools. Several questions recur from year to year. For instance, people ask what is a reasonable time within which a local authority must give a family a kindergarten place; and parents are also

interested in the conditions of the childcare service.

During the reporting period, many questions arose in connection with distance learning and other corona restrictions imposed in schools. A number of petitions did concern organisation of study in the conditions of combating the spread of the virus. There were also recurring questions, for instance concerning school food and use of smart devices.

Distance learning

Distance learning − when a pupil communicates with teachers only online during instruction – is nothing unprecedented in itself. It can be seen as a different and enriching way of study, which also helps pupils to develop skills for independent work. While distance learning was applied on a small scale before the emergency situation in force in spring 2020 − for instance, project days were organised based on e-learning − then during the second wave of the corona outbreak distance learning lasted for a week or several weeks without interruption, and sometimes even for a month or two.

Despite the experience gained during the emergency situation, many questions this year concerned the lawfulness of applying distance learning and its quality. For instance, the Chancellor had to form an opinion whether distance learning lasting for weeks and months is in conformity with legislation (see e.g. distance learning at Jüri Upper Secondary School, distance learning at Oru School, distance learning at Tallinn Järveotsa Upper Secondary School).

The Chancellor explained to parents, schools and local authorities that, in order to apply distance learning, a relevant legal basis must have been established in school internal rules or the curriculum. If distance learning is applied to combat the spread of the coronavirus, then the measures taken to protect everyone at school, as well as the organisation of those measures, must be reflected in school internal rules.

Distance learning for protection of health cannot be imposed if no such measure is laid down in school internal rules. Nor, of course, can distance learning be applied if it has been laid down as a health protection measure in school internal rules but, in view of the actual situation, use of such a measure is not justified.

The legal basis for distance learning may also be laid down in the school curriculum. Regulating distance learning in the school curriculum would be especially useful in those cases where the school intends to apply e-learning as part of ordinary instruction. In the

curriculum, the school can lay down the essential conditions and procedure for organising e-learning, which is carefully planned and discussed with everyone at school.

A legal basis should be understood as the right to act provided by a law or a regulation. Consequently, a school may not base its decision on legally non-binding guidelines or recommendations (see distance learning at Rahumäe Basic School). Recommendations are intended for practical organisation of distance learning. Orders given by the owner of a school − as a rule a local authority − can be seen as orders given in the frame of the school's internal relations, compliance with which may be mandatory for the head of the school as a local authority employee. However, such orders cannot be applied directly in respect of persons outside the administration, i.e. pupils. For this, a decision by the school is needed, and the school, in turn, proceeds from a law or a regulation when adopting that decision.

In one case, the Chancellor had to assess whether the school was allowed to refer pupils to distance learning because there were not enough teachers at school (see "Distance learning at Järveküla School"). It was decided to apply distance learning not for protection of those staying in the school building but because a large number of teachers could not work in the school building due to national restrictions on movement. The Chancellor found that the law does not allow all pupils to be referred to distance learning for this reason. When making this decision, the school cannot rely on an emergency plan because under the Basic Schools and Upper Secondary Schools Act temporary absence of teachers from school cannot be interpreted as an emergency. Nor had the school declared an emergency under the Emergency Act.

In most cases, the Chancellor assessed the application of distance learning on the basis of a petition, but in one case she also initiated proceedings herself (see distance learning at schools in Jõgeva rural municipality). The Chancellor found that two-day (in one school three-day) distance learning immediately before the school holidays did not breach pupils' rights.

Assessment of distance learning also revealed that it is unclear who is actually competent to decide on applying distance learning (see "Distance learning at Tabasalu Ühisgümnaasium").

The Chancellor explained that, in order to combat an infectious disease, the law allows imposition only of those restrictions which are unavoidably necessary to prevent the spread of the infection. It is necessary to assess each restriction individually as well as the aggregate of all the restrictions simultaneously imposed. Prohibitions and orders must have a causallink to decrease of the infection in view of their anticipated effect.

Decisions on the risk arising due to the epidemic spread of the coronavirus are made by the Health Board relying on epidemiological, laboratory and clinical data. Depending on the situation, the Health Board or the Government of the Republic may impose measures laid down by law: for instance, temporarily closing a school or restricting freedom of movement in a school. However, neither the Health Board nor the Government can decide that a school should (partially) transfer to distance learning. The school itself must decide on the best educational organisational measure in the conditions of the spread of the virus. For example, if the Health Board temporarily closes a school, in principle the possibility of referring all or some pupils to distance learning may need to be considered.

There was also a case where the decision on transfer to distance learning was made by the owner of the school (see distance learning at Kuusalu Secondary School). The Chancellor explained to the owner of the school that making such a decision is not within the competence of the school owner, so that it was void. A decision to apply distance learning may be made by the school director if the possibility of distance learning is stipulated by school internal rules. Even if the owner of the school gives guidelines for action to a school as its establishment, ultimately the school (director) is responsible for the lawfulness of the decision to transfer to distance learning.

The Chancellor has been asked whether education was accessible during distance learning in the manner required by law. Legislation does not regulate what extent of instruction provided by a school may be made up of e-learning. It is also unclear how exactly e-learning must be carried out. Even during distance learning, schools must ensure that teachers provide sufficient guidance and instruction to pupils. This means that a subject is explained and pupils have an opportunity to ask the teacher for clarification when they do not understand the study material. A parent must not take a teacher's place (see e.g. "Distance learning in schools in Tallinn").

On several occasions, the Chancellor had to assess whether a school's decision to refer a specific pupil to distance learning was lawful.

In one case, a school prohibited a child who had returned from a trip to Greece to take up studies at the school even though under the Government of the Republic Order in force at the relevant time people arriving from Greece did not have to self-isolate. The Chancellor explained to the school that a school may neither disregard the Government Order nor impose restrictions other than those established by the Government on people arriving from abroad. The Chancellor recommended that the school should allow the child to attend classes taking place in the school building.

In another case, a school referred the children of a family to distance learning although on the day when the family returned from abroad no restriction of movement was imposed in Estonia on travellers arriving from the country in question. Thus, there was no need for the children to self-isolate. The Chancellor found that no legal basis existed for referral of these pupils to distance learning and the school's decision was based on mistaken circumstances. The school should have established the conditions for referral to distance learning beforehand in school internal rules or the curriculum. The school should also have first contacted the parents of the children and not started to ascertain the potential need for self-isolation through a child as intermediary.

The Chancellor also had to explain whether a(n) (upper secondary school) pupil is entitled to demand the possibility of distance learning if by doing so they wish to avoid infection of their family members with the coronavirus.

The Chancellor explained that studying in a school building is still the standard form of instruction for schools. Thus, a pupil must attend instruction taking place in a school building. However, a school should be understanding as to a pupil's problem and try to resolve it. In the specific case, the school's decision would have been correct in either case: both when allowing a pupil to use distance learning or when obliging them to attend instruction taking place in the school building.

Thus, a need has arisen to apply distance learning to combat the spread of the coronavirus(or some other virus in the future), but several schools also plan to increase the share ofdistance learning in so-called ordinary study. Instruction might no longer take place mostly inthe school building.

In any case the quality of education must be guaranteed, no matter what form of instruction the school uses. For this, the Riigikogu must establish by law all the essential norms and set the limits within which a school and the owner of a school may operate. Under rule of law, no situation may arise where the public power acts without a legal basis even though that action may be motivated by the best intentions. That is, not every individual step necessarily amounts to a violation but in a combination of several factors high-quality education may become inaccessible. The limits for action by schools and school owners should be so precise and clear that pupils and parents understand what a school may and what it may not do.

Schools and school owners must be left sufficient autonomy for organising instruction. This means that too detailed regulation should be avoided. Nevertheless, the necessity to amend and supplement the law and the national curricula should be considered, so that nationwide understanding exists as to what e-learning is and under what rules it may be applied. Education must be uniformly accessible everywhere in Estonia, and the rights and duties of pupils and parents must be laid down comprehensibly and clearly.

In that light, the Chancellor sent her opinions on distance learning both to the Riigikogu Cultural Affairs Committee and the Ministry of Education and Research.

Preparatory course for state examination

The Association of Estonian Student Representative Bodies asked the Chancellor to assess whether, in provision of free preparatory courses for the state examination in mathematics, pupils are treated equally if those courses are only organised in Estonian.

The Chancellor found that the state has relatively broad freedom in deciding how to offer preparatory courses to pupils as long as equal opportunities for school leavers are providedin this. Pupils must receive support first and foremost from their school. A secondary school leaver must understand Estonian at least at proficiency level B2.1, which means that they should be able to follow the course in Estonian. Since this was a review course, it means the pupils already had to be familiar with the material beforehand. Thus, the state is not obliged to offer all school leavers preparatory courses in Russian as well.

Smart devices at school

The Chancellor was asked once again what rules a school relies on when it prohibits the use of smart devices during the school day. A parent asked whether a school may lay down in its internal rules that at the beginning of a lesson all children must place their mobile phones in a depository in the classroom and refusal to do so is interpreted as a violation of internal rules.

The Chancellor found that school internal rules which oblige all pupils to deposit their mobile phone before a lesson, and treat refusal to do so as violation of internal rules, are not compatible with the Basic Schools and Upper Secondary Schools Act. The law allows a school to request deposit of items (including smart devices) if a pupil uses them in violation of internal rules. However, preventively depositing the phones of all pupils is not compatible with the letter or the spirit of the law, nor is it fair in respect of those pupils who do not violate internal rules.

Since restriction on the use of smart devices is also a topical issue in other schools, the Chancellor's adviser wrote an article on this for the teachers' newspaper *Õpetajete Leht*.

Grouping of pupils in a physical education lesson

The Chancellor was asked whether a school may divide pupils into stronger and weaker groups in a physical education lesson and give different tasks to those groups.

The national curriculum allows differentiation of physical education learning tasks according to substance and level of difficulty. This enables taking into account pupils' abilities and increasing their learning motivation. At the same time, the substance of learning and the results sought are uniform for all pupils (except pupils with special educational needs).

When organising instruction, a school must also proceed from the needs and interests of

pupils and, where possible, take into account proposals by pupils and parents. Each child must be treated with respect, regardless of their abilities in one or another field of sport. No child may be disparaged or degraded. Learning tasks should be differentiated so as to increase a child's motivation to study, and not reduce it.

School transport

Jõhvi rural municipality changed a bus route in the middle of the school year, so that a child from a neighbouring municipality attending the school was 10–15 minutes late for school every day. Although planning of bus routes cannot take into account the interests of all passengers, when introducing changes a local authority must nevertheless analyse their impact on families.

Where a local authority has given a child a place in a school based on the child's residence, it is not required to organise transport of pupils to school in a neighbouring local authority and back. If a local authority does not ensure a place in a school, the rural municipality, town or city must organise a possibility for a pupil's transport to and back from a school outside its boundaries or compensate the pupil's transport expenses.

Narva City Government organised a pupil's transport to school and back home on the basis of a schedule. In the event of a trip outside the schedule, the city government compensated expenses related to public transport tickets or use of a personal car. The Chancellor found that the local authority must also find a solution where a pupil must travel to school or from school back home outside the schedule, for instance due to illness, but they cannot use public transport and the parent does not have a car. Narva City Government agreed with the Chancellor's assessment. In the future, in such a situation the inhabitants of Narva can apply, for example, for compensation of taxi expenses and social transport expenses.

School food

According to the law, school meals for pupils are organised by the local authority. Due to distance learning, some pupils were sometimes deprived of organised school food.

According to the Chancellor's assessment, provision of meals to pupils under distance learning is a voluntary decision by local authorities, and certainly such support to pupils and their families deserves recognition. However, when providing that benefit, cities, towns and rural municipalities must ensure that the rules for providing meals to those studying outside the school are established by a municipal council. All pupils must be treated equally when

providing school food. For example, it is difficult to justify why a local authority distributes food parcels to pupils under distance learning but not to pupils studying at home due to quarantine. However, pupils living further from the school may be deprived of school food because going to pick it up would take an unreasonably long time.

The Chancellor explained that cities, towns and rural municipalities must also organise an appropriate and varied school lunch for pupils needing different food for health reasons. If a local authority has decided to distribute a free school lunch to everyone, the greater expense related to special food must be borne by the local authority.

When setting the time of the meal break, schools must take into account the best interests of children and ascertain, assess and consider how best to organise meal breaks with a view to reasonable solutions.

Thermal cameras in school

Unlike the use of monitoring devices, the law does not regulate installation of thermal cameras in schools. In principle, a school is entitled to install and use a thermal camera but this must be previously regulated by internal school rules. A pupil can go to a school nurse and have them assess their health on the basis of the camera measurement results. If a pupil does not go to a school nurse or fails to observe the advice given by the nurse, then depending on circumstances the school, with the knowledge of a parent, may ask the pupil to leave the school building or ask a parent to pick up their child.

A thermal camera may be adjusted so that it also fulfils the function of a monitoring device. In that case, the school may use monitoring only to check entry and exit to the school building or school grounds and to prevent a situation endangering the safety of pupils and school staff. A dangerous situation must be resolved in accordance with the provisions of internal school rules. No parental consent is needed to monitor a child.

Hobby education

The Chancellor was contacted by a parent with a concern that their child living in Toila rural municipality wanted to take up studies at Jõhvi music school but Toila rural municipality did not agree to cover the music school tuition costs. The municipality justified its refusal by asserting that the parent had been late in applying. At the same time, people had not been informed by what deadline they had to notify the municipal government of their wish.

The Chancellor found that support for hobby education by rural municipalities, towns and cities deserved recognition. However, a municipal council should establish rules for supporting hobby education, so that the inhabitants know who can receive support and on what conditions, and that distribution of public benefit is transparent.

Once again, problems for a child and their family were caused by the wish of the child's former football club to receive a thousand euros transfer fee from the new club. The problem of the specific family was resolved temporarily: the child was registered as a player for the new club for one year without the club having to pay the transfer fee claimed.

A few years ago, the Chancellor analysed the problems related to change of sports clubs and sent recommendations for proper dealings to sports clubs and federations. The majority of sports clubs are legal persons in private law, so that the Chancellor cannot intervene in their disputes. If necessary, these disputes are resolved in court.

The Chancellor was also asked to assess whether a school may restrict a pupil's participation in a camp. A school allowed a third-year pupil to participate in a language immersion camp organised by the school only together with a support person. The condition of a support person was imposed immediately before the camp was to take place. Prior to this, the school had advised the family that they should abandon the wish to attend the camp. According to the information available to the Chancellor, the school did not offer any adjustments to the child for participation in the camp, and justified its decision by the fact that the child was in need of special support during studies. In doing so, the school violated the child's rights both while preparing the camp and when deciding on the child's participation.

Organising a camp presumes offering equal opportunities. That is, a camp must be organised for as many children as possible; in case of necessity an individual approach must be considered and if the parent so requests then also reasonable adjustments. The child is also entitled to express their opinion as to what should be done so as to enable them to attend the camp. However, if the school still finds that the school's own adjustments would be too burdensome or would compromise the well-being of other children, the justifications by the school must be based on objective criteria. Since the school is responsible for the well-being of all the children in a camp, in that case it is entitled to refuse to allow a child to attend the camp.

The right to a kindergarten place

Many parents complained against local authorities who declined to give their child a place in a kindergarten.

Under the Preschool Childcare Institutions Act, a rural municipality, town 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, town or city and coincides with the residence of at least one of the parents. The law does not require that a child must receive a place in a kindergarten of their parents' choice, but a rural municipality, town or city must ensure a place in the kindergarten of its service district.

A rural municipality, town 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. In case-law, as a rule, a reasonable time has been considered to be two months after applying for a kindergarten place.

Parents who contacted the Chancellor with concerns about a kindergarten place were given an explanation of how to protect their rights through the court. According to case-law, reference to rapid population growth, lack of money or other similar justifications do not relieve a local authority of the duty to ensure a kindergarten place. The court has stated that if a family is not given a kindergarten place in time and the family has incurred additional expenses for this reason (e.g. a higher fee in a private kindergarten in comparison to the municipal kindergarten, or a fee for childcare), the local authority must compensate those expenses to the family.

The Chancellor explained to parents that a rural municipality, town or city may replace a kindergarten place with a place in childcare only with parental consent. The activities of a rural municipality, town or city are not lawful if a parent is forced to find a place in childcare for their child because the local authority fails to ensure a kindergarten place to a family by breaching the law.

Many questions about the duty of ensuring a kindergarten place were received from Saue rural municipality, so that the Chancellor checked the regulations concerning kindergartens in that municipality. The Chancellor found that a provision in Saue Rural Municipal Government regulation on "The procedure for admission to and exclusion from preschool childcare institutions in Saue rural municipality, and the period of operation of a childcare institution",

which links a child's right to use a kindergarten place to reaching three years of age, contravenes the law and the Constitution since, in the case of the parents' wish, a kindergarten place must be given to a child who is at least 1.5 years old. The regulation also lacked a procedure for applying for a kindergarten place for a child aged 1.5–3 years. The Chancellor asked that Saue Rural Municipal Government should bring the provisions of the regulation into line with the law and the Constitution. The rural municipal government said that it was prepared to amend the regulation.

The Chancellor also examined the procedure for ensuring a kindergarten place in Saku rural municipality. The basis for this was a complaint by a parent saying that Saku rural municipality had failed to give their child a place in a municipal kindergarten for the requested period. Because of this, the parent sought a place in childcare for their child. The Chancellor found that it is not lawful that a kindergarten place is first of all ensured to children aged 2–7 years. The law allows offering a place in childcare for a child aged 1.5–3 years, but if the parent does not consent to this a kindergarten place must be given to the child. Therefore, the Chancellor proposed to Saku Rural Municipal Government that such a violation should be avoided in the future and a kindergarten place should be given to all the children who are entitled to it by law.

The Chancellor proposed to Saku Rural Municipal Government that some provisions of the regulation on "The procedure for provision of social welfare assistance" should be brought into line with the law and the Constitution. The Chancellor found unconstitutionality in the provision of the regulation under which the childcare service of a child aged 1.5–3 years is partially financed from the budget of Saku rural municipality if a parent has applied for a kindergarten place at a kindergarten in Saku rural municipality but, due to the absence of a place, agrees to childcare service. Apart from this, the Chancellor saw a problem in a provision under which the highest rate of that compensation is approved by the rural municipal government. The maximum rate of compensation or the criteria for paying compensation should be approved by the municipal council. Saku Rural Municipal Council amended the regulation in line with the Chancellor's proposal.

On several occasions, the concern of a person contacting the Chancellor was resolved in the course of proceedings. For example, in one case it was found that the local authority was able to offer a suitable kindergarten place to the family so that their child could start going to a kindergarten. The misunderstanding was caused by the complexity of the system of the queue for a kindergarten place and granting a kindergarten place. In another case, the

kindergarten annulled the decision by which a child had been excluded from the kindergarten. The local authority also brought the provisions of its regulation concerning exclusion from a kindergarten into line with the law. Namely, the Preschool Childcare Institutions Act stipulates that a child may be excluded from a kindergarten only if the child goes to school, or on the basis of an application by a parent.

No other bases are stipulated by law, and a local authority may also not establish any such bases.

Suitability of a kindergarten place

In some cases, parents contacting the Chancellor saw a problem in the unsuitability of a kindergarten place offered by a rural municipality, town or city. If a local authority offers a kindergarten place, it must be accessible to the family in terms of its location, so that the family would be able to use the place in reality. In rapidly developing residential areas, the problem may be acute, so that in those places a local authority must find flexible solutions to increase the number of kindergarten places.

For instance, the Chancellor assessed the distribution of kindergarten places in Harku rural municipality. The Chancellor found the activities of Harku rural municipality to be lawful in this case. The law requires that distributing kindergarten places should also involve taking into account, if possible, whether children of the same family already attend that kindergarten. Harku rural municipality had done so. The Chancellor explained that although the law does not require that a kindergarten place should be given as close to a family's residence as possible, the needs of a particular family must be taken into account when offering a place. For example, it cannot be considered lawful if a rural municipality, town or city offers a family a place in a kindergarten but reaching it takes unreasonably long and/or is too expensive.

The availability of a kindergarten place was also dealt with in a recommendation which the Chancellor sent to Häädemeeste rural municipality in connection with closing down the building of Kabli Kindergarten.

Kindergarten fee

The Chancellor also received many questions concerning the kindergarten fee. Parents asked whether it was compatible with the principle of equal treatment that in Saue rural municipality parents had to pay the kindergarten participation fee for a child under three

years old at twice the amount payable for a child over three years of age.

The Chancellor found that the fee concession does result in different treatment of parents but, in view of the aims of the concession and the local authority's right to decide, it was not arbitrary or unconstitutional.

However, the Chancellor recommended that Saue Rural Municipal Council in its regulation on "The procedure for supporting pre-school private childcare institutions and provision of the childcare service" should unequivocally and clearly lay down whether the municipality supports attendance of children in a private kindergarten and childcare voluntarily or whether, by paying the support, it fulfils a statutorily imposed duty (see the proposal to Saue rural municipality). If this constitutes fulfilment of a duty imposed on a local authority, it should be ensured that families are not placed at a disadvantage in paying for the service.

For example, the amount of support for a private kindergarten and childcare cannot depend on whether both parents are registered as inhabitants of the municipality, because the amount of a municipal kindergarten fee does not depend on it. However, if support for a private kindergarten and childcare is deemed to be a benefit voluntarily provided by the municipality, issues of constitutionality would disappear.

The Chancellor expressed a similar position in a letter to Viimsi rural municipality. A parent who was left without a kindergarten place and therefore had to put their child in a private kindergarten asked to check the procedure for supporting private kindergartens in Viimsi rural municipality. The Chancellor found that support paid under the regulation on private kindergartens can be deemed as support voluntarily provided by the municipality and thus is constitutional. Rural municipalities, towns and cities are not required to finance private kindergartens or support families whose children attend them.

While the petition was being resolved, Viimsi rural municipality adopted a new procedure for supporting private kindergartens. The new procedure did equalise the fee for children attending private and municipal kindergartens, but for the petitioner's child this would have meant a change of kindergarten. Therefore, the Chancellor recommended that it should be kept in mind that, in assigning a kindergarten place, similarly to all the decisions concerning children, the best interests of the child should be given primary consideration.

The Chancellor also had to answer the question whether the kindergarten fee may be higher if a child attends a municipal kindergarten in another local authority. The Chancellor found

that if the municipality voluntarily supports attendance of its residents in a municipal kindergarten of another municipality, this constitutes an additional benefit offered to the municipality's own residents. The precondition is that the municipality should be able to offer a kindergarten place in its own municipality to all its residents. In that case, the municipality may determine the amount of kindergarten fee that families must pay in a municipal kindergarten of another municipality and what benefits are granted to them.

Treatment of children in kindergarten

Similarly to previous years, the Chancellor was asked whether a kindergarten may oblige a child to sleep in kindergarten during lunchtime.

A regulation applicable to kindergartens stipulates that children from four years of age on should be enabled to choose themselves whether they wish to have a nap or engage in another quiet activity during rest time in kindergarten. However, in practice problems exist with compliance with this regulation.

Whether a child needs daytime sleep is primarily for the parent to decide based on the child's need for sleep and other interests. The parent and the kindergarten must reach an agreement as to rest time arrangements.

The Chancellor also received a letter about an incident where a kindergarten teacher had placed a paper tape on a child's mouth. No criminal proceedings were initiated in this matter but the local authority responded swiftly and terminated the employment relationship with the teacher who had committed the act. Ill-treatment of children, including degrading or punishing a child in any manner that endangers their mental, emotional or physical health is prohibited under the Child Protection Act.

Restrictions in kindergarten due to the spread of the virus

The epidemic spread of the coronavirus also affected the operation of kindergartens and the Chancellor received several petitions in this connection.

In one case, a kindergarten refused to let a child come to the kindergarten even though the child was not ill nor had been in close contact with staff who had fallen ill. The Chancellor considered it reasonable that a kindergarten advised not to bring children to the kindergarten if possible. Nevertheless, the kindergarten had no right to refuse to let the child into the kindergarten because the child had no symptoms of a disease nor was the child required to

self-isolate. The Chancellor recommended that the kindergarten should avoid such a mistake in the future. If the teachers of the child's group could not go to work, the child should have been temporarily included in another group.

The Chancellor conceded that perhaps it would be reasonable to introduce a provision in the Preschool Childcare Institutions Act that would enable temporarily closing a kindergarten in exceptional cases. That decision can be made by the Riigikogu.

A petitioner wanted to know whether a kindergarten may ask a parent why they bring their child to a kindergarten where the Government of the Republic has strongly recommended that children should not be taken to a kindergarten or a childcare facility without absolute necessity. Another enquiry related to whether a kindergarten may ask about a child's health if there is reason to believe that someone in the child's immediate circle has become infected with the coronavirus.

The Chancellor explained that even though the Government has recommended that a child be taken into a kindergarten only in case of absolute necessity, doing so is not prohibited. This means that in such a situation a kindergarten may not refuse to let the child come to the kindergarten. A kindergarten is not competent to enquire about absolute necessity on the part of the parents, let alone make decisions on that basis.

Kindergarten and school boards of trustees

The Chancellor was repeatedly asked to what extent a local authority or a director must take into account the opinion of school and kindergarten boards of trustees.

When assessing the facts of several complaints, the Chancellor found that the rights of a board of trustees had not been violated. For instance, a local authority may decide who and how establishes the conditions for waiving a meal. Thus, it may be considered justified that Tartu city wishes to regulate waiving a meal on a uniform basis in all the city's childcare institutions. A kindergarten board of trustees may propose to the city government to change the conditions, but this does not mean that changing the conditions lies within the competence of the board of trustees and that the city government must agree with proposals by the board of trustees.

No matter whether a decision concerns educational reform, reorganisation of schools, adoption of statutes of an establishment, transfer of instruction to another building, or reorganisation of the work of kindergarten teachers – that decision must be made by a local

authority or school director. In any case, a local authority must fulfil the functions arising from law, for instance ensuring that education meets the national curriculum, that the learning environment is safe and that pupils in need of support do receive that support. A board of trustees cannot assume responsibility for fulfilling the functions of a local authority, kindergarten or school. Many decisions have a monetary dimension, i.e. the choices must be made by the local authority.

The child and health

During the reporting period, a problem was resolved to which the Chancellor had already drawn attention in July 2019. Namely, on a proposal by the Chancellor of Justice, the Riigikogu amended the Mental Health Act so that a young person under 18 years of age who is sufficiently mature and has capacity to reason may themselves provide informed consent to receive psychiatric care. While in the case of other healthcare services, for many years a young person's right to decide independently depends on their capacity to reason, which is assessed by a healthcare professional, then in order to obtain psychiatric care a young person with capacity to reason can give independent consent only as of 3 April 2021 when amendments to the Mental Health Act entered into force.

The issue of parental consent is also topical in vaccination against the coronavirus. During the reporting period, the Chancellor was asked whether parental consent is needed to vaccinate a child at the school.

The Chancellor explained that the same rules apply to vaccination against Covid-19 as in vaccination against other infectious diseases. Vaccination is voluntary. The principle of voluntariness applies equally to adults and young people.

As a general rule, a patient may be examined and healthcare services provided to them (including vaccination) only with their consent. This means that a healthcare provider must duly inform the patient (including about the availability, nature and purpose of the necessary healthcare service, the risks and consequences entailed in its provision) and then the patient has the right to decide whether they accept or refuse the service offered.

A patient with restricted active legal capacity (including a child) enjoys patient's rights (including the right to give or refuse consent) insofar as they are capable to consider responsibly all the arguments for and against. If, according to assessment by a healthcare professional, a minor is incapable of independently considering all the arguments for and

against, then the minor's legal representative − usually a parent − is entitled to give consent. Even when consent for vaccination is given by a parent, the child themselves must also agree with vaccination (read, in more detail, paras 17 and 18 of the guidelines). If a healthcare professional deems that a young person has sufficient capacity to reason, the doctor must proceed from the young person's own decision. In that case, a parent may not decide on the child's vaccination.

Prior to providing a service, a healthcare professional is obliged to assess a young patient's capacity to reason if the minor came to the appointment without their parent. Age may be one criterion based on which a child's capacity to reason can be assessed, but it cannot be the only criterion. It cannot be presumed that a patient who is a minor necessarily lacks capacity to reason and responsibility, but similarly it cannot be presumed that in any case they are capable of weighing all the risks themselves. A young person's capacity to reason must be ascertained on the basis of the specific case. A child's capacity to reason is assessed similarly to an adult's capacity to reason.

In order for a patient to be capable of weighing the circumstances and reaching a decision with regard to them, the patient must understand the nature of their illness and the choices they are faced with. They must be able to understand the information given to them and be capable of drawing conclusions on that basis. A patient must also be able to come to a decision based on the information received and their own value judgements, and notify the healthcare professional about it. The larger the risks entailed in a decision, the greater the capacity to reason presumed for making the decision. If a healthcare professional has misgivings that a young person is not capable of responsibly weighing all the risks, parental consent must be sought.

Vaccination of school-aged children and young people is mostly organised by a school nurse.

A special regulatory framework currently applies in school healthcare. A school nurse may vaccinate a pupil only on the basis of consent given in a format reproducible in writing by the pupil's parent or other legal representative. Under the Minister of Social Affairs regulation, a school nurse must inform a pupil's parents about vaccination and also seek the pupil's own consent, and this is done at least one week before the planned vaccination. The pupil's legal representative must notify in a format reproducible in writing whether they agree to vaccination or not, and that reply is retained among the pupil's health records.

Thus, a pupil's vaccination at the school requires consent from both the child and their

parent. If one of the parents provides consent, a healthcare professional may also presume consent from the other parent. If the other parent has expressed opposition to the child's vaccination, the child cannot be vaccinated on the basis of consent by one parent.

Under the legislation, a school cannot oblige children to be vaccinated but it may provide information about organisation of vaccination at the school.

Refusal of medical treatment

Paediatricians asked the Chancellor how to ensure the child's best interests when the child's need is medically justified but the parents refuse the child's treatment.

Paediatricians are concerned that child protection and court proceedings initiated for protecting a child's life and health take too long. Paediatricians also find that shortcomings exist in the work of child protection specialists, due to which a child's best interests are sometimes left unprotected in such a complicated situation.

During a roundtable held in the Chancellor's Office on 15 June 2021, with participation by paediatricians, judges, child protection specialists and representatives from the Social Insurance Board, the Ministry of Justice and the Ministry of Social Affairs, it was noted that, if a child's life or health is endangered, intervention to protect the child is required and all parties must act swiftly. A healthcare institution may contact a local authority child protection worker or have direct recourse to the court to protect a child's interests. To protect a child's interests, the court may restrict a parent's right to decide in respect of health issues and appoint a special guardian for the child.

In a situation where saving a child's life and health requires a very quick response, it is reasonable that the healthcare institution itself has recourse to the court. It is also important that the healthcare institution should submit to the court evidence concerning the child's health status. Such evidence may include an opinion by the child's attending doctor or a transcript from the medical record.

Preventive health checks

A family medicine centre asked the Chancellor whether a parent of a child born at home may waive the child's postnatal health check as well as the child's subsequent health checks at a general practitioner's.

In her reply, the Chancellor explained that a preventive health check of a patient at a general

practitioner's can only be carried out with patient's consent (in the case of a child, usually with parental consent). Although the legislation does not explicitly stipulate that a parent must take their child to a general practitioner for a preventive health check, monitoring a child's health in this way is in the child's best interests.

The Chancellor found that if a parent refuses a child's preventive health check, the general practitioner might ask the parent the reason for refusal, try to convince the parent of the necessity for the health check and, in cooperation with the parent, find a possibility to monitor the child's health (e.g. a home visit). If the parent fails to cooperate with the general practitioner or refuses a preventive health check without a compelling reason, it is justified to contact a child protection worker. A general practitioner should immediately notify a child protection worker if there is reason to believe that a child's health may be endangered.

Prevention and promotion

The Chancellor's tasks also include raising awareness of the rights of children and strengthening the position of children in society as active participants and contributors. As Ombudsman for Children, the Chancellor organises analytical studies and surveys concerning children's rights, and on that basis makes recommendations and proposals for improving children's situation. The Ombudsman for Children also 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.

In preventive work concerning the rights of children, meetings with the Chancellor have also played an important role. Unfortunately, restrictions due to the spread of the coronavirus did not enable organising as many face-to-face meetings as in previous years. Nevertheless, in summer, after the restrictions were relaxed, the Chancellor did manage to organise some meetings with young people while observing all the safety rules.

The Chancellor's Office received a visit from a few dozen young people participating in a summer camp organised by the Estonian Union for Child Welfare and the Social Insurance Board, and the development programme organised by the Estonian Association of Substitute Home Workers. Discussions during the meeting focused on the rights and duties of children, and young people were given an overview of the work of the Ombudsman for Children. Additionally, meetings took place with the Estonian National Youth Council and the Association of Estonian Student Representative Bodies.

On the initiative of the Chancellor's Office, audio clips and "recipes" were prepared on what kinds of parents children need. The "recipes" for a good parent were prepared by children as part of the creative writing process, which the Estonian Children's Literature Centre helped to organise. Opinions expressed by children were presented at a seminar organised in the frame of the adoption week by the non-profit association Oma Pere, the National Institute for Health Development, the non-profit association SEB Charity Fund, and the Office of the Chancellor of Justice.

The voice of young people in local elections

In October 2021, elections for municipal councils will take place again. Young people at the age of 16 to 17 can also vote in local elections, so that care should be taken that schools should remain politically impartial when organising events during the election period. For this purpose, on the initiative of the Estonian National Youth Council and with support from the Ministry of Education and Research and the Office of the Chancellor of Justice, agreements on best election practice were updated. Best practice includes principles on how to speak about elections honestly and freely and 'in a cool manner' at school. The Chancellor also participated in a debate where the principles of best practice were introduced.

In connection with the upcoming elections, online lessons and a photo hunt "The voice of children and young people in organising local life" took place under the leadership of the Chancellor's Office, the Estonian Union for Child Welfare, and the Estonian Centre for Applied Anthropology. To collect ideas from children and ascertain their expectations concerning their everyday life and local living arrangements, online lessons were organised at different schools in Estonia where these topics were discussed together with children.

It was found that children and young people want more diverse leisure opportunities, an organised environment, a feeling that security is ensured in public spaces and playgrounds;

they also want pavements and traffic lights, and signs to mark play areas. Children and young people expect better communication about events and undertakings intended for them, more varied and richer school food, more support to participation in hobby education, and support for economically needy children and families. Very many children spoke of the need for psychological support and wanted it to be more accessible than currently.

In children's opinion, it is more difficult for younger children, such as those under ten years old, as well as children and young people with a mother tongue other than Estonian, and also children and young people with mental and health problems or special needs, to make their voice heard in organising local life. In order to make the voice of children better heard, children and young people consider it necessary to meet regularly with adults who could encourage them to speak and seek their opinion, and not ridicule children's ideas. If necessary, specialists could be involved for this purpose.

During the photo hunt, children and young people were invited to collect observations about the child-friendliness at the place where they live. Participants were asked to photograph places in their home community which could be made more child-friendly, which are either inconvenient or downright dangerous for children, or conversely, find good examples of places where the needs of children have been taken into account and where children feel comfortable.

Information materials

The Chancellor's advisers helped to prepare various video and printed materials introducing the rights of the child. Video lectures were prepared on child-friendly proceedings and child-friendly healthcare. Both videos were made in cooperation with the Ministry of Justice and the Social Insurance Board. A video lecture "Why do we keep talking about the rights of the child" was prepared together with the non-profit association Mondo. At the instigation of the Youth Council of the Estonian Union for Child Welfare, the Chancellor of Justice and her advisers introduced their activities in the journal *Märka Last*.

Under the leadership of the Chancellor's Office, a diverse volume "Lapsed Eesti ühiskonnas" [Children in Estonian society], exploring different areas, was published. More than 40 experts were involved in compiling the volume. The structure of the volume proceeds from the underlying principles of the rights of the child and describes how Estonian children are doing. Nine chapters provide an overview of the general principles of the rights of the child, the child's right to health, family, education, security and protection, as well as children's living

standards, their contacts with the law enforcement system, offences by children, and the rights of stateless and unaccompanied children.

The authors of the volume have analysed the situation of children in different walks of life and suggest how to improve the life of children in Estonia. The rights of the child form a part of the legal system and, with the help of suitable and feasible measures, the state must introduce the principles of the Convention to both adults and children. This volume offers a good opportunity to do so.

Since data about the situation of children is fragmented among several agencies, a considerable asset of the volume is also publication of statistics concerning children. The volume is intended for policy-makers and specialists working with children, as well as a wider readership and children themselves. The volume is published on the website of the Chancellor of Justice. Articles also provide direct links to studies, legislation and scientific articles. The volume was introduced in the radio programme „Vikerhommik“, the teachers' newspaper Õpetajate Leht and the journal Sotsiaaltöö.

In cooperation with the Data Protection Inspectorate, the Chancellor's Office updated the guidelines “Notifying about a child in need, and data protection“. This could serve as a small handbook for everyone who notices a child or a young person in need of support and must notify this. The guidelines provide an overview of the cases in which notification should be given about a child in need, as well as who should do it and via what channels. It also contains specific references to legal provisions on which a person may rely in doing so, taking into account personal data protection requirements.

The guidelines are necessary since unfortunately many people do not yet know that a concern about children should first of all be notified to the children's helpline at 116 111 or a local authority child protection worker. During the reporting period, the Chancellor's advice about this was sought, for instance, by a young person in need themselves, as well as by a person noticing a child in need in the social media, and an adult who had experienced harassment by a teacher as a child, as well as specialists working with children. It is particularly important to notice a child in need and notify this during isolation caused by the pandemic when a child's relationships outside home, and thus also the possibilities to speak about their problem, are either limited or excluded. The media have published stories about children who for years suffered from ill-treatment at home without anyone noticing it.

Training and events

The Chancellor's advisers regularly train child protection and social workers. During the reporting year, training on the rights of the child was also offered to judges, attorneys, youth workers, supervisory officials of the Social Insurance Board, and medical students. A Chancellor's adviser delivered a presentation "Võrdsed võimalused – kas kättesaamatu ideaal või igapäevane tegelikkus" [Equal opportunities – an unattainable ideal or everyday reality] at the 13th conference on values education organised by the University of Tartu Centre for Ethics .

In order to contribute to implementing the principles of child-friendly proceedings in police work, the Chancellor's Office in cooperation with the Police and Border Guard Board, the Prosecutor's Office, the Social Insurance Board, and the Ministry of Justice continued organising seminars for police officers and prosecutors. The seminars offered practical advice on how to take the needs and interests of the child into account in day-to-day police work, i.e. how to ensure the well-being of the child. At the seminars, materials were also introduced on which police officers can rely in arranging child-friendly proceedings: guidance for police officers on treatment of children; an agreement among prosecutors on special treatment of minors in criminal proceedings; a reminder on child-friendly proceedings; the Chancellor's guidelines on the rights of children on first contact with the police.

During training, answers were also provided to questions about child-friendly proceedings which people had asked the Chancellor during the previous year. For example, it was explained how important it is to involve a parent substantively and as quickly as possible in discussing an offence committed by a child. It would be good to inform the parent about the situation even before the child is interviewed, and if the parent so wishes they could be enabled to be present during the interview. In that case, the parent could ensure that the rights of their child are fully protected during contact with the police. In any case, a police officer must weigh and justify excluding a parent from an interview with the child. When planning an interview with a child, a police officer must take into account that the time chosen for the interview should be suitable for the child, so that it does not interfere with the child's studies or other activities important for the child (e.g. hobby education).

For the first time, one of the debates at the days of legal scholars in Estonia was dedicated to the rights of the child.

The debate was led by advisers from the Chancellor's Office, with participation by representatives from the Social Insurance Board, the Bar Association, the bailiffs' office *Ühinenud Kohtutäiturid*, and the University of Tartu. During the panel, topics such as child-friendly proceedings, the right of custody and access rights, and the inviolability of family life were discussed. In the course of the debate, explanations were given as to the meaning of child-friendly proceedings, the complexity and possibilities of ensuring a relationship between a child and parents were explored, and based on the experience of different countries the limits of interference with family life were analysed.

The autumn 2020 meeting of the advisory body on human rights was also dedicated to the rights of children and young people. Topics included possibilities for supporting the mental health of babies and infants, the introduction of an information leaflet on this and the outlook of young people on mental health. A flashback was taken in terms of how the restrictions imposed in schools and kindergartens during the emergency situation affected young people and children. Studies were introduced on accessibility of public space for children and on school bullying. A debate was held on the rights of the child in the healthcare system, including as regards access to psychiatric care. The debate also touched upon the rights of the child to a family and contact with a parent who is in prison.

Also this year the children's and youth film festival 'Just Film', held as part of the PÖFF Film Festival, included a programme on the rights of children, prepared in cooperation between Just Film, the Office of the Chancellor of Justice, the Ministry of Justice, the Ministry of Social Affairs, the Social Insurance Board, the Police and Border Guard Board, and the Estonian Union for Child Welfare. The programme on the rights of children featured already for the ninth time. Screening of selected films was followed by debates with experts and well-known personalities discussing the films together with viewers. To increase the interest of young people with Russian mother tongue, more and more films in the programme have also been translated into Russian. In 2020, several debates following the films were held in Russian.

A total of 2932 cinema lovers went to see the films within the special programme on the rights of children.

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 eighth

time in 2021. President Kersti Kaljulaid and Chancellor of Justice Ülle Madise thanked those who have significantly contributed to the well-being of children through their new initiatives or long-standing activities. Also a television programme was made featuring this year's merit awards event, screened on 1 June, the International Day for Protection of Children, on the public ETV channel. As of 2021, the Day for Protection of Children has been officially declared a flag day.

At a joint public debate of the Riigikogu Social Affairs Committee and the Study Committee to Solve the Demographic Crisis, the Chancellor's adviser drew attention to the need to aim support and assistance directly to children. Solutions must proceed from the child's need and support the child's development regardless of the opportunities of the family. Providing state assistance should include ensuring that it is not discriminatory, alienating or stigmatising.

Rule of law

A large part of the Chancellor's work consists of supervising the activities of state agencies. More specifically, this involves monitoring whether laws and other legislation organising the lives of people, institutions and companies are compatible with the Constitution and other laws and whether applicable rules are also lawfully implemented. The core of the state based on the rule of law is the principle that everyone is equal before the law. The principle of separation of powers and independent institutions must guarantee a situation where the lawfulness of norms can be checked and, if necessary, contested.

Corona restrictions and a general order

Rule of law needs care and attention at all times. No compromises may be made on that account even when combating an infectious disease or money laundering, distributing benefits or doing some other necessary things. However, in the crisis situation it has happened that rules established for safeguarding fundamental rights have been bent or disregarded because it is said that this is what the crisis requires and that a different approach is not possible. This kind of argumentation, primarily emotionally underlining the need to resolve the crisis and thus turn a blind eye at the expense of the rule of law, will lead to a situation where life will be shaped by a single instruction instead of a norm, and a directive instead of a law.

Decision-making based on a single case gives a blow to equal treatment and enables administrative arbitrariness. Fundamental features of essential national issues must be established by the Riigikogu and, in principle, this should be done uniformly for all. The executive power must stay within the boundaries of the rules established by the Riigikogu.

For example, the Chancellor had to draw attention to the fact that a local authority cannot impose restrictions on fundamental rights without a legal basis by merely referring to the corona situation. The Chancellor also noted that the law does not allow a police prefect to enact a restriction overnight on sale of alcoholic drinks by simply notifying the public about the order.

During the reporting year, the Chancellor explained repeatedly the general points of departure for imposing restrictions with a view to combating the spread of SARS-CoV-2. In the case of combating an infectious disease, it should be kept in mind that the principle of proportionality enshrined in § 11 of the Constitution allows imposition only of those restrictions which are unavoidably necessary to prevent the spread of the infection. Each restriction has to be assessed individually as well as the aggregate of all the restrictions simultaneously imposed.

Prohibitions and orders must have a causal link to decreasing the infection in view of their actual anticipated effect. If a choice can be made between several effective restrictions to combat the risk, the measure which least restricts fundamental rights should be chosen. If a new unknown, and presumably grave, threat appears, it is conceivable that initially restrictions are imposed based on the precautionary principle, but if the threat persists the restrictions must be revised and updated in line with newly acquired knowledge. If a threat is no longer unknown, only restrictions with proven effect may be imposed to combat it.

At the latest after adoption of a legal act, studies and analyses underlying the decision must be disclosed. The effect of restrictions must be assessed both prior to imposing the restriction and periodically afterwards. Those restrictions which are not unavoidably necessary or have become excessive due to a negative side-effect must be abolished immediately. The constitutionality of a restriction depends on how much the restriction is currently needed, i.e. whether the need for that restriction outweighs restricting people's fundamental rights.

Certainly, the epidemic spread of an infectious disease affects the functioning of the

healthcare system and may endanger the possibility of all people to obtain the necessary healthcare. In such a situation, the need for restrictions changes. The Chancellor carefully monitors the situation, including, on the one hand, the tendency of the spread of infection and progress of vaccination and, on the other hand, the risk linked to mutation of the coronavirus and resistance of potential new virus strains to vaccines.

The Chancellor dealt in more detail with restrictions imposed on catering establishments.

The Chancellor also had to explain repeatedly the legal nature of the corona restrictions imposed by order of the Government of the Republic.

Legislation is divided into general legislative acts, i.e. legislative acts of general application, and individual legal acts. Section 87 clause 6 of the Constitution states that the Government of the Republic issues regulations and orders on the basis of laws. A regulation is a legislative act of general application while an order is an individual act. Acts of general application are usually general rules of conduct established for an unspecified range of people for an unlimited time. An individual act usually regulates the activities of a specific person or a specific situation. If an individual act restricts a person's rights, a legal basis to issue it, i.e. a legislative act of general application, must have been established beforehand.

Distinguishing between legislative acts of general application and individual acts is complicated in legal terms because every atypical situation is special and it is impossible to draw a clear line between what is individual and what is general (see, in more detail, M. Ernits. Määruse mõiste. [The concept of a regulation] Õiguskeel 2010/3). By nature, a general order which is a subcategory of an individual act remains between an act of general application and an individual act.

When categorising acts of general application and individual acts, the Supreme Court has considered several aspects: the range of persons and size of territory covered by the legal act, the scope of rights related to the type of legal act (in particular as regards possibilities for involvement in proceedings and contesting the legal act), and others. In doing so, the court has not considered it important how the Riigikogu itself has classified a legal act. The court may even declare the Riigikogu's choice to be unconstitutional (Supreme Court en banc judgment of 31 May 2011 No 3-3-1-85-10).

The Communicable Diseases Prevention and Control Act (§ 28 subsections 2, 5 and 6 in combination) allows the Government of the Republic to establish certain corona restrictions

by order, i.e. an individual act. When granting such powers to the Government, the Riigikogu has proceeded from the presumption that, even if nationwide restrictions need to be imposed in respect of an unidentified number of persons, those restrictions are presumably valid for a fixed term because at some point the spread of the virus ends or no longer poses a threat that would justify continuation of restrictions. However, the spread of the coronavirus has shown that such restrictions might not be in force only for a short period. In view of this, it remains for the court to decide whether restrictions are specific enough so that the relevant orders from the Government can be deemed general orders. It is possible that the restrictions should have been established via a regulation.

Corona restrictions remaining in force for a long time also raises the question whether it is justified that the Government of the Republic still decides on restrictions − perhaps the decision should lie with the Riigikogu. Certainly, the fact that resolving an epidemic situation has been left for the Government has some advantages. In particular, this enables a quick response in a changing situation.

However, on the other hand, it has brought about decisions passed at very short notice (sometimes essentially overnight). This does not leave any possibility for public debate. It is not normal if undertakings are given only 24 hours to express an opinion concerning an important change that affects them significantly (see article). It would be understandable if such overnight changes were due to an unexpected change in the epidemic situation requiring extremely rapid intervention. However, such rapid changes cannot be acceptable when the emergence of a situation was known long in advance (in which case planning the changes should have started earlier) or if the situation allows giving those concerned a reasonable time for expressing an opinion.

The majority of restrictions with a significant impact which are presumably established for a long time should be adopted by the Riigikogu (many other countries where initially restrictions were imposed by the executive have now also chosen the path of increasing the role of the parliament). The parliament can do this in a procedure enabling public debate and, after adopting a legislative act, give people enough time to rearrange their life (sufficient *vacatio legis* complying with constitutional requirements).

Since the Chancellor of Justice cannot contest a general order (Supreme Court Constitutional Review Chamber order of 22 November 2010 No 3-4-1-6-10), petitioners with issues related to the corona crisis had to be repeatedly asked to have recourse to the court even when the petitioner's decision to contact the Chancellor had been clearly considered. There were not

many undertakings during the corona crisis who ventured or deemed it reasonable to protect their rights in the court. Indeed, an opinion about the lawfulness of applicable rules is needed quickly because theatres, shops and cafés which are closed cannot reclaim lost time. Even if compensation is later awarded to an undertaking, the state must find that money on account of other expenses, so that something else important for society remains undone.

If recourse to the court is considered pointless, such a situation requires everyone's attention under the rule of law. The reason might be that court proceedings have been made too cumbersome, judges are overburdened, or a dispute and defending one's interests seems frightening. It may also be that judicial proceedings last too long and a clear solution for urgent concerns is not obtained quickly enough. It would be especially regrettable if the fear of some undertakings turns out to be true that, in granting support, some representatives of public authorities take into consideration as a negative factor that a particular undertaking has previously had recourse to the court against the state to defend its rights. Any of the above reasons undermines the health of the rule of law in the country.

A question also arose how to effectively contest the conditions for crisis support. Such support can be applied for within a very limited period. This means that equal treatment of applicants cannot be checked before the round of support is already over. If an undertaking wishes to obtain support but the conditions for support do not enable this, the only solution seems to be to apply for support regardless and to contest a negative decision in the administrative court.

In view of the nature of the crisis and, inter alia, lack of time and legal assistance, the conditions for such support measures must be as clear as possible and without any debatable formalities. (See also the Chapter "Money".)

The Chancellor also had to deal with a case where the Agricultural Registers and Information Board disregarded a Supreme Court opinion and replied that the Board would continue to resolve applications for area payments according to the principles used so far. The Board also explained that it intends to ask for an assessment from the European Commission concerning the opinions expressed in the Supreme Court judgment and, based on that assessment, would develop its future practice.

An executive authority cannot disregard interpretations by the court. Under the rule of law, justice is administered by the court and, where necessary, it also provides substantive interpretations of rules. A court's interpretations create clarity as to how a certain norm is to

be understood and applied in a specific situation. If a government agency disregards the court's interpretation, the need to have recourse to the court for enforcement of one's rights actually increases.

In line with the principle of separation of powers, no agency can take the court's place and decide that it complies with case-law only selectively. A final court judgment is one of the foundations of administrative practice. First and foremost, the court resolves a specific dispute but Supreme Court case-law guides all future judicial practice. This comes down to the issue of legal certainty which an administrative body must take into account in its decisions.

A person is entitled to presume that legal norms in respect of them are applied by relying on Supreme Court judgment, and they should not need to have recourse to the court to claim this. Administrative practice which is in conflict with a court judgment and forces persons to repeatedly have recourse to the court in the same situation means an additional burden both for the judicial system and the Agricultural Registers and Information Board. If an executive authority is dissatisfied with applicable law, an adequate solution would be to initiate amendment of legal rules.

In connection with paying crisis support, the Chancellor was asked what rules should apply to activities of the Estonian Rural Development Foundation. Specifically, undertakings enquired how they could contest the Foundation's decision not to grant them a loan for mitigating economic difficulties caused by the pandemic. The undertakings also found that the reasoning given for refusal to grant a loan was too succinct.

The Rural Development Foundation must observe the principles of good administration and thereby ensure equal treatment of undertakings and fair competition (§ 12 Constitution). If the Foundation denies an undertaking's loan application, the reasons for refusal must be set out in the decision. Lawful administrative procedure is not merely a formality but an important safeguard for the principles of transparency and consistency in granting loans and thus for uniform, fair and lawful treatment of undertakings. Without comprehensible explanations or reasoning, judicial review is complicated. Nevertheless, undertakings must be ensured the opportunity for judicial appeal against refusal to grant a loan. The court, in turn, must be enabled to assess the lawfulness of refusing a loan, including whether decisions were made by taking into account public interests and objectives.

The Chancellor also explained to undertakings the activities of the Rural Development

Foundation in granting loans.

The obligation to wear masks in a care home

On 11 September 2020, the Government of the Republic adopted Order No 308 on "Amending the Government of the Republic Order No 282 of 19 August 2020 on "Restrictions on the freedom of movement and on holding public meetings and public events as necessary for preventing the spread of the COVID-19 disease"". In her analysis the Chancellor reached the conclusion that the Order lacked a legal basis, nor was it sufficiently precise or sufficiently reasoned.

As the basis for the Order, § 28 subs (6), subs (5) clause 3, and subs (8) of the Communicable Diseases Prevention and Control Act had been cited, under which other restrictions on freedom of movement may be temporarily established to prevent a dangerous novel infectious disease. Section 28(5) clause 3 of the Act does not provide a basis for imposing an obligation to wear masks since freedom of movement mostly includes issues of moving and not of conduct in one or another place. For example, Article 12 of the UN International Covenant on Civil and Political Rights understands the right of movement as the right to move from one place to another (see the UN Human Rights Committee General Comment No 27).

Imposing the obligation to use personal protective equipment affects people's behaviour (they must use or wear something). For example, the Occupational Health and Safety Act lays down the obligation to use personal protective equipment. Section 3(5) of the Act stipulates that if the risk of an accident or illness cannot be avoided otherwise, then the employer must provide an employee with personal protective equipment. In that case, the employee must use the prescribed personal protective equipment properly and keep it in working order. In this case, it is not the employee's movement that is restricted but their freedom to behave and dress to their liking, as well as their private life, i.e. the right to decide themselves about their health. According to the same principle, for example, theatres have imposed the requirement to switch mobile phones to silent mode during a performance, or the requirement imposed in traffic to drive a vehicle in good technical condition.

How the obligation to wear a mask was notified to care homes cannot be considered lawful either. Namely, one day before the Order was adopted (10 September 2020), at 19.06 a notice was published on the website of the Government of the Republic: "By Government decision, all care home employees and visitors must begin wearing protective masks." The same notice was published on the corona crisis website kriis.ee on 10 September 2020 at 21.20.

The public register of documents of the Government Office does not show when and with what content the Order was issued. According to the *Riigi Teataja* gazette, the Order reached the editor's office on 11 September at 22.56. No one had informed the *Riigi Teataja* editorial team that orders concerning the spread of Covid-19 might arrive late on Friday evening. Therefore, the *Riigi Teataja* formalised and published the orders and the related full texts only on 14 September 2020 at 9.29. Thus, the Order was adopted on 11 September 2020 (Friday) and published on 14 September 2020 (Monday) when it had already entered into force.

It is obvious that the obligation to wear a mask affects an establishment's working arrangements and entails additional expense. No known, relevant, reasonable and compelling reason exists why the obligation to wear a mask had to be imposed overnight. That Order could also have been sent to care homes by e-mail, in addition to publication in the *Riigi Teataja*.

Draft Administrative Fine Procedure Act

As a rule, the Chancellor does not deal with draft legislation nor does she prepare a legal analysis on draft legal acts. An important exception during the reporting year was the Draft Administrative Fine Procedure Act. The Draft Act sought to create a new institution for responding to offences – an administrative fine procedure. Several analyses (an analysis commissioned from the University of Tartu in 2020, presentations on administrative penalties during the 2020 days of legal scholars, and others) have shown a lack of clarity concerning the administrative fine. It is not known how to understand the definition of "administrative" in this context, and it remains unclear in what respect the rules for administrative fine procedure should be different from rules for offence proceedings.

In her opinion, the Chancellor noted, inter alia, that merely giving a punitive procedure a different name does not relieve the state of the duty to guarantee fundamental procedural rights. From the point of view of a body conducting the proceedings, an effective penalty imposed in simple proceedings may seem like something good because simpler proceedings

require less effort. However, this cannot be the state's point of view because the Estonian Constitution stipulates everyone's protection from the arbitrary exercise of state power (§ 13(2) Constitution) and also places the duty of guarantee of rights and freedoms on the executive (§ 14 Constitution). And in doing so, the essence of the rights and freedoms restricted may not be distorted (§ 11 Constitution).

Until now, protection from the arbitrary exercise of state power has been offered by procedural rights which require that the state should ascertain the facts and prove violations – only then can the court impose a punishment. Protection of fundamental rights should not be considered an impediment to effectiveness or an inconvenience.

The work of the 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; the Chancellor may initiate disciplinary proceedings in respect of all judges, and the Chancellor prepares an opinion for the Supreme Court in constitutional review court proceedings.

By virtue of office, the Chancellor serves on the Council for Administration of Courts, which convened for a session twice in the second half of 2020 and four times in the first half of this year (all four sessions were held online).

Complaints against 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.

When deciding on initiation of disciplinary proceedings, the Chancellor does not assess substantive issues concerning administration of justice but only a judge's actions amounting to failure to perform their duties of office or disreputable conduct. However, the Chancellor is mainly contacted about substantive issues of administration of justice, in which the Chancellor may not intervene. Mostly, people are not satisfied with a court decision. Petitioners expect the Chancellor to assess the correctness of a court judgment, which is, however, precisely what the Chancellor cannot do. Under the Constitution, justice is administered by the courts, and only a higher court can assess issues concerning

administration of justice in substance.

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 to initiate disciplinary proceedings in respect of a judge. During the reporting period, there were 15 such cases. With regard to some cases, the Chancellor also asked for an explanation from a judge and/or chair of the court. During the reporting year, in none of the cases did the Chancellor find a reason to initiate disciplinary proceedings in respect of a judge.

In one case, complaints were raised in connection with a judge's conduct during a court hearing. According to the complaint, the judge was allegedly impolite, had raised their voice and given inappropriate value judgements. Under para. 13 of the Code of Ethics of Judges, a judge must be patient and polite with all participants in proceedings, colleagues and court employees. Para. 14 requires a judge to be impartial and fair in administering justice and try to appear as such to a reasonable observer. For that purpose, a judge must treat participants in proceedings equally, and refrain from unnecessary and irrelevant comments or remarks. The judge must avoid becoming irritated, getting angry, raising their voice, letting their facial expression and body language reveal their attitude, and other such behaviour that could leave the impression of partiality.

In an explanation sent to the Chancellor, the judge denied having used improper language or providing inappropriate value judgements. The judge's words were also confirmed by the secretary of the court hearing. At the hearing, the judge allegedly had to thoroughly explain circumstances which the petitioner's representative for some reason had failed to explain to the petitioner. Since the petitioner in their statement of claim had failed to prove their claim in substance, the judge was forced to clarify all the facts at the hearing.

The judge conceded that such examination may have caused discomfort and left an impression that the judge was aggressive or emotional. The judge may also have spoken at a higher volume since they wanted to be better heard through the video link (some people attended the hearing on site while others participated via a video link).

The Chancellor expressed regret that the hearing had caused annoyance to this person. Unfortunately, the Chancellor could not ascertain what and how precisely the judge said during the hearing since this was a preliminary hearing which was not recorded and an audio recording of which is also not required.

A petitioner also sought initiation of disciplinary proceedings in respect of a judge who had not allowed into a public hearing in March 2021 people wishing to listen to the hearing. The hearing took place in a courtroom with attendance of, in addition to the judge, the secretary of the hearing, the plaintiff, the defendant, the defendant's representative, and two persons who had also been called to give statements. The size of the courtroom is 34 m^2, which means that, according to restrictions imposed for combating the spread of the coronavirus at that time (considering the 50% occupancy requirement), four to five people simultaneously could be present in that room. Therefore, the judge could not allow observers into the hearing, and (relying on § 44 of the Code of Civil Procedure) asked them to leave the courtroom.

The Chancellor explained to the petitioner that courts cannot exist in isolation from the rest of society. Measures for combating the virus must also be observed in court, thus ensuring protection of the health of court officials, people summoned to the court as well as those voluntarily coming to the court. According to the minutes of the hearing, the judge also offered the petitioner an opportunity to postpone the hearing since the court could also not arrange a video link to another courtroom so quickly. However, the petitioner did not wish postponement.

A person complained that they had not been ensured proper interpretation at an administrative court hearing. However, the materials of the case file revealed that the person, who was in the detention centre, participated in the hearing via video conference. An interpreter participating in the hearing interpreted the participants from Estonian into Persian and vice versa. The interpreter holds a master's degree in the Persian language and has worked as an interpreter for more than ten years. Based on an audio recording of the hearing, it can be said that during the hearing the petitioner did not raise any complaints about interpretation to the court. Communication between the petitioner and the judge was seamless; no misunderstandings occurred. There was never a situation where the petitioner did not understand the interpreter or vice versa. Moreover, also present at the hearing was the petitioner's representative who actively defended the petitioner's interests. On that basis, the Chancellor had no criticism against the activities of the judge.

In one court case, a person found that judicial proceedings of a civil case had lasted too long. Examination of the materials of the case showed that, in comparison to the average duration of proceedings, the proceedings in this case had indeed lasted longer but this was not due to failure by the judge to perform their duties, or inadequate performance of duties, but due to

the large number of participants in proceedings. The number of persons concerned in this civil case is 73, and serving the procedural documents on all of them simply takes time.

Service of procedural documents is time-consuming and complicated but an unavoidable process in judicial proceedings, which is most often the cause for delay in civil cases. According to the information system of the courts, interruptions in performing procedural steps by the courts have sometimes occurred, but in view of the workload of judges in Harju County Court (a judge and the procedural team simultaneously deal with proceedings of many cases), prolonging the duration of civil proceedings is inevitable.

Disclosure of court decisions

The Chancellor was contacted with a concern that judicial decisions in administrative court proceedings concerning the social sphere are often not disclosed, so that people cannot examine the case-law.

The Chancellor explained that the principle of public court proceedings also includes public pronouncement of a court decision, which contributes to ensuring the right to fair court proceedings. The public must be able to examine case-law and, as a rule, court decisions should be accessible to everyone. This means that the public nature of court proceedings and disclosure of court decisions should be restricted as little as possible. At the same time, § 24 of the Constitution of Estonia allows restricting public access to court proceedings and disclosure of court decisions if the court believes that this is necessary, for example, to protect a minor or privacy. Therefore, procedural codes contain a possibility to restrict disclosure of a court decision: for instance, the name of a person participating in proceedings may be replaced with initials in the court decision.

However, sometimes replacing a name with initials or removing from a court decision data concerning private life is not sufficient if the context of the decision still enabled identifying the person. In that case, non-disclosure of a court decision is justified. Yet this does not mean that court decisions concerning some spheres of life are not disclosed at all. In such cases too, judges should still consider whether it would be possible to disclose that part of the court decision which concerns interpretation of legal norms or legal reasoning. Otherwise, it is impossible to acquaint oneself with case-law. The practice of disclosure of decisions of administrative courts has changed by now.

The Chancellor received a complaint that the website of the *Riigi Teataja* gazette discloses old

court decisions which, in the petitioner's opinion, should no longer be public.

The Chancellor explained that, in a disclosed court decision concerning a criminal offence or a misdemeanour, the court replaces a person's name with initials or characters upon arrival of the deadline for deleting data concerning a person's punishment from the register (§ 28 Criminal Records Database Act). Names of persons having committed certain types of criminal offences are not replaced.

As a rule, personal data should automatically disappear from court decisions disclosed on the website of the *Riigi Teataja*. If this is not so, a person may request removal of their name from court decisions concerning expired punishment data within the meaning of the Criminal Records Database Act. This is also supported by the general principles of personal data protection which require that personal data should be processed only to the extent necessary for the purpose of processing. If no reason exists for continued disclosure of a person's name, the name must be replaced with initials or characters. Thus, the person concerned should apply to the court that made the relevant decision.

Different treatment of witnesses in court

Under § 152 of the Code of Civil Procedure, a witness is paid compensation for participating in civil proceedings. This is compensation for lost wages or loss of other permanent income, and it is also paid even if the witness did not lose income due to giving testimony or if they are unemployed or have no income.

On the other hand, paying compensation to a witness in offence proceedings is regulated by § 178 of the Code of Criminal Procedure, which does not enable claiming compensation for lost income by a witness who has not lost their income or is unemployed. The Chancellor was asked to assess the compatibility of this provision with the principle of equal treatment (§ 12 Constitution).

The Chancellor found that § 178 of the Code of Criminal Procedure does not contravene the principle of equal treatment and a reason exists for different treatment of witnesses participating in different types of judicial proceedings. Unlike in civil proceedings, the purpose of criminal proceedings is not to resolve private disputes. The purpose of criminal proceedings is to ascertain whether someone has committed a crime, i.e. harmed essential legal rights by their conduct. Participating as a witness in offence proceedings is an extremely important civic duty on which depends ascertaining the perpetrator of the offence and

preservation of the legal order. Performance of this kind of civic duty does not need to be remunerated with additional compensation (i.e. witness compensation paid to an unemployed witness).

However, a witness participating in civil proceedings is forced to intervene in a private dispute. Therefore, witness compensation paid to an unemployed witness in civil proceedings is intended as symbolic additional compensation. As a rule, a witness is involved in a private dispute at the request of a party to civil proceedings. Therefore, expenses related to a witness appearing (including witness compensation) are borne not by the state but by the person seeking examination of the witness or by the person on whom procedural expenses are left to be borne according to the court decision.

Imposition of aggregate sentence

An aggregate sentence is the final sentence imposed on a person for committing several criminal offences. Where a need should arise to punish a convicted person for an additional criminal offence, imposition of an aggregate sentence is regulated by § 65 of the Penal Code. This constitutes subsequent imposition of an aggregate sentence.

The Chancellor was asked to clarify within the limits of her competence whether an aggregate sentence may be imposed if one of the sentences to be aggregated has been imposed by a court judgment which has not yet become final.

The Chancellor explained that subsequent imposition of an aggregate sentence is not possible if one of the sentences to be aggregated has been imposed on the person by a judgment reached in different criminal proceedings and it is not yet final (i.e. has been appealed). Aggregating a sentence imposed by a judgment which is not yet final would mean that an as yet legally non-existent sentence would be included among the aggregate punishment.

This would contravene the principle of the presumption of innocence (§ 22(1) Constitution). The Supreme Court has also emphasised that imposing an aggregate sentence is logically possible only if both of the aggregated sentences exist.

Offence proceedings

On a proposal by the Chancellor of Justice, in spring 2021 the Code of Misdemeanour Procedure was amended so that a person suffering damage as a result of a misdemeanour

may access the misdemeanour file after the court decision in the case.

Compensation of damage caused through a misdemeanour can be sought in court through civil procedure. Evidence of damage incurred and the amount of damage must be submitted to the court. Unfortunately, a person suffering as a result of a misdemeanour had no access to materials in the misdemeanour file containing the necessary data for protecting their rights. The amendments to the Code of Misdemeanour Procedure entered into force on 30 April 2021.

Regrettably, petitions received by the Chancellor revealed that even after the amendment to the Code of Misdemeanour Procedure, when issuing a copy of the file, officials of the Police and Border Guard Board still also cover other information in the file, such as the contact data of the person causing the damage or witnesses. Since this is contrary to the aim of amending the Code of Misdemeanour Procedure, the Chancellor recommended that the Police and Border Guard Board should comply with the provisions of § 62 subsections (3) and (4) of the Code when presenting the misdemeanour file or issuing copies from it. This means that a person who has directly suffered damage as a result of a misdemeanour is entitled to examine the entire file (subs. (3)). Only special categories of personal data of other persons contained in the misdemeanour file should be covered. Contact data of another person (e.g. the person subject to proceedings or a witness) do not constitute special categories of personal data. Under § 62(4) of the Code of Misdemeanour Procedure, where an application is made, the body in charge of proceedings issues a complete copy of a procedural document or the case file to the person entitled to access it.

The Chancellor was asked to check whether the head of a bureau in the Central Criminal Police breached the principle of the presumption of innocence when in the *Ringvaade* programme on the public ETV television channel they called a person a member of a criminal organisation even though no court judgment had yet been reached in respect of the person.

The Chancellor explained that under § 22 of the Constitution, no one may be deemed guilty of a criminal offence before they have been convicted by a court and before the conviction has become final. The requirement of the presumption of innocence is binding on police officers, prosecutors, judges and other public officials.

The Supreme Court has emphasised that it is not compatible with the presumption of innocence if a representative of public authority draws public attention to the accused before a court judgment. The authority possessed by the state may give a different weight in the

eyes of the public to information disseminated by a public authority. Therefore, in statements concerning charges, words and expressions must be extremely carefully chosen. Thus, the Chancellor concluded that the statement by the head of a bureau of the Central Criminal Police contravened the principle of the presumption of innocence. A person whose rights are violated in this way may claim compensation of damage from the Police and Border Guard Board.

The duty to submit data of the actual traffic violator

In the event of suspicion of an offence, the burden of proof lies on the state. Thus, an accused is not required to prove their innocence (see, the presumption of innocence, § 12 Constitution). This applies both in criminal and misdemeanour proceedings. However, neither the presumption of innocence nor a person's right not to prove their innocence in proceedings for offence is not absolute.

The Chancellor analysed the compatibility with the principle of the presumption of innocence of the duty arising from § 54^5(3) of the Code of Misdemeanour Procedure that, in the event of contesting a penalty notice, it is required to submit to the body in charge of proceedings the data of the person who was actually using the motor vehicle at the time of violation. The duty to submit the data of the actual traffic violator interferes with a person's right not to prove their innocence in offence proceedings. Thus, in the event of contesting a cautionary fine, the burden of proof must be partially (i.e. as regards identifying the person using the vehicle at the time of violation) borne by the owner or authorised user of the vehicle. However, this duty does not contravene the principle of the presumption of innocence.

Due to the enhanced risk posed by motor vehicles, road users and those responsible for motor vehicles have a duty of care towards fellow road users. If someone grants another person use of a vehicle, the person responsible for the vehicle must, inter alia, collect and maintain data about the actual user (Traffic Act § 72(1) and (2)). At the request of the body in charge of proceedings, the person responsible for the vehicle must submit those data to the body in charge of proceedings. Although this duty interferes with the presumption of innocence, the purpose of the duty is to protect the life and health of others. This duty ensures that a vehicle does not end up with a person who does not have the right to drive or about whose trustworthiness the person responsible for the vehicle has misgivings.

Enforcement procedure

In most petitions about enforcement proceedings, the Chancellor is asked about the right of bailiffs to attach income or an immovable, but also about the size of the fee bailiffs can charge. Petitioners also ask for an assessment as to whether a bailiff has acted lawfully in enforcing a court decision regulating access arrangements. A number of petitions received during the reporting year concerned expiry of claims arising from enforceable titles.

In April 2011, an amendment to the General Part of the Civil Code Act (§ 157(1)) entered into force stipulating that the limitation period for enforcing a claim which has been recognised by a judicial disposition that has entered into effect or which is inherent in another enforceable title is ten years, instead of the previous 30 years. Thus, April 2021 saw the expiry of tens of thousands (estimated 80 000) of claims arising from enforceable titles entering into force prior to that date.

Several debtors contacted the Chancellor with a concern that, prior to expiry of the limitation period of a claim, a party seeking enforcement had lodged an application with the bailiff for termination of enforcement proceedings, and subsequently lodged a new enforcement application concerning the same enforceable title. The parties seeking enforcement interpreted the law (§ 159(2) of the General Part of the Civil Code Act) so that, if enforcement proceedings are terminated on the basis of an application by the party seeking enforcement and the same enforceable title is repeatedly submitted for enforcement, then the limitation period for enforcement can be repeatedly prolonged by ten years. Bailiffs also went along with that interpretation.

However, that interpretation is not compatible with established case-law (Supreme Court judgment of 13 December 2018 No 2-15-16664, para. 21; judgment of 16 December 2013 No 3-2-1-141-13, para. 29). Namely, the Supreme Court has repeatedly expressed the opinion that, under the law, the period of limitation is not deemed to have been interrupted if enforcement proceedings are terminated on the basis of an application by the party seeking enforcement. In that case, the period of limitation is calculated from the time when the claim arising from an enforceable title became enforceable. This prevents the period of limitation being dragged out unreasonably. The Ministry of Justice criticised the bailiffs that no fee for termination of enforcement proceedings was charged from parties seeking enforcement. To prevent further misinterpretation, the grounds for interrupting the period of limitation were

clarified in the law (see the Act Amending the Code of Enforcement Procedure and Amending Other Acts).

The Act Amending the Code of Enforcement Procedure and Amending Other Acts, entering into force on 1 April 2021, simplified termination of enforcement proceedings on account of expiry of the limitation period of a claim arising from an enforceable title and made the proceedings cheaper for debtors. Bailiffs now obtained the possibility to terminate enforcement proceedings on the basis of a debtor's application in the case of expiry of the limitation period. The court examines the application in proceedings on petition. It is worth recognition that the Ministry of Justice and the Estonian Chamber of Bailiffs and Trustees in Bankruptcy provided explanations and guidance to debtors as to how to apply for termination of enforcement proceedings on account of expiry of a limitation period for a claim.

This legislative amendment applies to all the enforceable titles mentioned in the Code of Enforcement Procedure, including public-law claims (§ 2(1) of the Code), for which no period of limitation has been established different from the period mentioned in § 157 of the General Part of the Code of Civil Procedure Act (as a rule, ten years), or special regulation (e.g. § 202 Code of Enforcement Procedure). For instance, simplified proceedings entering into force on 1 April 2021 cannot be applied in the case of expiry of a claim for payment of expenses awarded in favour of the state in civil proceedings. The period of limitation for expiry of enforcement of that claim differs from the period laid down by § 157 of the General Part of the Civil Code Act. Legislation should treat equally all the essentially similar public-law claims (procedural expenses awarded in favour of the state in different types of proceedings) and situations of expiry of the limitation period for their enforcement. Nor does state interest in applying the expiry of the period of limitation for public-law claims and their enforcement generally require significantly different protection in comparison to private claims (e.g. only protection guaranteed by the court).

The Chancellor considered it possible to interpret the provisions of the Code of Enforcement Procedure and the Code of Civil Procedure (§§ 202 and 209 CEP, and § 179(7) and (8) CCivP) in conformity with the Constitution. A bailiff themselves can terminate enforcementproceedings in a claim for payment of procedural expenses awarded in favour of the state ifthe claim has not been enforced within three years from the entry into force of the courtdecision awarding the money and if no circumstances exist requiring interruption of theperiod of limitation.

The Chancellor asked the Ministry of Justice to consider the possibility of the interpretations provided above, as well as the need to clarify the law. The Chancellor also asked the Ministry to check whether current law has other claims to which the provisions entering into force on 1 April 2021 do not apply, and to analyse whether lodging an action seeking a declaration of inadmissibility of compulsory enforcement is justified in the case of them, or whether legislation needs to be changed.

Traffic management

Speed limit for electric scooters

Among personal light electric vehicles are electric scooters. These were introduced as a new vehicle category among the legal provisions by amendments to the Traffic Act entering into force at the beginning of 2021, and new traffic rules for them were also established. The maximum speed limit for a personal light electric vehicle was set at 25 kilometres an hour (§ 15(1) clause 11 of the Traffic Act).

Unlike in the case of a personal light electric vehicle, the law does not impose a maximum speed limit for a bicycle. Therefore, the Chancellor was asked to assess whether the restriction imposed on personal light electric vehicles was compatible with the principle of equal treatment.

The Chancellor found that imposing a speed limit on personal light electric vehicles does not violate the principle of equal treatment. Riding an electric scooter does not presume physical preparation or skills from the driver. The characteristic features of an electric scooter are small wheels and a narrow handlebar which make it more unstable in comparison to a bicycle. Increasing the speed only requires pressing a button. Therefore, an electric scooter is more dangerous, the risk of an accident is higher, and the reasonable justification for the restriction is the need to protect the life, health and property of the driver as well as other

traffic participants.

Measuring location of a speed camera

Under the Traffic Act, traffic supervision may be carried out, inter alia, by a portable speed camera whose purpose is to constantly check whether drivers comply with the speed limit, and to react to all violations.

Before legalisation of portable speed cameras in 2019, the Ministry of Justice found, for example, in the explanatory memorandum to the Draft Act, that the measuring location of a speed camera should be marked with a traffic sign. This gives a driver a possibility to change their behaviour and refrain from a violation. Therefore, the Chancellor has been repeatedly asked whether the measuring location of a speed camera must be marked with the "Automatic control" traffic sign.

The Chancellor explained that explanatory memorandums and the views expressed in them are not legal acts. Neither the Traffic Act nor the Government of the Republic regulation establishing the requirements for installation, the measuring procedure, and processing the measurement results of speed cameras require a speed camera's measuring location to be marked with a traffic sign.

The driver of a vehicle must choose a speed suitable for traffic conditions which is not higher than the maximum speed allowed on the specific section of road – regardless of whether an "Automatic control" sign has been placed in front of the speed camera or not. The absence of an indicating sign does not render a traffic violation non-existent.

Local authorities

Chapter 14 of the Constitution guarantees the autonomy of local government, i.e. the right of local authorities to resolve and manage local matters independently. Naturally, rural municipalities, towns and cities must 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.

Local authorities are not a local extension of the arm of national Government or ministries. The idea of local government is that local matters are resolved by the community itself in a manner most suitable for the particular city, town or rural municipality. The state should provide support in this process: matters should be arranged so that local authorities have

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 contributed to resolving problems occurring in the internal working arrangements of local authorities and supervised conformity of local authority legislative acts of general application (i.e. regulations) with the Constitution and laws. The Chancellor also verified that rural municipalities, towns and cities perform public functions lawfully and do not violate the fundamental rights and freedoms of persons.

Working arrangements of local authorities

According to § 156 of the Constitution, the municipal council is the representative body of a municipality. This gives it the right of self-organisation, including the right to establish rules on arranging its work. However, the council's right of self-organisation is not unlimited; it must be compatible with the Constitution and laws, as well as the European Charter of Local Self-Government.

Several issues relating to the working arrangements of the municipal council and government are regulated by the Local Government Organisation Act whose requirements must be observed when establishing the working arrangements of local government bodies. The Chancellor was asked to check the constitutionality of the second and third sentence of § 35(3) of the Local Government Organisation Act. Under these provisions, a rural municipal, town or city government appoints the members of supervisory boards of foundations, private limited companies or public limited companies and exercises other rights of a founder or shareholder. If a private limited company does not have a supervisory board, the rural municipal, town or city government nominates the members of its management board. The Chancellor reached the opinion that those provisions of the law are compatible with the Constitution.

Competence of a rural municipality mayor

The Chancellor proposed to Põltsamaa Rural Municipal Council to bring into line with the law and the Constitution a provision in the statutes of Põltsamaa rural municipality which authorised a rural municipality mayor who had not yet obtained all mayoral powers to submit to the municipal council a draft amending the rural municipality's statutes and the composition and categorisation of posts.

Under § 28(3) of the Local Government Organisation Act, a rural municipality, town or city mayor obtains the powers prescribed by law and the statutes of the rural municipality, town or city as of the date when the appointment of the municipal government to office is confirmed. Thus, prior to forming the rural municipal government, a rural municipality mayor has only one right and duty – to assemble the rural municipal government and submit its composition in time for approval to the municipal council. The council cannot change by the municipality's statutes what has been laid down by law.

Põltsamaa Rural Municipal Council removed this contradiction from the municipality's statutes.

Convening a municipal council session

The Chancellor explained that the municipal council chair may also convene a municipal council session on the day requested by at least a quarter of the members of the council who have proposed convening the session. However, the municipal council chair has no obligation to do so.

Section 43(4) of the Local Government Organisation Act lays down that the chair or deputy chair of a municipal council shall convene a municipal council session on a proposal by the rural municipal, town or city government or of not less than one-fourth of the membership of the municipal council. The time of the session shall be determined by the municipal council chair or their deputy, taking account of the provisions of the statutes of the rural municipality, town or city, but the session shall be held no more than one month later. Nor do the statutes of Valga rural municipality or the rules of procedure of Valga Rural Municipal Council require that the municipal council chair should convene the council session more quickly.

Compliance with procedural requirements in the work of a municipal council

The Chancellor found that neither Haljala Rural Municipal Council nor the Rural Municipal Government had complied with the Local Government Financial Management Act, the statutes of the rural municipality

or the rural municipality's financial management procedure when formulating the draft explanatory memorandum to the first supplementary budget of Haljala rural municipality for 2021 and conducting the proceedings of the 2020 annual report.

The explanatory memorandum to the municipality's 2021 supplementary budget does not contain reasons concerning the necessity for a supplementary budget. However, this is required by the Local Government Financial Management Act (§ 26(1) (second sentence)) as well as the municipality's financial management procedure. The municipal council should have approved the annual report on 30 June 2021 at the latest, but this was not done.

The Chancellor asked that, in the future, the rural municipality should comply with the law and the municipal council should approve the annual report as soon as the council convenes (see the "explanatory memorandum to the draft supplementary budget, and the annual report").

The Chancellor drew the attention of Tori Rural Municipal Council to shortcomings in the municipality's statutes concerning the competence of the audit committee.

Under the law (§ 48(5) Local Government Organisation Act), the audit committee must submit both an audit report and the committee's decision concerning the result of its work to the rural municipal, town or city government. Along with the opinion of the rural municipal, town or city government, the audit committee will subsequently submit to the municipal council its decision, the audit report and draft council legislation, so that the council can pass a resolution on the results of the audit.

According to the statutes of Tori rural municipality, the audit committee only sends the audit report to the municipal government. The statutes entitle the audit committee to assess whether the documents submitted by it to the council should also include the draft municipal council legislation necessary for passing a resolution.

The Chancellor also ascertained that for a long time Tori Rural Municipal Council had not had an audit committee with the required number of members. At the time of the check (May 2021), the municipal council's audit committee had only held one meeting. Such a situation is not lawful and may lead to the risk of corruption.

According to law (§ 48(1) Local Government Organisation Act), the audit committee must have at least three members. The audit committee fulfils the function of scrutinising the local authority's financial records. The committee's effective work helps to ensure that the local

authority proceeds from the interests and aims of local residents and properly performs its tasks.

The Chancellor asked that the municipal council should immediately assemble a three-member audit committee.

Tori Rural Municipal Council informed the Chancellor that it had elected the committee chair and deputy chair.

The Chancellor recommended that Valga Rural Municipal Council should re-elect the audit committee chair and deputy chair as quickly as possible. The municipal council audit committee must have a chair and deputy chair. The law (§ 47(1^6) Local Government Organisation Act) stipulates that in the event of termination of the powers of the chair or deputy chair of the committee due to an expression of no confidence in them, their resignation, expiry or suspension of term of office as a member of the municipal council, both the chair as well as the deputy chair must be elected anew.

Releasing restricted information to a municipal council member

The Chancellor was asked whether a rural municipal government should release to a municipal council member information collected in the course of ongoing misdemeanour proceedings, which under the Public Information Act (§ 35(1) clause 1) has been classified as information intended for internal use.

The Chancellor explained that a municipal council member is entitled to receive legal acts, documents and other information of the municipal council and government, except information whose release is prohibited by law (see § 26(1) Local Government Organisation Act). When providing information about misdemeanour proceedings, the provisions of the Code of Misdemeanour Procedure must be complied with. Release of personal data must comply with the principles of data processing laid down by the General Data Protection Regulation.

Access to information classified for internal use only presumes that such information is necessary for a municipal council member for performing their duties, i.e. for exercising public power.

One of the duties of a municipal council member is to check the activities of the rural municipal council. This, however, does not entitle them to intervene (politically) in ongoing

misdemeanour proceedings. The extra-judicial body conducting proceedings in cases laid down by law is the rural municipality, town or city government (§ 9 clause 2 Code of Misdemeanour Procedure). A municipal council member may also initiate amendments to the legislation of a rural municipal, town or city council. For this, it may be necessary to obtain information about the implementing practice of legislation.

Thus, unless releasing information would excessively compromise ongoing misdemeanour proceedings, and if it is in the public interest (see § 62 Code of Misdemeanour Procedure), information should be given to a municipal council member. However, if that information contains personal data, it may be appropriate to cover those data (the principle of minimum processing of personal data). As a rule, to perform their duties, a municipal council member does not need to know in respect of whom misdemeanour proceedings are currently being conducted. Refusal to release information must be reasoned.

Prohibition on withdrawal of a motion of no confidence

The Chancellor checked compatibility with the law of the provisions in the statutes of Jõhvi rural municipality according to which a draft decision on expressing no confidence cannot be withdrawn from proceedings.

The Chancellor found no conflict with the law.

The procedure for expressing no confidence is regulated by § 46 of the Local Government Organisation Act. However, that provision does not state whether the initiators of an expression of no confidence may withdraw the motion of no confidence. Although the provisions of the statutes which prohibit such withdrawal restrict the free mandate of (a) municipal council member(s), that restriction is not excessive.

Functions of rural municipalities, towns and cities

The functions of rural municipalities, towns and cities are divided into local government functions (§ 154(1) Constitution) and state-level functions (§ 154(2) Constitution). Local government functions, in turn, are divided into voluntary and mandatory duties.

Performance of public functions must comply with the principles of lawfulness. People's fundamental rights and freedoms may not be restricted unless a sufficiently clear legal basis for this exists in view of the nature of the particular restriction.

Rural municipalities, towns and cities must also keep the requirement in mind in combating

the spread of the coronavirus (see "Memorandum concerning measures taken to combat the spread of the SARS-CoV-2 virus in Peipsiääre rural municipality").

The ban on grilling on balconies and terraces

It is the local authority's function to organise maintenance of property and facilities (§ 6(1) Local Government Organisation Act), i.e. to ensure a human- and environmentally friendly, aesthetic and maintained space in a rural municipality, town or city. To ensure maintenance of property, the municipal council lays down property maintenance rules (§ 22(1) clause 36^1 Local Government Organisation Act).

The Chancellor was asked to check the lawfulness of a ban on grilling on a balcony and terrace in an apartment building imposed by Saue rural municipality's property maintenance rules. The Chancellor found that such a blanket ban contravenes the Administrative Procedure Act (§ 4(2)2; § 90(1)), the Local Government Organisation Act (§ 22(1) clause 36^1) and the Apartment Ownership and Apartment Associations Act (§ 30(1) clause 1).

Although the municipal council enjoys discretion in determining the substance of property maintenance rules, fundamental rights may not be restricted excessively or arbitrarily. Proportionate restrictions on grilling might be imposed by property maintenance rules where the smoke and smell excessively annoy people in the vicinity of buildings, as well as with a view to maintaining the aesthetic external appearance of public space. The principle of equality must also be complied with. For instance, the effects caused by grilling on a balcony or terrace of a private house do not significantly differ from the effects arising from grilling on a balcony of an apartment building. Naturally, the precondition for it should be compliance with the necessary fire safety regulations.

The Chancellor proposed that Saue Rural Municipal Council should bring into line with the laws and the Constitution that part of the property maintenance rules which bans grilling on a balcony and terrace of an apartment building.

The municipal council did so in the municipality's property maintenance rules adopted on 25 February 2021.

Property maintenance encumbrance

The Chancellor recommended that Paide Town Council should consider amending the town's property maintenance rules so that they would enable taking into account different

circumstances in determining the size of the area to be maintained, and in justified cases also to reduce that area. The duties imposed on a town by law may not be extended to the owner of an immovable.

Cities, towns and rural municipalities may impose an encumbrance to ensure property maintenance (§ 157(2) Constitution); § 36 Local Government Organisation Act) and decide on its substance at their own discretion. In doing so, the constitutional requirements must be complied with, including the principles of legality and proportionality (§ 154(1), § 11 Constitution).

Depending on the location, in some cases the territory to be maintained may be very large and the relevant encumbrance may turn out to be disproportionate. Proportionality is ensured by flexibility of property maintenance rules, for example the possibility to mitigate the encumbrance in some cases.

Paide Town Council informed the Chancellor that the town's property maintenance rules were in need of an update in their entirety. To date, this has not yet been done.

Cemetery administration

The rules on use of a cemetery administered by a local authority are established by the rural municipal, town or city council (§ 7(1) Cemeteries Act). The Chancellor drew the attention of Tallinn City Council to legal problems in connection with permit requirements laid down in the rules on the use of cemeteries in Tallinn.

If a permit is required for a vehicle to enter a cemetery or to provide paid services there, the rules must set the conditions for granting a permit and lay down the procedure for applying for and granting a permit (§ 14, § 31(1) Constitution), otherwise people are not protected from arbitrariness. Granting a permit cannot be an arbitrary decision by a public authority. With reasonable effort, a permit applicant must be able to understand from the established rules what the exact substance of the permit is and what conditions they must fulfil to obtain the permit.

Tallinn City Council acknowledged that the Chancellor's opinion was relevant and stated that it was planning to adopt new rules on the use of cemeteries in 2021.

Paying a kindergarten fee

In April 2020, Narva City Council supplemented the regulation on "Setting the rate for part of other expenses to be covered by parents in Narva city preschool municipal childcare institutions

". In doing so, the city council delegated the city government to decide on the amount of other expenses (maintenance costs, staff wages, social tax, costs of teaching aids) of municipal childcare institutions to be covered by parents during the emergency situation.

In June 2020, the Chancellor proposed to Narva City Council to bring the council regulation into conformity with the Preschool Childcare Institutions Act and the Constitution, and also explained § 27(3) and (4) of the Preschool Childcare Institutions Act (see "Narva City Council Regulation No 6 of 17 January 2008 on "Setting the rate for part of other expenses to be covered by parents in Narva city preschool municipal childcare institutions", § 4(3)").

The Preschool Childcare Institutions Act states (§ 27(39 and (4)) that the conditions on the amount of the parents' own contribution in a preschool childcare institution must be laid down by the municipal council.

Narva City Council repealed the unlawful provision of the regulation.

Public financial obligations

Under § 157(2) of the Constitution, a local authority may establish a local tax, duty or other public financial obligation only if permitted by law.

The Kadriorg Park Authority, which administers cemeteries in Tallinn, charged a fee for preparing grave plots, imposed by a directive of Tallinn Urban Environment and Public Works Department. The fee was charged if a new plot was allocated for burial or an old grave plot was taken into use. Without paying the fee it was not possible to bury a deceased person in any of the municipal cemeteries in Tallinn since a grave plot needs to be prepared for burial, and those works could only be done by the Kadriorg Park Authority. No fee had to be paid for preparing a grave plot only if the grave plot needed for burial existed previously (e.g. a family burial site). The next of kin of a deceased person had no possibility to affect the rate of the fee. This means that no contractual relationship was involved. Nor did the fee for preparing a grave plot depend on the actual costs. In essence, next of kin had to pay a fee for allocation of a grave plot.

The Chancellor reached the opinion that no legal basis existed for charging a fee for preparing a grave plot. Neither the Cemeteries Act nor any other law authorises a rural municipality, town or city to establish such a fee. Under the Cemeteries Act (§ 9(8)), the costs of burial must be borne by a deceased person's next of kin; however, fees for preparation of a grave plot established by the city department were not directly related to burial but to

adjusting the land on the cemetery so as to make it usable, i.e. general administration of a cemetery.

Tallinn Urban Environment and Public Works Department informed the Chancellor that the fee in question is no longer charged.

Fee for vehicle entry to cemeteries in Tallinn

The Chancellor was also asked to assess whether undertakings providing maintenance services may be charged a fee for entry of vehicles to cemeteries in Tallinn.

The Chancellor found that imposing such a fee contravenes § 157(2) of the Constitution and restricts the fundamental right to property without a legal basis (§ 32(1)−(3) Constitution) and freedom of enterprise (§ 31 Constitution). Undertakings providing maintenance services in a cemetery could be charged a fee for entry to a cemetery with a motor vehicle only if the law explicitly authorised a local authority to establish a fee for vehicle entry to a cemetery. However, no such basis exists in the law.

Tallinn Urban Environment and Public Works Department agreed with the Chancellor's opinion and annulled the provision in the directive laying down a fee for vehicle entry to a cemetery.

Social infrastructure fee in Kiili rural municipality

The Chancellor was asked to assess the Kiili Rural Municipal Council resolution on "Establishing a social infrastructure fee" by which the municipal council had imposed a fee for those wishing to initiate a detailed spatial plan for a development involving four or more dwelling units (an apartment, a terraced house section, a residential building). The municipality justified the decision by the need to reduce the negative effects on the municipality's budget arising from new residents.

The Chancellor noted that, although the municipality's viewpoint was understandable, all aims must be reached by lawful means. No law (the Local Taxes Act, the Planning Act, or others) authorises a local authority to establish a social infrastructure fee. Thus, the municipal council resolution contravenes § 157(2) of the Constitution.

The Chancellor dealt with the same issue in the 2017−2018 annual report.

The Chancellor recommended that the Riigikogu should consider a legislative amendment

laying down a possibility to impose on developers duties in the public interest, and authorising local authorities to establish by a legislative act of general application the methodology and conditions for setting so-called development compensation, and its rate (or e.g. the maximum rate).

Good administration in the activities of rural municipalities, towns and cities

Procedural deadlines

The right to speedy proceedings is one of the principles of good administration (§ 14 Constitution). Administrative proceedings must be conducted without undue delay (§ 5(2) Administrative Procedure Act). A local authority must set up its working arrangements and procedures so that they would enable complying with statutory procedural deadlines.

- The Chancellor ascertained that Märjamaa Rural Municipal Government had erred against the principle of good administration in proceedings concerning design specifications organised for building a special care home in Märjamaa town since it failed to choose the right type of procedure. In the instant case, the statutorily required proceedings for a detailed spatial plan could not be replaced by proceedings for design specifications. This error caused unnecessary loss of time and possibly also other unjustified expenses.

The choice of the right procedure is extremely important in complying with the principle of good administration. Even if the municipality at first started with proceedings for design specification, those proceedings should have been discontinued as soon as it became clear that no design specifications could be issued. This would have saved valuable time and enabled initiating a detailed spatial plan.

Under § 31(2) of the Building Code, a decision to issue or refuse design specifications should have been made within 60 days in proceedings conducted by open procedure.

Although the Administrative Procedure Act (§ 5(2); § 41) enables prolonging the procedural deadline, in doing so the proceedings still have to be conducted without undue delay and avoiding superfluous costs and inconvenience to persons.

The proceedings for design specifications lasted more than a year, which is unacceptably long.

- A resident of Kohtla-Järve city complained to the Chancellor that the city would not reply to their application for municipal housing. The petitioner lacked any housing of their

own and was receiving incapacity for work allowance.

The Chancellor ascertained that the city had failed to resolve the application lawfully. The city government failed to register the application in the document register by the deadline, failed to assess the applicant's need for assistance, failed to draw up a proper decision concerning their application, and failed to duly notify the applicant of the decision.

Applications and other documents must be registered in the document register no later than on the following working day after their receipt (§ 12(1) clause 1 Public Information Act). A decision on the social service to be provided must be made within ten working days (§ 25(1) General Part of the Social Code Act). If a local authority sees that the prescribed deadline cannot be complied with, it must promptly notify the participants in proceedings of the reasons for delay and of the time of issue of the administrative act (§ 41 Administrative Procedure Act). A service pertinent to the need for assistance must be ensured within a reasonable time.

- The Chancellor drew the attention of Kose Rural Municipal Government to the fact that documents must be properly registered. Replies to memorandums must be issued in writing, or otherwise by agreement, and no later than within 30 calendar days as of registration of the memorandum (§ 5(8) (first sentence); § 6 Response to Memoranda and Requests for Explanations and Submission of Collective Proposals Act). No option exists not to reply to a person's memorandum.
- The Chancellor received a complaint that the city of Tallinn did not always comply with the Building Code: significantly more time is spent on proceedings than prescribed by law.

The Chancellor recommended that the city should revise its working arrangements and procedural principles and develop them so that the city is able to comply with statutory procedural deadlines. By making appropriate changes, the number of proceedings requiring intervention can be cut, the duration of proceedings shortened, and the burden on both the city and persons reduced. The Chancellor also recommended that guidance material concerning building issues on the city's homepage should be updated.

Tallinn Urban Planning Department did not agree with the majority of the Chancellor's recommendations.

- A Tallinn resident complained to the Chancellor that they had sought assistance from

Tallinn City Centre District Government in obtaining housing but the city had failed to assist them. The city had placed them in the queue for applicants for municipal housing one and a half months after submission of the application, but had failed to give them housing even more than eight months later. At the same time, as far as is known, the applicant lacked any housing of their own and their pension did not enable them to rent an apartment.

The Chancellor concluded that Tallinn city had unjustifiably delayed in deciding on provision of assistance and ensuring housing to the person in need. The Chancellor asked that Tallinn city should immediately provide appropriate housing to the person in need and also ensure that in the future the city district government would make decisions on provision of housing within the statutory deadline.

Where a person has given notice to the city that they need welfare assistance, a city district government must assess comprehensively whether and what assistance the person needs, and decide no later than within ten working days whether and how the city can help the person (§ 15(1) Social Welfare Act; § 25(1) General Part of the Social Code Act). The necessary assistance, including suitable housing, must be provided to a person if they need it (§ 3(1) clause 1; § 41 Social Welfare Act).

By order of 21 April 2021, Tallinn City Government temporarily rented a dwelling to the person in need.

- The Chancellor found that Lüganuse Rural Municipal Council and Government had failed to act lawfully in conducting proceedings of a draft council resolution submitted by municipality's residents since the municipal council and government had failed to comply with the statutory deadlines, and had not justified the missed deadline to the initiators of the draft.

Section 32 of the Local Government Organisation Act lays down that no less than one per cent of the residents – but not less than five residents – of a rural municipality, town or city with the right to vote may initiate passing, amending or repealing legislation of the rural municipal, town or city council or government concerning local issues. Such initiatives must be debated no later than within three months. The initiative is to be presented to the rural municipal, town or city government in the form of a corresponding draft to which a list with the signatures of the initiators is to be appended. If the issue initiated is within the competence of the municipal council, the municipal government shall, within one month,

submit the issue together with its position to the municipal council for resolution.

The Chancellor asked that Lüganuse Rural Municipal Council should put the draft swiftly for debate and pass a decision on it. The municipal council complied with the proposal.

State supervisory proceedings

The Chancellor found that Peipsiääre Rural Municipal Government had unjustifiably delayed a decision to initiate state supervision proceedings. The municipal government also provided unclear and misleading information to petitioners and state bodies about initiating the proceedings.

A law enforcement body must act swiftly, with appropriate due diligence and consistently, both for protecting private and public (the general public) interests. A decision on initiating proceedings must also be made within a reasonable time.

Since Peipsiääre Rural Municipal Government had failed to act in this way, the Chancellor proposed that the municipal government should comply with the principle of good administration. The Chancellor called on the municipal government to quickly organise state supervision proceedings in line with all the procedural requirements, and asked to be regularly notified about the progress of the proceedings (and be sent the newly added procedural documents). The Chancellor recommended that in the future the municipal government should also comply with the principles of administrative procedure (the investigative principle, the duty to carry out proceedings as quickly and effectively as possible, and the like – § 6; § 5(2) and (4) Administrative Procedure Act; § 8 Law Enforcement Act) and provide precise information about the proceedings.

Justification for rejecting a proposal

The Chancellor was asked to check whether proceedings concerning a proposal submitted within the participative budgeting procedure in Elva rural municipality had been carried out properly. The participative budgeting procedure is regulated by the Elva Rural Municipal Council regulation on "The procedure for carrying out participative budgeting proceedings". This lays down that an object of participative budgeting must provide public benefit, be in public use, and may not lead to unreasonable future expenses in the municipal budget.

The Chancellor found that the relevant committee of the rural municipal government had failed to properly assess the application and recommended that the municipal government

should reconsider the proposal and properly justify its decision. For instance, the procedure for participative budgeting does not require that a building concerning which a proposal is made must belong to the municipality and be administered by the municipality (which was the reason given for rejecting the proposal).

The mayor of the rural municipality informed the Chancellor that the municipal government intended to revise the procedure for participative budgeting and amend it where necessary.

Good administration

The Chancellor's task is to monitor whether the authorities comply in their work with legislation, including the principle of good administration. The principles of good administration are set out in the Administrative Procedure Act. The principle of good administration means, inter alia, that state and local government officials communicate with people politely and to the point. State agencies must also organise their work so that no one is left uninformed or in an uncertain or simply confusing situation as a result of action or inaction by the agencies.

People contacting the Chancellor are often dissatisfied with how state agencies deal with their requests and applications. The problem starts right from an agency's failure to register a person's application. Applications and other documents must be registered in the document register no later than on the working day following their receipt. This requirement is laid down by the Public Information Act (§ 12(1) clause 1). The requirement of registering documents is not an end in itself but helps to ensure that each application leaves a trace and is also dealt with. It is unlawful to keep an application simply on an official's desk or in the e-mail inbox. Due to failure to register applications and requests, the Chancellor had to admonish the Agricultural Board, Kohtla-Järve City Government as well as Kose Rural Municipal Government.

Põlva and Rakvere town and Tallinn city and Valga rural municipality failed to reply by deadline to people's memorandums and requests for explanation. Problems with following deadlines also occurred in the Ministry of Justice, the Ministry of the Interior, the Ministry of Social Affairs, and the Health Board. The law stipulates that 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. In line with the principle of good administration, an individual must be informed at the first opportunity

about a delay in replying or extension of the deadline for reply and the reasons for it.

Problems over compliance with the principle of good administration also occurred in organising social services. This was particularly evident in a case in Toila rural municipality where a petitioner complained about being taken to a care home.

According to the Chancellor's assessment, in terms of applicable law Toila rural municipality clearly violated the petitioner's rights while the municipality's activities in organising the general care service were not lawful. The rural municipal government failed to draw up a record of the petitioner's alleged oral request to obtain the general care service, failed to present data on involving the petitioner in the proceedings for provision of the social service, ensuring their right to be heard and taking account of their will, nor did it prepare an all-round assessment of the petitioner's need for assistance. It also remained unclear in this case in what condition the petitioner was at the time of signing the contract with the care home and whether and what kind of will they expressed at all.

Kohtla-Järve city also failed to resolve an application for housing in line with applicable law. The petitioner requested housing from the city because they lived in an unheated garage and had been identified as lacking capacity for work. The Chancellor found that Kohtla-Järve city had failed to lawfully resolve the petitioner's application for housing. The city government failed to assess the petitioner's need for assistance, failed to draw up a proper decision concerning the petitioner's application, nor did it duly notify the petitioner of the decision.

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 the editor-in-chief of the cultural paper *Sirp*, Kaarel Tarand, 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.

In spring 2021, ten years had passed from setting up the Political Parties Financing Surveillance Committee in its present form. This has been a sufficiently long time to reveal whether and how well the established procedure leads to the desired objective, and whether supervision is effective and economical and supports law-abiding behaviour by political parties and election coalitions equated with them. And not only this. Supervision is also a sort

of a mirror: it shows that statutory financing rules − not only control − contribute to fair competition and the development of representative democracy exercised through political parties.

When an attempt was made a year ago in the Riigikogu to change the current procedure for supervision, unfortunately the approach initially pursued was not of the kind that would have led to a solution. Instead, as of this spring, work has been ongoing on remedying shortcomings in the Political Parties Act based on the so-called traditional approach, beginning from collecting and analysing data and preparing a draft by experts in the Ministry of Justice. However, regardless of who does the preparatory work, final political decisions are for the parliament to make. Both sides must be weighed in combination, i.e. both financing of political parties and supervision thereof. The choice of tools provided for supervision depends on what is allowed and what is prohibited in financing political parties.

The period of the global corona pandemic has very well revealed why every detail in the structure of state power is important. The idea and purpose of supervision over financing of political parties is not to undermine the authority of political parties. Likewise, it cannot be the aim of political parties to discredit supervision. Cooperation carried out in line with clear and precise rules should ensure that public power in its entirety, including political parties as its building blocks, enjoys sufficient trust in the eyes of citizens. There could be more trust in political parties, and shortcomings in this respect also cast a shadow on state institutions. If citizens do not trust political parties, they do not trust the state, which in turn affects the state's ability to succeed: this time in dealing with the health crisis, next time with some other crisis originating independently of Estonia which, nevertheless, the Estonian state must deal with. Thus, in establishing rules for financing and supervising political parties, human lives and openness of society are indirectly at stake.

Possible changes in the set-up and financing of institutions must be weighed carefully, yet quickly, because the entry into force of the changes should not hamper election of the next composition of the Riigikogu. Everyone concerned − recipients, donors and guardians of money − must be given time and opportunity to prepare and get adjusted. After all, it is in the interests of everyone involved that competition is fair and a corrupt act by a single individual involved in the system should not cause unfair reputational damage to their colleagues who abide by the rules.

As is usual in years when elections of municipal councils take place, the focus of supervision also falls on local authorities. Compared to the time four years ago, some improvement in the

conduct of candidates running for municipal councils may be perceived, including in the use of communication channels of local authorities, or to be precise, in non-use of those channels for political advertising.

Based on complaints received by the surveillance committee, room for improving the situation still exists, but undoubtedly the persistent work of the Political Parties Financing Surveillance Committee, precepts issued by it and court rulings have had an effect at least on the conduct of political parties in power in larger local authorities. At the same time, we should not forget the question whether resources spent in the course of supervision to investigate misuse of an insignificant monetary amount have indeed been used for a good purpose and whether an indirect consequence of burdening the committee with these acts might not be that a larger – in monetary terms more significant – violation, creating an unfair advantage for the perpetrator, might evade proper scrutiny.

In this case, an example of citizens seeing most directly how extensive the effect of changing just one detail in the law can be is the abolition of the restriction on outdoor political advertising during the active campaign period. This should inspire the Riigikogu to deal swiftly and properly with other details of political competition as well.

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 and control of all the decisions and steps taken in connection with elections. In addition, the Electoral Committee organises and carries out 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. 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.

From 1 September 2020 to 31 August 2021, two elections for the Board of the Riigikogu and election of the President of the Republic took place in Estonia. In addition, the National Electoral Committee also dealt with preparing the municipal council elections taking place on 17 October 2021.

During the reporting period, the Committee held 15 meetings.

Money

Money is a topic that leaves no one indifferent. Questions and problems arise when people have to give away money by paying taxes or fees as well as regarding how and for what the state uses taxpayers' money and in line with which principles it distributes money for aid measures.

During the reporting period, the Chancellor dealt with the issue of transparency and comprehensibility of the budget and, in this context, also addressed the role of the Riigikogu in deciding over the budget. The Chancellor was often asked whether the state treats people and undertakings equally when granting support and loans and whether support is purposeful and proportionate.

Comprehensibility of the state budget

Member of the Riigikogu, Aivar Sõerd, asked the Chancellor whether a member of the Riigikogu can have an effective and productive say at all in budgetary issues considering the current structure of the state budget.

The Chancellor found that the state's expenditure, including investments, has been written into the 2021 State Budget Act in such general terms that it is impossible to obtain a sufficiently clear overview of what the state's money is actually used for. The budget has become less transparent and control over use of taxpayers' money has also become significantly more difficult.

The ambiguity and generality of the budget have been a problem for quite some time already.

This is also indicated by setting up a Riigikogu support group for making the budget more comprehensible. Contrary to expectations, introducing activity- and performance-based budgeting made the state budget even more vague.

State budget expenditure is structured according to subject areas and programmes but their substance is not defined in the law. Thus, the Riigikogu lacks control over the final breakdown of expenditure in the national budget. The actual breakdown of expenditure is determined by the Government of the Republic. However, under § 115 of the Constitution, it is the Riigikogu that adopts the budget of the state's entire revenue and expenditure.

Regrettably, budget expenditure entries are very general and even the current breakdown of expenditure on a very general level is often illusory. For example, in the 2021 budget, one of the performance areas under the area of government of the Ministry of Justice is "Rule of law" containing, in turn, the Ministry's programme "Credible and productive legal space". The expenditure of the performance area and of the programme (174.5 million euros) overlap, and at the same time the expenditure of the area of government of the Ministry of Justice is also 174.5 million euros. This means that in actuality there is no breakdown of expenditure. Consequently, a decision on the distribution of expenditure has been left entirely for the Government of the Republic and the Ministry to make.

The same problem can be seen in terms of breakdown of expenditure relating to areas of government of ministries.

The list of expenditure of performance areas and programmes often overlaps and the majority of expenditure is not differentiated. In essence, currently the executive decides for what purpose the money should be used. The Riigikogu does not very often pass essential decisions on the budget.

The ambiguity of the budget and the fact that the executive has been granted broad decision-making powers over the budget involves greater risk of corruption. At the same time, there is greater risk that taxpayers' money is used unreasonably and unpurposefully. As people's representatives, members of parliament must retain control over essential budgetary policy decisions and be accountable for budgetary policy.

The Chancellor sent a memorandum to the Riigikogu Finance Committee, the Riigikogu Budget Control Select Committee, and the Riigikogu support group for making the budget more comprehensible, recommending that the State Budget Act should lay down the

requirements for additional breakdown of expenditure. The Finance Committee and the Budget Control Select Committee debated the issue at several sessions. The majority of the members of the Riigikogu taking the floor during the sessions agreed that problems exist with the comprehensibility and transparency of the state budget and that the state budget expenditure entries should be differentiated in more detail in the law. The issue is finding the right balance point between the tasks of the Riigikogu and of the Government.

According to the Chancellor's assessment, a possibility should be found to draw up the budget in a way that enables the Riigikogu to perform the task conferred on it by the Constitution to decide on the expenditure and revenue of the state budget, and on the other hand gives sufficient flexibility for the Government of the Republic in performing its tasks.

In July 2020, the Ministry of Finance sent speedily prepared amendments to the State Budget Act for an approval round, the objective being to provide a more detailed breakdown of the state budget revenue and expenditure and create better possibilities for members of the Riigikogu in the frame of budget proceedings. According to the Chancellor's assessment, even though a step has been taken in the right direction, the changes should be even more extensive in order for the Riigikogu to obtain the substantive right of decision-making also laid down by the Constitution.

EU recovery instrument and a levy for plastic waste

On 10 May 2021, the Riigikogu approved the financing plan for the European Union Recovery Plan, part of which is a levy for plastic waste payable to the EU budget. In this connection, the Chancellor had to form an opinion whether such a levy inadmissibly restricts Estonia's budgetary and tax competence.

According to the EU Recovery Plan, the EU will take a loan of up to 750 billion euros in order to help member states to resolve problems caused by the Covid-19 pandemic. Never before has the European Union taken such a massive loan. The borrower is the European Union based on the EU Treaties, and the loan will be repaid from the EU budget.

The Chancellor found that, by approving the loan decision, Estonia does not surrender additional competence to the EU, even though joining the Recovery Plan loan scheme could mean that in the future the Estonian state will be making somewhat larger payments to the EU budget than before (by an estimated annual 34 million euros more than currently). In the 2003 referendum, the Estonian people by deciding in favour of accession to the European

Union also authorised the use of powers laid down in the EU Treaties, including for a possible change of the system of own resources.

Analyses have found that the regulatory scheme of the recovery instrument is compatible with the EU Treaties and the use of extra-budgetary earmarked loans for lending to member states or financing projects is, in principle, allowed under the Treaties.

Every member state is responsible for loan repayments according to their share of contributions to the EU budget, and no obligations are assumed on behalf of other member states. Since the amount of possible additional future obligations is not extensive in comparison to the volume of Estonia's state budget and the increased contributions to the EU budget are limited in time and amount, then taking on that financial obligation cannot be considered an inadmissible restriction of the budgetary competence of the next compositions of the Riigikogu. What is important is that the Riigikogu should debate and decide such issues. In this case, it was indeed so.

A levy based on the amount of non-recycled plastic waste does not result in a restriction of the Riigikogu's financial competence because Estonia has not granted the EU competence to establish a tax, nor does this decision impose on Estonia an obligation to establish any taxes. Even if such an obligation were taken on, that decision has been approved by the Riigikogu, which is entitled to decide on taxes to be established in Estonia. However, the so-called plastic tax is not a tax within the meaning of § 113 of the Constitution payable by people and companies to the state. This is a component of the member states' contribution to the EU budget whose calculation is based on the amount of non-recycled plastic waste.

One of the objectives of the levy is to influence EU member states to reduce plastic packaging waste. If Estonia fails to reduce the amount of plastic waste or increase the amount of recycled packaging, Estonia is estimated to incur an additional burden of 11 million euros a year, which is to be paid jointly by all Estonian taxpayers. The state may still decide what additional measures to take so as to reduce the amount of plastic packaging waste and thus also the amount of the relevant levy payable to the EU budget (see, additionally, "The loan under the European Union Recovery Plan and the levy to be calculated on non-recycled packaging waste").

Pension reform

Under the Act on reform of the mandatory funded pension, among other things, people

obtained the possibility to withdraw their money from the second pension pillar all at once. The Supreme Court assessed the law and found it to be constitutional, while conceding that, in some specific cases, implementing the law may nevertheless lead to an unconstitutional situation where risks inherent in the legislative amendment are realised in respect of someone to a larger extent than anticipated. The court referred to a possibility that, on the basis of a court decision, specific constitutional review proceedings may be initiated or recourse had to the Chancellor of Justice.

At the time of drawing up this report, the Chancellor has received relatively few petitions concerning payments from the second pension pillar. However, it may be assumed that people would also contact the Chancellor in the autumn when money from the second pension pillar will be received by working-age people who have expressed their wish to do so. Then people will find out how much money they will actually receive.

A few petitions concerning the second pillar have nevertheless been submitted to the Chancellor. For example, a question was asked about the fee for withdrawal from a pension contract. A pensioner was dissatisfied that the law does not regulate the amount of the fee or its maximum limit. According to the petitioner's assessment, the fee (10%) for withdrawal from their pension contract was too high. If income tax payable to the state (10%) is added to this, in the case of withdrawing from the pension contract they should pay 20% of the total sum.

The Chancellor found that the Constitution does not require establishing regulatory provisions to limit the amount of the fee for withdrawal from a pension contract. An insurer may offer other more favourable contract terms in comparison to other insurers and thus also a higher pension but still insert in the contract an obligation to pay a fee in the case of premature termination of the contract. When analysing the constitutionality of the Act on reform of the mandatory funded pension, the Supreme Court noted that insurers may charge a fee for withdrawal agreed in a pension contract but that fee may not be claimed at a rate which essentially precludes withdrawal from a pension contract (para. 118.1 of the judgment).

The Chancellor was asked why people cannot enter into unit-linked pension contracts although the law allows it (see "Unit-linked pension contract").

The possibility for unit-linked pension contracts was established by the Act amending the Funded Pensions Act and the Investment Funds Act, adopted in June 2017 and entering into force at the beginning of 2018. In that case, the assets accumulated in the pension pillar are

invested and the risk is borne by the pension recipient. As a result, the pension may either increase or decrease.

Financial institutions have not yet begun to offer this kind of pension product. The reason might be uncertainty that the system of disbursements might be changed. People's interest in withdrawal of the second-pillar money as an insurance pension is currently extremely small: the majority of those entering retirement withdraw all the money at once.

However, if someone still wishes to receive a long-term pension and, in doing so, still increase the pension on account of income received from investments, they may enter into a funded pension contract. A funded pension is not a lifetime pension but depends on the period for which payment of the pension was agreed. Income tax from funded pension disbursements is either zero or ten per cent depending on the disbursement period.

Some petitions received by the Chancellor concerned taxation of second pillar payments, in particular situations where money from the second pillar is withdrawn as a single payment. For example, petitioners desired that the tax exemption for people with no capacity for work should also extend to those with partial capacity for work (see "Taxation of mandatory funded pension disbursements in the case of partial capacity for work") and that tax incentives applicable to those of retirement age would also extend to recipients of a special pension for police officers who have not yet reached retirement age (see "Tax incentives in the event of withdrawal of the mandatory funded pension"). The Chancellor was also asked whether taxation of payments from the second pillar constitutes double taxation of people's savings. This is not the case (see "Taxation of payments from the second pension pillar").

Taxes, fees and charges

Under § 113 of the Constitution, all public financial obligations must be established by a law. Regardless of practice established over the years and discussed in the courts, laws are circumvented when establishing fees and charges. It has become customary in recent times to introduce fees and charges through administrative practice. Remarkable inventiveness in establishing fees and charges is also demonstrated by local authorities who play with both the form and substance of imposing a fee or a charge.

With regard to taxes, the Chancellor was asked primarily about income tax, land tax andsocial tax. Most questions concerned legal clarity or application of tax exemptions orincentives in view of the principle of equal treatment.

Additional basic exemption

A mother living separately from her children asked the Chancellor why she could not use the additional basic exemption for children. Although she pays maintenance for the children, under the law the tax incentive is used by the parent who receives child allowance.

The Chancellor explained that, in the event of disagreement arising from the use of tax incentives, the state may give priority to the parent who is actually raising the children. In terms of earning income, the parent raising the children is not in the same situation as the parent fulfilling the duty of maintenance because they also have to bear the burden of everyday care and education of children. Taking care of children may become an obstacle in terms of earning a living. A parent who gives money for children's maintenance, but does not equally participate in raising the children, has no such obstacles.

The aim of child benefits and tax incentives is to facilitate reconciliation of work and family life of parents raising children. Therefore, there is no reason to consider as arbitrary § 23^1(3) of the Income Tax Act, under which priority for using the basic exemption for children is given to the parent in whose family the children are growing up. However, if parents reach agreement among themselves, entitlement to additional basic exemption may also be used by the parent living separately from children.

Land tax incentives

Although the land tax is a national tax, it accrues directly to the local government budget. The Land Tax Act lays down different tax incentives and exemptions, some of which have been established by the state while others have been left for local authorities to decide.

The Riigikogu has linked the tax exemption of land under a person's home explicitly with the condition that the person's residence according to the population register must be at the same address (§ 11(1) Land Tax Act).

Problems have arisen in connection with the issue of the conditions on which a local authority may, in addition to tax exemption of land under a person's home, grant additional tax exemptions to pensioners, to persons with no or partial capacity for work, to repressed

persons and persons equated to repressed persons (§ 11(5) and (6) Land Tax Act). However, those possibilities for exemption from land tax are not clearly linked to the condition that the residence of an applicant for exemption as recorded in the population register should be on the same plot of land. One may ask whether a local authority may only stipulate an additional tax incentive for a plot under a person's home – in that case, as a result of a local authority decision the person would receive a tax incentive to a larger extent than 0.15 hectares in cities or 2 hectares in the countryside. Or is it also possible to apply tax-exemption to a plot on which a pensioner, repressed person, etc, does not have their residence as recorded in the population register (e.g. land under a summer house or country home)? Currently, some local authorities actually do interpret the law so that the additional tax exemption which local authorities may lay down for pensioners, repressed persons and people with no or partial capacity for work is not linked to the condition of residence recorded in the population register.

The Chancellor found that provisions regulating establishment of an additional tax exemption can be interpreted differently, and elucidating them should be considered in the interests of legal clarity. In the Act amending the Land Valuation Act, the Land Tax Act and other Acts (406 SE), accepted for proceedings in the Riigikogu, § 11(5) and (6) of the Land Tax Act have been amended and clarified so that a local authority may grant a larger tax exemption on land under a person's home. Once this amendment enters into force, it is unequivocally clear that a local authority can provide an additional land tax incentive to pensioners, repressed persons and others on the condition that the person's residence as recorded in the population register is on the same plot.

Tax exemptions and incentives are an issue of political choice. The parliament could also take a position concerning a situation where an elderly person or a person with no capacity for work does not independently cope with their everyday life and must therefore go and live with their next of kin in another city, town or rural municipality. At the same time, it may become necessary for them to re-register their residence if they wish to obtain a social service from the rural municipality, town or city. After re-registration of their residence, a pensioner must pay land tax for the land under their previous residence.

If a person becomes a resident in a social welfare institution, they are still entitled to land tax exemption. Namely, § 70(2) clause 2 of the Population Register Act lays down that becoming a resident of a social welfare institution does not constitute a basis for amending a person's residential address entered in the population register. What is entered in the population

register is the place of stay of people staying in a social welfare institution (§ 96(1) Population Register Act). Local authorities could be left a flexible possibility to establish need-based land tax incentives and exemptions for pensioners and other people belonging to a risk group.

Cemetery fees

The Chancellor was contacted about public fees imposed by Tallinn in cemeteries located within the city boundaries. The Chancellor found that the fee for preparing a grave plot as well as the fee for vehicle entry to a cemetery had been established without a legal basis. Tallinn agreed with the Chancellor on both issues and neither of the fees is any longer collected (read, in more detail, in the chapter “The rule of law”).

Supervisory fees and food safety analysis

The Chancellor was asked whether the Veterinary and Food Board may charge a fee for supervisory activities even though it is an agency financed from the state budget and an undertaking has not commissioned that service from the state.

The Chancellor explained that supervisory fees have been established by law, so that such a fee may and must be charged. The system of supervisory fees is compatible with the principles laid down by EU legislation, i.e. a fee for checking compliance with requirements is collected from operators.

A question was also asked about food safety analyses. In the opinion of the petitioner, the prices for laboratory analyses by the Health Board are too high and establishment of these fees may be seen as amounting to hidden taxation of companies in the food sector.

The Chancellor found that there is no reason to consider the fees charged for laboratory analyses by the Health Board as excessive considering the price lists of other laboratories according to which a fee in the same amount or even higher is charged for analysis of similar samples. Nor does this constitute taxation. The frequency of sampling with the aim of guaranteeing food safety is determined by a food business operator in its self-check plan by assessing various risks as to how and when food may become contaminated and how often a check is needed. The operator also decides whether it is reasonable for it to analyse the samples itself (acquiring laboratory equipment, competent staff, etc., for this) or take samples for an analysis to another laboratory, and from which laboratory to commission the service.

Definition of the object of road charging

In a memorandum sent to the Riigikogu Economic Affairs Committee, the Chancellor wrote that the Traffic Act fails to lay down with sufficient clarity whether a special-purpose vehicle is taxed with the road toll or not. The Traffic Act should be amended in the interests of legal clarity. In March 2021, the Riigikogu amended the definition of truck in the Traffic Act: truck means a car designed for the carriage of goods or for towing while coupled to vehicles or for specific work applications (§ 2(93) Traffic Act).

As a result, it became clear that the road toll is also payable for special-purpose vehicles.

Social infrastructure fee

A member of Kiili Rural Municipal Council asked the Chancellor to check the constitutionality of a social infrastructure fee established by municipal council resolution No 4 of 21 February 2021.

The municipal council established a fee payable by everyone wishing to initiate a detailed spatial plan for a development involving four or more dwelling units (an apartment, a terraced house section, a residential building) in the municipality. The justification given for the decision was the need to reduce the effects on the municipality's budget arising from new residents.

The Chancellor found that even though according to case-law a local authority may also reach agreement with a developer concerning building or financing social facilities, a rural municipality cannot unilaterally impose such financial obligations. By nature, this fee is similar to a local tax with characteristics of a levy (in return for paying the fee the payer would get a detailed spatial plan). The fee has a general fiscal objective since its imposition attempts to balance the difference between rapid population growth and slower growth of tax revenue. The rural municipality has established a uniform fee for all developers and a person who does not agree with the fee may appeal the decision to an administrative court (para. 4 of the resolution).

The Riigikogu is currently carrying out proceedings of the Draft Act amending the Planning Act (378 SE), which deals with the bases for agreeing on building planning-related civil engineering works and bearing the costs of building them, and the principles for allocation of costs. The amendment does not concern financing of social facilities. However, in the

interests of legal clarity, it is important that the Riigikogu should also express an opinion on social infrastructure costs: whether agreements on bearing costs are allowed or prohibited (while no relevant regulation exists). If the Riigikogu finds that a social infrastructure fee might be charged from a developer or agreements with a developer could be concluded for financing social facilities, then these possibilities should be created by law.

The Chancellor recommended the same in the 2017–2018 annual report.

The requirement for an employer's deposit in the Aliens Act

The Chancellor had to resolve an undertaking's concern involving a complaint that, after the entry into force of an amendment to the Aliens Act on 1 July 2020, the Police and Border Guard Board (PBGB) had changed its administrative practice in connection with temporary agency workers, so that it is now less favourable towards undertakings. While previously an employer had to have funds on deposit to the extent of ten per cent of the employer's monthly remuneration fund then after amendment an undertaking had to deposit ten per cent of the 12-month remuneration of a particular alien.

The Police and Border Guard Board may register temporary agency work as short-term employment or grant an alien a residence permit to work as a temporary agency worker if the employer has deposited the amount required under the Aliens Act to guarantee the obligations related to remuneration.

The issue is for what period the employer's deposit is to be calculated.

By the time of submission of the petition, the PBGB had applied the provisions of the Aliens Act regulating the deposit (§ 106(8) and § 176¹(2)) in three different ways. First, the PBGB found that the sum to be deposited is linked to the anticipated period of the worker's employment. Second, the PBGB found that the remuneration fund is linked to one month's remuneration. The third interpretation, i.e. the one used at the time of submission of the petition, was that calculation of the remuneration fund must be based on the anticipated period of employment or at most 12 months' remuneration. The PBGB informed undertakings about the change of its administrative practice by e-mail.

Impelled by the petition, the Chancellor analysed the conformity of the regulatory provisions on the employer's deposit in the Aliens Act with the requirement of a clear definition and the proportionality of a deposit as financial security, and assessed the PBGB administrative practice in connection with applying the regulatory provisions.

In the memorandum to the Riigikogu Constitutional Committee, the Ministry of the Interior and the Police and Border Guard Board, the Chancellor reached the opinion that the rules establishing the obligation of employer's deposit (§ 106(8) and § 176¹(2) Aliens Act) do not lay down with sufficient clarity what sum an employer must deposit. Nor is there a maximum limit for the financial obligation. In view of the onerous nature of the financial obligation and the requirement of a legal basis, this shortcoming cannot be overcome even by way of a constitutionally-conforming interpretation. Section 106(8) and § 176¹(2) of the Aliens Act do not confer on the PBGB a general right of discretion to decide on the length of period based on which the deposit is to be calculated. No such right can be deduced from the wording of the provisions in question nor is it compatible with §§ 3, 10 and 113 of the Constitution.

In the memorandum, the Chancellor also raised the issue of the proportionality of the regulatory provisions since, according to information from employers' representative organisations, no necessity has arisen in practice to actually make use of the employer's deposit. Nor is there any other data (including impact assessments) that would enable a conclusion that the deposit is unavoidably necessary for achieving a particular aim.

On this basis, the Chancellor asked the Ministry of the Interior and the Riigikogu first to analyse the necessity for regulatory provisions on the employer's deposit as laid down by the Aliens Act. Should it be confirmed that the deposit requirement is necessary, the Chancellor asked the Riigikogu to amend the Aliens Act so that an employer would be able to understand the amount of the financial obligation from the wording of the law without any external assistance. The conditions for disbursement and repayment of the deposit as well as the main procedural norms in connection with it must also be regulated.

The Chancellor reached the opinion that it cannot be considered lawful that the PBGB has changed the period for calculating the deposit by relying on a legislative amendment which is not at all related to the period of calculating the deposit. Such a change in practice is deceitful towards employers and the Chancellor asked that it should be avoided in the future.

Considering that the PBGB as an executive agency cannot set aside a norm not conforming to

the requirement of a clear definition and it has the duty of applying applicable law, the Chancellor suggested as a solution for calculating the deposit that the remuneration fund could be based on one month's remuneration and ten per cent of this should be deposited. Until the law is amended, this enables application of the regulatory provisions so that interference with the rights of persons is minimal.

Crisis support for undertakings

The Chancellor assessed the compatibility of numerous crisis assistance measures with the principles of equal treatment. The gist of several petitions concerned ascertaining the need for assistance: if everyone is in a difficult situation due to restrictions then whom should the state support and whom not?

On several occasions, the Chancellor reached the conclusion that the conditions for support measures were reasonable and not arbitrary. At the same time, the reasoning for the conditions for support measures is often too scant and the actual reasons can only be found out by making enquiries with the drafters of conditions. Therefore, it is difficult for people to understand the considerations based on which the conditions for support and the fields of activity eligible for support have been determined. Considering that the aim is to make available state money with a view to helping undertakings survive the crisis, this is a worrying trend in the process of allocating state money. This kind of behaviour renders the decision-making process for allocating support non-transparent and incomprehensible. If the bases for allocating support cannot be understood, it is difficult for undertakings to protect their rights because specific deadlines have been set for allocating support.

In the so-called performing arts institutions case, the Chancellor submitted an opinion in Supreme Court constitutional review case No 5-20-6. In this case, the Supreme Court had to resolve the issue whether it was compatible with the principle of equal treatment that § 4(2) clause 6 of the Minister of Culture Regulation of 12 September 2020 on "Exceptional aid to the sphere of culture and sport due to the outbreak of COVID-19" precluded crisis aid to a performing arts institution that had not voluntarily submitted statistics on its repertoire by 1 May 2020 at the latest while giving entitlement to apply for crisis aid to a performing arts institution that had voluntarily submitted statistics on their repertoire by that time.

The Chancellor found that the relevant regulation partially contravened § 12(1) of the Constitution and the principle of legal certainty. The Supreme Court too decided that the

ministerial regulation partially contravened the Constitution and invalidated it to the relevant extent.

Arbitrariness of conditions for support

On several occasions, the Chancellor had misgivings whether crisis support measures were sufficiently well-considered and compatible with the principle of equal treatment. The prohibition on treating unequally those who are equal has been violated if two persons, groups of persons or situations are arbitrarily treated unequally. Unequal treatment may be considered arbitrary if no reasonable justification for this exists. On that basis, the Chancellor assessed the measures established by the Minister of Foreign Trade and Information Technology Regulation No 2 of 20 January 2021 on "Support to undertakings in tourism-related sectors of the economy in connection with the spread of the coronavirus causing the COVID-19 disease" (Regulation No 2).

In her memorandum, the Chancellor found that it was arbitrary to deny support to an accommodation establishment which had not declared any services taxable by nine per cent VAT nor was liable to account for VAT. This was done in a situation where declaring services taxable by nine per cent VAT is voluntary. The Chancellor explained that the conditions established under the regulation for accommodation establishments which do not have any other possibility to prove their economic indicators alongside declaring turnover taxable by nine per cent VAT does not ensure a constitutionally compliant result in every situation.

The Chancellor also checked the constitutionality of the condition of classification of an undertaking's main activity declared for payment of wage support under § 19^1(1) of the Government of the Republic Regulation No 87 of 19 November 2020 on "Employment programme 2021–2023" (Regulation No 87). According to that condition, the classification of an undertaking's main activity had to be based on the "Estonian Classification of Economic Activities (EMTAK)". In a memorandum sent to the Ministry of Social Affairs, the Chancellor explained that allocation of support rigidly only on the basis of fields of activity as classified in the EMTAK raises the question of the constitutionality of the conditions for support if persons operating in the same field are treated unequally because their EMTAK code does not conform to the requirements of the Regulation.

The Chancellor reiterated this opinion in a memorandum sent to the Ministry of Economic Affairs and Communications and the KredEx Foundation. The memorandum was motivated by a petition asking the Chancellor to check a condition in the financing contract between the

Ministry and KredEx which referred to the EMTAK code of the main activity as a precondition for obtaining support.

In addition, the Chancellor drew attention to the fact that it could not be considered appropriate on the part of KredEx to issue guidance to re-submit an undertaking's annual report so as to be able to simply change the undertaking's main field of activity which must formally comply with the requirement for applying for support. The fact that an undertaking's main field of activity does not formally match the EMTAK code at the time of applying for support cannot necessarily lead to the conclusion that the undertaking has provided false data in its annual report. An undertaking's profile of activity may be broad and it may also change over time. The Chancellor noted that, in view of the diverse activity profiles of undertakings nowadays, creating more flexible possibilities for recording and amending the main field of activity in EMTAK should be considered. This would help to tidy up the registry data and present them more comprehensibly, so as subsequently to be able to organise proceedings more effectively and at less cost by relying on those data.

The Chancellor also reached the opinion that the conditions established by Regulation No 2 for supporting accommodation establishments were not arbitrary nor did they violate the principle of equal treatment.

On several occasions, the Chancellor was contacted with a concern that Regulation No 2 stipulated the possibility of support only for catering establishments located in Tallinn old town but not for establishments outside the boundaries of the old town. The Chancellor reached the opinion that there was no reason to consider the criteria established by Regulation No 2 for supporting catering establishments in Tallinn old town as arbitrary. The instant case does not involve a situation where the one and only objective of paying support would be to compensate crisis damage to catering establishments. Although support to a catering establishment in Tallinn old town is accounted on the basis of an establishment's decreased turnover, the broader aim of the support is to maintain the sustainability of Tallinn old town as the most visited tourist attraction in Estonia. In view of this, the support measure is very specifically limited to Tallinn old town as a heritage conservation area. This kind of objective is admissible and is not arbitrary.

The Chancellor was asked whether redistribution of support money intended for travel undertakings under Regulation No 2 − if funds are not sufficient to satisfy all the relevant applications − places some undertakings in an unequal situation in comparison to others.

The issue was that, during the redistribution, support money was distributed between eligible applications proportionally to the ratio of the budget for financing the relevant support and the total sum of the relevant eligible applications. Since the number of eligible applications was bigger than the amount of money available for support, according to the Regulation all grants were reduced by 52.27%. Thus, undertakings which had applied for support within the maximum limit received a smaller percentage of support in comparison to the total sum of labour taxes paid by them than undertakings which paid taxes below the maximum limit.

The Chancellor explained that such a situation was not due to the principle of redistribution but because the state imposed a maximum limit on the amount of support (i.e. 80 000 euros). Setting a maximum limit cannot be considered unreasonable since the state has limited resources for allocating support. Nor is there reason to consider the principle of proportional redistribution as arbitrary since it is logically linked to the sum in the undertaking's application and ensures that allocation of support is as broad-based as possible. In essence, setting the maximum limit for support and proportional reduction of support corresponds to the decision that first and foremost support should be given to smaller undertakings in proportion to the loss incurred and somewhat less to larger undertakings. However, only the minister is competent to impose such preferences.

The Chancellor was contacted by a sole proprietor who was not eligible for wage compensation under the Government of the Republic Regulation No 87 of 19 November 2020 on "Employment programme 2021–2023" (Regulation No 87 v.r) since a decrease of their business income in a comparison of reference years did not meet the eligibility conditions for wage support. The Chancellor explained that the conditions imposed by this Regulation for eligibility of sole proprietors for support cannot be considered arbitrary since they ensure that support is paid as swiftly as possible and according to its intended purpose.

The Chancellor was also asked about the conditions for support paid to operators of international regular bus services. The Chancellor reached the opinion that the conditions for support established by the Minister of Foreign Trade and Information Technology Regulation No 68 of 5 November 2020 on "Additional support for partial compensation of losses arising from the outbreak of the coronavirus causing the COVID-19 disease to undertakings in directly tourism-related sectors of the economy" do not violate the principle of equal treatment. Since the objective of the support measures is to support undertakings which continued international regular bus services, the latter are not in the same situation as undertakings which discontinued regular international services. Therefore, equal treatment of

both groups cannot be required.

The Chancellor was asked to check the constitutionality of §§ 12 and 19 of the Creative Persons and Artistic Associations Act since no additional money was allocated to artistic associations for organisational expenses in connection with paying additional support. The Chancellor found that the norms in the Creative Persons and Artistic Associations Act concerning support paid to artistic associations are constitutional. The state has several possibilities for compensating increased organisational expenses related to payment of additional support during a crisis situation. It can be considered reasonable that tasks are redistributed and money is used economically. Allocation of additional money to compensate procedural expenses can be presumed if it is found that the existing money is not sufficient. Even in this situation the law does not necessarily have to be amended but one-off additional allocations can be made.

Regarding issues of support, the Chancellor was also contacted by undertakings from the pig farming and horticultural sectors. The conditions for exceptional support intended for pig farming undertakings were laid down in the draft legislation so that a large amount of support funds would have been distributed between only a small number of undertakings engaged in pig farming. The draft did not clarify the choice of conditions nor did it contain reasoning for different treatment of persons. The condition imposed for paying support in the horticultural sector was that an undertaking must have applied for a single area payment and their application must have been satisfied by the Agricultural Registers and Information Board in 2020. When imposing the conditions, it had not been taken into account that applying for area payments has been voluntary and that the corona pandemic has similarly caused damage to those undertakings in the sector that did not apply for single area payment. The Chancellor asked that the Minister of Rural Affairs in his regulation should establish conditions for support that would allow equal treatment of undertakings when allocating support from public funds. The Ministry of Rural Affairs amended the conditions for support before adopting the Regulation.

Setting the specific underlying criteria for support is always a matter of assessment. Taking into account the specificity of individual cases in doing so is extremely complicated. In this regard, the conditions for measures may vary depending on whether the aim is only to compensate crisis damage to undertakings or to support the particularity of a specific geographical area or sector. When establishing crisis measures, a balance should be found between available resources and the wishes of undertakings suffering as a result of the crisis.

The minister must identify that point of balance and set the preferences.

Public accessibility and comprehensibility of reasoning

Although on several occasions the conditions for support can ultimately be considered justified, reaching that conclusion often takes much time and is not easy without external assistance.

Therefore, the Chancellor has drawn attention in her memorandum to the fact that, in the interests of effective and timely legal protection, the purpose and conditions of a support measure should be explained exhaustively and clearly in the explanatory memorandum (see § 63 of the rules on good law-making and legislative drafting). Normally, there is little time to apply for support granted on the basis of regulations. For instance, the application round for compensation of losses in the tourism sector was open from 29 March to 8 April 2021. In view of the acute need for assistance, such haste is understandable. However, the principle always to be observed is that the target group of a support measure is defined as precisely as possible. In that case, if necessary, the applicants can also appeal refusals and, if the appeal is successful, they can still obtain support.

However, if a person only knows the criteria for eligibility for support but it is not unequivocally clear based on what the criteria were determined in the specific case, the person lacks sufficient information to decide whether they were excluded from the target group of the measure lawfully or unlawfully. This, however, significantly diminishes the possibility to protect one's rights. Interference with a person's rights can essentially be ascertained only if an undertaking applies for support just in case and, in the event of refusal, appeals the negative decision in court, simultaneously seeking constitutional review. Although the Chancellor has the opportunity to check the constitutionality of a regulation based on a petition, this might not ensure timely help to the person concerned since the result of the analysis would probably be complete only when it is no longer possible to apply for the specific support.

It is impermissible if the reasoning for establishing a support measure can only be accessed in appeal proceedings or with the help of the Chancellor of Justice. Therefore, the Chancellor has also emphasised that providing reasoning for support measures retrospectively is problematic.

Money laundering prevention and customs supervision

The area of virtual currencies is rapidly developing and new risks are emerging along with this, including the risk of money laundering or fraud.

According to Estonia's 2020 national risk assessment of money laundering and terrorist financing, the biggest risks of money laundering relate to virtual currencies. First and foremost, these concern risks related to operating licences of virtual currency service providers, but not only. Risks related to virtual currencies may be connected both with money laundering and terrorist financing as well as investment fraud.

In 2017, Estonia was one of the first European countries establishing the obligation of authorisation for provision of virtual currency services. This transposed Directive 2015/849, not yet entered into force at that time, establishing the first legal framework on an EU level for virtual currency services.

Issuing of authorisations for virtual currency services became very popular in Estonia because operators sought international recognition as to the legality of their economic activities. At the same time, the law also enabled applying for authorisation even when no services were actually provided in Estonia. Allowing this meant that carrying out supervision on Estonian territory became essentially impossible because often neither the technical platform for providing the service nor the staff implementing money laundering prevention requirements were located in Estonia.

Since applying for authorisation was very easy, many parties abusing this opportunity emerged whom the state was no longer able to control. Subsequently, supervision was to a large extent dependent on the willingness of the service provider to subject themselves to supervision. This significantly increased the risk that, with the help of Estonian companies, illegal transactions would take place, along with the accompanying risk of international reputational damage.

Considering that the number of applications for authorisation exceeded expectations as well as increased risks due to insufficient legislation, in 2019 the Riigikogu adopted amendments to the Money Laundering and Terrorist Financing Prevention Act concerning virtual currencies, making the rules for provision of the service stricter. In order to issue authorisation, an undertaking's registered seat, the seat of the management board (head

office) and place of business must be in Estonia.

The Chancellor was contacted by several companies complaining about changes in the object of control for authorisation in the field of virtual currencies, as well as foreign citizens concerned about possible fraud. Since the field of virtual currencies is still little regulated and the supervisory resources in comparison to the service providers operating in the sector are insufficient, in the course of supervision the authorities have started interpreting the provisions of the Money Laundering and Terrorist Financing Prevention Act narrowly, thus restricting the activities of undertakings.

The Money Laundering and Terrorist Financing Prevention Act does not state that all the management board members must be in Estonia or be resident for tax purposes in Estonia but, for example, this has become a requirement in carrying out supervision; consequently the authorisations of several virtual currency service providers have been declared invalid. Based on court decisions, the Chancellor has had to explain that it cannot actually be required that all the members of the management board should be located in Estonia but that what is important is the physical location of persons in the company management board who in actuality perform the management and control functions of economic activities. In other words, this is the place where a company's management board makes everyday management decisions.

Closing of bank accounts

On 20 July 2020, amendments to § 89 (new subsections 9^1 and 9^2) of the Credit Institutions Act entered into force, obliging banks to provide more thorough justifications as to why they decide to close an existing account or refuse to open a new account. The purpose of these amendments was to motivate banks as providers of services vital for a person's life or business to thoroughly consider whether and why it is not reasonable to open an account for someone or whether there is indeed a reason to terminate a client relationship.

However, the Chancellor continues to receive complaints about a bank deciding to close a person's account without having provided the necessary justification. Although the number of complaints has decreased recently, there are still people who cannot pay for the necessary services or make other payments essential in everyday life. Economic activities of some companies have essentially stopped after closure of their account, or they even have to close down completely.

The desire of banks to mitigate possible risks is understandable. The fight against money laundering must be systematic. However, it is not lawful to use this as a disguise to deprive someone of access to basic payment services and legal protection.

In a memorandum to the Minister of Finance, the Chancellor noted that the requirements to combat money laundering may not be used as a pretext to reject financially less attractive persons (including, for instance, tax debtors or people owing money in enforcement proceedings). Although under the Credit Institutions Act banks themselves are allowed to choose to whom they wish to provide services, the banks' choice in serving natural persons is limited by the Law of Obligations Act. Under the Law of Obligations Act, a bank undertakes to enter into a basic payment service contract with a consumer lawfully residing in the European Union in the event of justified interest from a consumer. Thus, a bank must enter into a payment service contract and open an account for a person in respect of whom no suspicion of money laundering and terrorist financing exists and if the person and the contract terms sought by them conform to the statutory requirements, the payment service provider's general terms and conditions for services or the standard conditions for provision of payment services.

Organisation of customs supervision

Lawful organisation of customs supervision and the postal service is important since this also ensures protection of the confidentiality of messages. Opening a postal item must be transparent and purposeful. As a rule, a postal worker may open and close a postal item in the presence of a customs official for the purpose of carrying out customs checks.

In the course of customs supervision, examining the contents of a postal item more thoroughly than required by the reason for opening the item is prohibited. The persons present at the opening of a postal item are required to maintain postal secrecy concerning information which becomes known to them when the postal item is opened (§ 32(5) Postal Act). Customs are also required to draw up a report on the results of examination of a postal item containing goods.

Since the Chancellor received several complaints about opening postal items, the Chancellor's advisers carried out an inspection visit to the logistics centre of the company Eesti Post. The inspection revealed that opening and marking postal items did not always comply with the requirements laid down by §§ 61 and 66 of the Customs Act and § 32 of the Postal Act,

reports on opening or examination were not always drawn up and not always was an employee of the company Eesti Post present during the opening of a postal item. This violates the law and the principle of good administration.

Fundamental rights and freedoms of persons must be complied with when opening postal items. If procedural rules are not observed when opening an item and the recipient of a postal item is not notified of opening, this violates the right to good administration (§ 14 Constitution) and the risk of violation of confidentiality of messages (§ 43 Constitution) occurs.

Under the Constitution (§ 14), the Tax and Customs Board as a body exercising governmental authority is obliged to guarantee protection of a person's fundamental rights and freedoms in its activities.

When carrying out customs supervision, the Tax and Customs Board must ensure that the principle of good administration enshrined in § 14 of the Constitution is complied with in a fair and proper procedure.

Activities carried out in respect of a postal item must be fit for purpose and transparent. The recipient of a postal item must subsequently be notified that the item was opened, and opening must always be fit for purpose and justified. As a rule, opening postal items secretly and leaving the person not notified about this is prohibited. Within the limits of their competence and only with court authorisation may surveillance and security agencies, including the Tax and Customs Board, open and covertly examine postal items in the frame of criminal proceedings.

Population

Citizenship and documents

During the reporting period, it was found that the Police and Border Guard Board (PBGB) was still delaying with issue of a new identity document on the grounds that the Board had initiated proceedings for loss of Estonian citizenship in respect of the person concerned. Although the person, according to their own knowledge, was a citizen by birth, the PBGB believed differently and refused to issue new documents to them because it had initiated proceedings for deprivation of citizenship on account of the person holding citizenship of another country. However, in the event of giving up the other country's citizenship, the

person would have been left without health insurance and free care.

The Chancellor drew the PBGB's attention to the fact that current legislation does not provide grounds for extending the deadline for issue of identity documents because the PBGB has initiated proceedings for loss of citizenship in respect of a person. The deadline may be extended if there is reason to doubt the legality of issue of a document. If a person is an Estonian citizen, they are also entitled to receive an Estonian citizen's identity document. If a person wishes to receive new documents despite proceedings for deprivation of citizenship having been initiated, the PBGB must issue documents within the statutory deadline even if the documents may later be revoked. The PBGB has no discretion to decide whether or not to issue identity documents to an Estonian citizen. Unfortunately, the PBGB has not changed its relevant practice.

The Chancellor also noted that the PBGB must check whether a person may have acquired Estonian citizenship by birth. In many cases, the PBGB has failed to do so because, in the interests of speed of dealings with the authorities, a person having married an Estonian citizen was determined to be an Estonian citizen by naturalisation. At the same time, in proceedings for deprivation of Estonian citizenship, the circumstances of each individual case must be taken into account.

In view of the petitioner's health, in the instant case the PBGB in the course of proceedings waived its previous request that within one year the person should begin the process of giving up their foreign citizenship.

Refusal to issue an Estonian citizen's identity documents in a foreign country

An Estonian citizen living abroad wanted new Estonian citizen's identity documents issued to them via the Ministry of Foreign Affairs. The PBGB refused to do so but did not justify its decision. In addition, the official resolving the application had demanded that the person should submit confirmation from another PBGB official concerning the fact that no basis existed for issue of documents abroad, even though those data should be ascertained by the PBGB itself.

The Chancellor found that the PBGB had failed to resolve the application lawfully and in conformity with the principle of good administration. The PBGB refused to issue documents abroad by relying on § $12^{1}(2^{4})$ of the Identity Documents Act entering into force at the beginning of 2021. Under this provision, a document may not be issued through the Ministry

of Foreign Affairs if a person has been declared a fugitive or the person has been imposed a prohibition on departure from residence or bail by way of a preventive measure in criminal proceedings. However, the PBGB official had presented a wrong legal basis to the applicant.

A person must also receive an explanation why the decision on refusal was made. PBGB officials themselves must ascertain the circumstances concerning an application for a document and collect information for it if necessary.

The PBGB affirmed that steps had been taken to avoid such problems in the future.

Population records

A child's data in the population register

The Chancellor was contacted with a concern that the data of a child born in Estonia had not been activated in the population register by officials because the child's parents were staying in Estonia on different legal bases. As a result, the child had been deprived of health insurance.

The Chancellor found that non-activation of the data was unlawful. A register entry must be made even if it is not possible to immediately ascertain all the data concerning a child. It is sufficient that a child is less than one year old and belongs to an alien living in Estonia on the basis of a residence permit.

If one of the child's parents is a citizen of the European Union and the other parent lives in Estonia on the basis of a residence permit, then according to law the child's legal status is determined on the basis of the legal status of the parent who is a European Union citizen since issues of the legal status of EU citizens and their family members are regulated by the Citizen of the European Union Act as the specific law.

According to the Chancellor's assessment, a question arises whether the above administrative practice and provisions of the law always ensure the rights of the child. For example, it is questionable whether determining a child's legal status imperatively according to the parent holding European Union citizenship is justified in a situation where relying on the legal status of the other parent's stay in the country would grant the child more rights and a more secure basis (e.g. if one of the parents holds a long-term resident's residence permit while the parent with EU citizenship has a temporary right of residence).

In the instant case, a question also arose whether the child was entitled to Estonian citizenship or whether they had acquired citizenship of a foreign country by birth. Therefore, no record concerning the child's citizenship was made in the population register.

According to PBGB practice, a child's citizenship data may remain unspecified even until the child reaches 15 years of age. However, the Chancellor cannot agree with this position. The Estonian state should ascertain whether a child has acquired the citizenship of another country by birth or whether they are entitled to Estonian citizenship by simplified procedure. The UN Human Rights Committee has noted that assessment of a child's citizenship should not take longer than five years (views adopted by the UN Human Rights Committee in the case of *D. Z. v. the Netherlands*, 20 January 2021, CCPR/C/130/D2918/2016, para. 8.3). On that basis, a child's citizenship in the population register should not remain undetermined.

According to the Chancellor's assessment, a parent should also ensure that the child's citizenship is ascertained.

Hostel as a place of residence

Once again the Chancellor received a petition complaining that a local authority refused to register a hostel as a person's permanent residence. The rural municipality argued that a hostel is not a dwelling, i.e. a residential building or an apartment, which can be used for permanent dwelling.

The Chancellor found that Rae Rural Municipal Government had acted unlawfully. Under the Population Register Act, it is also possible to register one's residence at an address of a non-dwelling if the person proves use of that space as their residence.

Population census and information about children's religion

Prior to the upcoming census, the Archbishop of the Estonian Evangelical Lutheran Church, Urmas Viilma, asked for the Chancellor's opinion whether the census respects the principle of children's freedom of religion since no question about religious belief is asked from children under 15 years old.

The Chancellor did not find a violation of children's freedom of religion in this case. The Estonian Constitution and international agreements guarantee children's freedom of religion. Its core is a person's inner conviction which they may but need not share with others. A parent cannot decide on behalf of their child whether to disclose to the state information

about the child's beliefs. It should also be taken into account that the child's own response may differ from the response given by their parent. However, a child might not understand what it means to disclose data about themselves to the state and why disclosing data about one's beliefs is voluntary. Thus, a response given by a child need not be a conscious response.

The Chancellor explained that even though a child's maturity should be taken into account in deciding over the exercise of freedom of religion, this does not prevent setting a specific statutory age threshold in respect of certain legal relationships, as of which a child themselves may perform actions with legal effect. On that basis, the situation did not constitute age discrimination. (See also the Chapter "Equal treatment".)

Registered partnership contract

The Chancellor was asked about the registered partnership of same-sex people and their rights. The problem is that the Ministry of the Interior still does not enter data on concluding a registered partnership contract into the population register. In one case, an Estonian consul had told a person that they cannot obtain an Estonian visa since the population register did not contain data about their registered partnership contract.

In another case, it was found that it is difficult for same-sex partners to enter into a registered partnership contract at a notary's if one of the parties is a foreign citizen whose data are not available in the population register. The petition revealed that notaries provide different pretexts for refusal to conclude the contract.

The Chancellor explained that the most effective solution is to have recourse to the court for protection of one's rights. Case-law affirms that the absence of implementing legislation for the Registered Partnership Act does not prevent entering into a registered partnership contract with a foreign citizen (Harju County Court judgment of 8 June 2020, No 2-20-5958). The court has also established that under § 3(4) of the Registered Partnership Act the registrar is required to enter the details of a registered partnership contract in the population register (Tallinn Court of Appeal judgment of 17 September 2018 No 3-17-1269, para. 15).

Aliens

The Supreme Court heard several constitutional review cases concerning the legal status of aliens. The Supreme Court declared unconstitutional and invalid § 100^{10}(1), § 100^{13}(2) and § 100^{18} of the Aliens Act insofar as they preclude filing an appeal with the administrative court

for contesting premature termination of the period of stay (Supreme Court Constitutional Review Chamber judgment of 20 April 2021, No 5-20-10/13). The Chancellor also reached the opinion that these provisions were unconstitutional.

The Supreme Court also resolved an application by Tallinn Court of Appeal to declare unconstitutional the part of the Aliens Act which precludes issuing a temporary residence permit to an alien wishing to settle in Estonia with a same-sex registered partner who is not an Estonian citizen but holds a residence permit in Estonia. The Court of Appeal also declared unconstitutional a ministerial regulation which fails to regulate the issue of certifying conclusion of a registered partnership contract.

The Chancellor found that both legal acts contravene §§ 12, 26 and 27 of the Constitution because they do not enable grant of a residence permit to the registered same-sex partner of an alien living in Estonia on the basis of a residence permit.

The requirement for an employer's deposit in the Aliens Act

The Chancellor had to resolve an undertaking's concern involving a complaint that, after the entry into force of an amendment to the Aliens Act on 1 July 2020, the Police and Border Guard Board (PBGB) had changed its administrative practice in connection with temporary agency workers, so that it is now less favourable towards undertakings. While previously an employer had to have funds on deposit to the extent of ten per cent of the employer's monthly remuneration fund, then after amendment an undertaking had to deposit ten per cent of the 12-month remuneration of a particular alien.

The PBGB may register temporary agency work as short-term employment or grant an alien a residence permit to work as a temporary agency worker if the employer has deposited the amount required under the Aliens Act to guarantee the obligations related to remuneration. The issue is for what period the employer's deposit is to be calculated.

In a memorandum to the Riigikogu Constitutional Committee, the Ministry of the Interior and the Police and Border Guard Board, the Chancellor reached the opinion that the rules establishing the obligation of an employer's deposit (§ 106(8) and § 176¹(2) Aliens Act) do not lay down with sufficient clarity what sum an employer must deposit. Nor is there a maximum limit for the financial obligation. In view of the onerous nature of the financial obligation and the requirement of a legal basis, this shortcoming cannot be overcome even by way of a constitutionally-conforming interpretation.

In the memorandum, the Chancellor also raised the issue of the proportionality of the regulatory provisions since, according to information from employers' representative organisations, no necessity has arisen in practice to actually make use of the employer's deposit. Nor is there any other data (including impact assessments) that would enable a conclusion that the deposit is unavoidably necessary for achieving a particular aim.

On that basis, the Chancellor asked the Ministry of the Interior and the Riigikogu first to analyse the necessity for regulatory provisions on the employer's deposit as laid down by the Aliens Act. Should it be confirmed that the deposit requirement is necessary, the Chancellor asked the Riigikogu to amend the Aliens Act so that an employer would be able to understand the amount of the financial obligation from the wording of the law without external assistance. The conditions for disbursement and repayment of the deposit as well as the main procedural norms in connection with it must also be regulated.

The Chancellor reached the opinion that it cannot be considered lawful that the PBGB has changed the period of calculating the deposit by relying on a legislative amendment which is not at all related to the period of calculating the deposit. Such a change in practice is deceitful towards employers and the Chancellor asked that it should be avoided in the future.

However, the PBGB as an executive agency cannot set aside a norm not conforming to the requirement of a clear definition and it has the duty to apply applicable law. In view of this, the Chancellor suggested as a solution for calculating the deposit that the remuneration fund could be based on one month's remuneration and ten per cent of this should be deposited. Until the law is amended, this enables application of the regulatory provisions so that interference with the rights of persons is minimal. (See also the Chapter "Money".)

Legal status of seafarers

The Estonian Seamen's Independent Union asked for the Chancellor's opinion concerning the

situation that the Estonian authorities do not require an Estonian residence permit or a visa or registration of short-term employment from foreign seafarers working on ships flying the Estonian flag. According to the trade union, this is unlawful. This places Estonian seafarers at a disadvantage because, moreover, seafarers from third countries are also not subjected to the minimum wage requirement or authorisation by the Estonian Unemployment Insurance Fund, which have been established for protection of the Estonian labour market.

The Chancellor found that the PBGB and the Transport Administration violate the law by failing to require compliance with the requirement of an Estonian residence permit or a visa and registration of short-term employment from third-county seafarers working on ships flying the Estonian flag. If the Riigikogu finds that these conditions should actually not be applicable to these people then the law can be amended. Under the current law, these requirements must presently be complied with, and Estonian seafarers are right to consider disregard for the requirements as damaging their interests.

Officials have conceded that theoretically ships flying the Estonian flag are considered Estonian territory and are subject to Estonian laws. This means that, under the law, third-country seafarers on ships flying the Estonian flag must also have either an Estonian residence permit or a visa and, where necessary, their short-term employment must be registered.

The Chancellor sent a recommendation to the agencies to bring the administrative practice into line with the law. The PBGB and the Transport Administration must also update the information published on their website concerning the legal bases for work by seafarers from third countries.

Applications for international protection

The Chancellor received a complaint that the PBGB refused to formalise a person's application for international protection even though the person wanted this. The PBGB also failed to pay sufficient attention to the person's special needs.

The Chancellor found that the PBGB must accept an application for international protection even when a person expresses a wish for it in the course of other proceedings (e.g. criminal proceedings). The PBGB must also assess the need for protection on its own initiative if a person's explanation indicates the possible existence of a need for it.

Where necessary, the authorities must explain the possibility of lodging an application for

international protection.

The PBGB also failed to pay necessary attention to the applicant's physical disability and emotional problems. The PBGB must assess whether and what assistance needs to be provided to a person due to their special needs. The PBGB informed the Chancellor that the need for assistance will be assessed more effectively in the future.

In another case the PBGB violated the law because, while issuing a precept to leave the country, a PBGB official disclosed to the person subject to expulsion the data about the circumstances of their spouse's application for international protection, even though those data may not be disclosed (§ 13(2) Act on Granting International Protection to Aliens). Moreover, during the interview for the purposes of the precept to leave, the PBGB official asked for the individual's personal data for which no basis existed and by which a very serious interference with the individual's family and private life took place.

The Chancellor found that by doing so the PBGB violated the principles of administrative procedure and the right to the inviolability of family and private life laid down by § 26 of the Constitution. The PBGB knew that due to the spread of the coronavirus the person was not able to leave Estonia during the validity of their visa. At the time of the interview, a possibility for departure had been found and only matters related to issuing the precept to leave needed to be resolved. In such a situation, the interview may only concern the matter of the precept to leave. Other proceedings – granting international protection, the issue of whether the family relationship of the official spouses is real, and the like – may not be mixed with this.

The Chancellor asked that the Director General of the PBGB should ensure that the PBGB complies with statutory requirements in its work. The PBGB must also comply with the requirements of administrative procedure and the Constitution in its proceedings.

Submission of false information

In one case, the PBGB had submitted false information to a person and the court.

A PBGB official had informed a person subject to expulsion that a travel document for them had been applied for from the embassy of the Russian Federation and that the document was ready. When the person contacted the embassy it was found that no document had been issued.

When ascertaining the facts, it was found that the PBGB had indeed given false information to

the person about the travel document. The PBGB had also provided false information to the court when seeking authorisation to detain the person. While the applicant was in prison, Tallinn Prison applied for a certificate of return for the applicant from the embassy of the Russian Federation but due to the pandemic the embassy's consular department was closed and no decision on issue of the travel document had been made.

According to the PBGB's explanation, the PBGB officials had misunderstood the e-mail from the consular department of the embassy of the Russian Federation, assuming that the travel document had been issued but it was simply impossible to receive it due to the pandemic.

The Chancellor noted that the activities of the PBGB had been unlawful but the PBGB had not submitted false information intentionally.

Failure to comply with a court judgment on entry ban

The Chancellor was also contacted by a person whom the PBGB had informed that an entry ban had been imposed on them for five years up to 2024. However, according to the final court judgment the entry ban was to be valid for three months and its validity had expired at the end of 2019. The PBGB had failed to comply with the final court judgment because an official had failed to amend the data in databases.

The Chancellor noted that failure to comply with a final court judgment was unlawful. The situation had been resolved since on 23 February 2021 the PBGB amended the data in the register of entry bans and the right to enter Schengen countries resumed.

Entry to the country with a special permit, and visas

The Chancellor received numerous applications about how the PBGB processed applications for a special permit to enter Estonia during the corona crisis. Problems were caused by the fact that under the Government of the Republic order the PBGB was granted a broad margin of appreciation in issuing special permits. Sometimes the decisions were contrary to the PBGB's own general guidelines. However, the PBGB resolved several problematic cases either during examination of a repeat application or extra-judicial challenge or while responding to an enquiry by the Chancellor.

In one case, a person repeatedly applied for a permit for their cohabitant. The PBGB granted permission to enter Estonia only in response to the third application although the applicant had specified that the reason for coming to Estonia was to get married. At the same time, the

PBGB guidelines prescribed that the PBGB issues a special permit for entry to the country for unavoidable family reasons (including for getting married) and also to carry out urgent procedures in state agencies where a person's presence is required (e.g. to submit an application for marriage). The Chancellor found that the PBGB's refusals had been unlawful.

In another case, a special permit for entry to Estonia was sought for a same-sex partner wishing to enter into a registered partnership contract in Estonia. In this case, too, the PBGB initially refused to grant the permit although same-sex persons have no other possibility to legalise their partnership than through a registered partnership contract. The PBGB resolved the problem in the course of further proceedings.

In the third case, the Chancellor dealt with a petition according to which a worker from a third country could not come to Estonia together with their family. If a worker has no residence permit, the PBGB also does not issue their family members with a special permit to enter the country. When resolving the application for a special permit, the PBGB official failed to take into account the principle of family unity or family reasons. Applicants for a special permit often also found themselves as if in a vicious circle because prior to issue of a special permit the PBGB requested them to present evidence of a legal basis for stay in Estonia, but foreign missions of Estonia did not accept visa applications unless the person had received confirmation concerning a special permit from the PBGB.

The Chancellor considered it questionable whether such a broad restriction on the right of entry to the country on the basis of the Government of the Republic order was compatible with the law and the Constitution. The PBGB enjoys quite a wide margin of appreciation in issuing a special permit to family members of foreign workers staying in the country, but regardless the PBGB in its decision must weigh all the essential facts and comply with the requirements of administrative procedure. According to the PBGB, as a rule they did not require that a person must have a legal basis to stay in Estonia in order to obtain a special permit, but the issue of a special permit and the basis for stay are examined in combination.

After clarifying the facts, the PBGB admitted a mistake by an official in the case of application for a special permit described above. It was also found that by a directive of the Secretary General of the Ministry of Foreign Affairs a restriction had been imposed according to which foreign missions of Estonia did not accept visa applications from people who had no PBGB special permit for entry to Estonia.

The Chancellor found that directive No 146 of the Secretary General of the Ministry of Foreign

Affairs was unlawful and had to be invalidated since no legal basis existed for its adoption.

Procedural deadlines

As a more general problem, it was found that in resolving applications for a residence permit or extension of a residence permit the PBGB failed to comply with the general deadlines laid down by legislation, and proceedings take a very long time.

Under the Aliens Act, these deadlines are established by regulation but a deadline may not exceed six months (§ 33(1) and (3) Aliens Act). The deadline may be extended if ascertaining the relevant facts or collecting evidence takes more time (§ 34(1) Aliens Act). According to a regulation of the Minister of the Interior, an application for a residence permit or extension of a residence permit is to be examined within two months (§ 22, § 44(1)). Furthermore, an application for extension of a residence permit must be resolved no later than ten days before the end of validity of the temporary residence permit.

Petitions received by the Chancellor showed that the relevant proceedings often lasted for more than six months. In one case, examining an application for a residence permit had lasted for more than a year; in another case resolving an application for extension of a residence permit took more than ten months.

The PBGB cited as a justification for delay in proceedings the directive of the Director General by which the requirement of procedural deadlines was suspended for the duration of the emergency situation. The directive stated that deadlines began running from the start after the emergency situation ended. The same topic was also dealt with in the Chancellor's 2020 annual report. The Chancellor has found that the above-mentioned directive was unlawful.

Equal treatment

Equal treatment is one of the fundamental principles enshrined in the Constitution. Under § 12(1) of the Constitution, everyone is equal before the law. No one may be discriminated against on the basis of ethnicity, race, colour, sex, language, origin, age, 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 arranges conciliation proceedings in the case of

discrimination disputes.

Every year, the Chancellor resolves about twenty petitions in which people complain about discrimination. During the reporting year, the total number of these petitions was 30. These included six petitions concerning discrimination on grounds of sex, five on grounds of sexual orientation, six on grounds of age, two on grounds of property or social status, two on grounds of language, one on grounds of ethnicity, one on grounds of disability, and seven on other grounds. This time, the Chancellor did not initiate any conciliation proceedings.

School life

On several occasions, the Chancellor was contacted concerning issues of school life. For example, in the opinion of a pupil a teacher at their school was not treating pupils equally because the teacher reprimanded boys more than girls. The pupil also claimed that they had been reprimanded for disturbances caused by classmates although the pupil themselves did not disturb the lesson.

The Chancellor explained that pupils have the right to equal treatment and a teacher must resolve conflicts fairly, be impartial when making judgements, and avoid discrimination (see also the Code of ethics for teachers in Estonia). This means that a teacher may not treat any pupil less favourably than others merely on the basis of the pupil's sex. When reprimanding a boy for talking during the lesson, the teacher should also reprimand a girl in a similar situation. By not responding to violations by some pupils, a teacher does not treat pupils equally. Therefore, a pupil may develop distrust towards that teacher even in other situations, such as concerning assessment of academic progress or diligence.

The Chancellor was also asked whether it was compatible with the principle of equal treatment if students aged 20 or older and enrolled in full-time vocational education are only provided emergency first aid at school. The Chancellor found that imposing an age limit on provision of the school healthcare service is neither arbitrary nor contrary to the requirement of equal treatment. The Chancellor explained that financing of the school healthcare service was changed in order to ensure rational use of health insurance money because students over 19 years of age do not need the usual school health service. Students over 19 years of age are ensured first aid during the school nurse's admission hours at a service-based cost. Besides, in the case of a health problem students over 19 years of age can obtain assistance from a general practitioner, and the Estonian Health Insurance Fund also pays for this assistance.

The Chancellor was asked to assess the activities of the non-profit Tartu Student Village which gives priority to foreign students in applying for accommodation. When investigating the matter, it was found that by applying this principle Tartu Student Village proceeds from the premise that it is more difficult for foreign students to find housing in Tartu than for Estonian students. According to the Chancellor's assessment, giving priority to foreign students in allocating a place in a dormitory is not a proportionate measure because the same objective may also be achieved so that it does not result in less favourable treatment of local students.

The Association of Estonian Student Representative Bodies asked the Chancellor to assess whether, in provision of free preparatory courses for the state examination in mathematics, pupils are treated equally if those courses are only organised in Estonian. The Chancellor found that the state has relatively broad freedom in deciding how to offer preparatory courses to pupils as long as equal opportunities for school leavers are provided in this. Pupils must receive support first and foremost from their school.

A secondary school leaver must understand Estonian at least at proficiency level B2.1, which means that they should be able to follow the course in Estonian. This was a review course, so that the pupils already had to be familiar with the material beforehand. Thus, the state is not obliged to offer all school leavers preparatory courses in Russian as well.

The Chancellor was asked whether a school may divide pupils into stronger and weaker groups in a physical education lesson and give different tasks to those groups.

The national curriculum allows differentiation of physical education learning tasks according

to substance and level of difficulty. This enables taking into account pupils' abilities and increasing their learning motivation. At the same time, the substance of learning and the results sought are uniform for all pupils (except pupils with special educational needs). When organising instruction, a school must also proceed from the needs and interests of pupils and, where possible, take into account proposals by pupils and parents. Each child must be treated with respect, regardless of their abilities in one or another field of sport. No child may be disparaged or degraded. Learning tasks should be differentiated so as to increase a child's desire to study, and not reduce it.

Military service

The Chancellor was asked whether, after completing military service, a person may refuse to participate in reservist training for religious or moral reasons.

Under the Military Service Act, a person in reserve may be released from reservist training if they cannot participate in training for religious or moral reasons. A person in reserve wishing to be released from reservist training is required to submit an application and a document certifying the corresponding circumstance at least 15 days before the beginning of the reservist training (§ 76(4) Military Service Act).

Consequently, a reservist expressing the relevant wish must prove their religious or moral beliefs. As a rule, it is not sufficient if the person presents a document confirming membership of a religious organisation. The applicant must justify how reservist training contradicts their beliefs. Section 58 of the Military Service Act mentions a reasoned request. The requirement to explain one's beliefs is understandable since the person's beliefs did not prevent them previously from completing military service.

Whether the request is reasoned is assessed by the commander of a structural unit authorised by the Commander of the Defence Forces. If the reasoning is not considered sufficient and the request is not granted, the applicant may challenge that decision (§ 214 Military Service Act). In turn, an appeal with an administrative court may be lodged against a decision on challenge.

The Chancellor was also asked about conscripts' hair length. Restrictions on hair length have been justified primarily by the need to ensure hygiene and safety, as well as group unity. For the same reason, a long beard, long nails, hanging ornaments, and the like, are also not allowed in military service. Considering the nature of training and the risk of injuries,

conscripts themselves usually do not want to wear long hair.

As an exception, shoulder-length hair is allowed for female servicemen. It appears that if an exception can be made for women in this regard, then in justified cases an exception should also be possible for male servicemen. According to information available to the Chancellor, exceptions based, for instance, on religion or beliefs have indeed been made for conscripts.

Vaccination against the coronavirus

In spring, when the expectation of relaxing the corona restrictions increased, a wider debate in society started as to whether those vaccinated against Covid-19 or recovered from the disease should in the future be treated differently from those who are unvaccinated against the disease and have not been infected with the disease either. It was found that in a situation where vaccination was still not available for everyone, there was no reason to speak of differentiation. Fairly quickly it was also concluded that people who cannot be vaccinated may not unjustifiably be treated differently from others because of this.

Nevertheless, the Government of the Republic imposed restrictions on organising large events, disregarding the fact that at the time of issuing the order vaccines were not available to 12-to-15-year-olds. On that basis, the Chancellor found that, at the time when 12-to-15-year-olds had no possibility to choose between SARS-CoV-2 testing and free vaccination, those young people may have been unjustifiably placed at a disadvantage in comparison to those for whom free vaccination was available or who were exempt from the testing requirement.

When the Government decided to ease the restrictions by order, the Chancellor began receiving enquiries about whether unvaccinated people should have the same opportunities to use certain services as vaccinated and recovered people. The Chancellor found that requiring a certificate of immunity from consumers of certain services is justified in order to reduce the risk of infection. At the same time, the Chancellor conceded that the certificate should remain a temporary solution only as long as the epidemiological situation so requires. Use of this kind of certificate is no longer justified once the majority of the population has been vaccinated or obtained immunity by having contracted and recovered from the disease, so that the overall risk of infection is low.

The Chancellor was also contacted with a concern that no entry in a person's electronic health record was made to indicate that the person had been vaccinated against SARS-CoV-2 in the

United States. The Chancellor explained that she had spoken about this problem on several occasions at sessions of the Government of the Republic and had also contacted the Ministry of Social Affairs and other officials in order to find a solution.

Other discrimination-related issues

The Chancellor was contacted by a person wishing to invite their same-sex partner to Estonia in order to enter into a registered partnership contract here. The Police and Border Guard Board (PBGB) refused to issue a special permit to enter the country, citing strict corona measures established by the Government of the Republic order. At the same time, people wishing to contract marriage were allowed to come to Estonia. After clarification was asked for, the PBGB admitted that refusal to issue a special permit had been unjustified and the person received permission to come to Estonia.

Prior to the upcoming population census, the Archbishop of the Estonian Evangelical Lutheran Church, Urmas Viilma, asked for the Chancellor's opinion whether the census respects the principle of children's freedom of religion since the census asks no data about the religious belief of children under 15 years old. The petitioner also noted that, according to the opinion of Statistics Estonia, a parent may not answer the question concerning the child's faith on behalf of their child, because disclosing one's beliefs is voluntary. Urmas Viilma also found that such an arrangement discriminates against children on grounds of age since children under 15 years old are treated less favourably in comparison to children aged 15 to 17.

The Chancellor explained that the purpose of the census is to collect data about the country's population in terms of numbers, composition, situation and location. During the census, data are also collected about people's religion but disclosing data about one's beliefs is voluntary. No one can exercise freedom of religion on behalf of another person. Thus, a child's freedom of religion is individual and a parent cannot exercise it instead or on behalf of the child. If no information about a child's religion is collected during the census, this does not deprive the child of an opportunity to publicly profess their religion. The Chancellor also found that this does not constitute discrimination on the ground of age.

With regard to certain legal relationships, legislation lays down a specific age threshold as of which a child themselves may perform actions with legal effect. In several administrative law legal relationships the age threshold has been set at 15 years, although even in the case of a 15-year-old it may be necessary to ask for additional parental consent or assess the child's

ability to exercise their rights.

The Chancellor was contacted by a male prisoner from whom the prison had taken away the necessary equipment for trimming their beard and hair because, under the prison rules of procedure, such equipment is stipulated only for female prisoners. The Chancellor found that seizure of items merely for formal reasons is not lawful. She asked the prison to amend its rules of procedure so that they enable resolving such cases lawfully.

A young person wrote to the Chancellor that a youth organisation had not allowed them to participate in a regional competition in a mixed team of girls and boys. The youth organisation clarified that mixed teams are allowed in the competition but these teams cannot proceed to the national competition. The Chancellor explained that it is customary in competitions of many sports (e.g. ball games, cycling, skiing, etc) that teams of girls and boys are formed and they are assessed and awarded separately. At the same time, it is important that in hobby activities young people's own opinion is also heard and their proposals taken into account. The youth organisation affirmed that they are prepared to do so.

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 the 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 set out in the Convention.

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.

During the reporting year, the Advisory Chamber of People with Disabilities, set up by the Chancellor, continued its work. At the online meeting on 25 November 2020, information was exchanged about problems of people with disabilities caused by changes in the organisation of government, including in provision of services, in connection with the spread of the coronavirus. The debate also included other problems and possibilities for better

organisation of the work of the Advisory Chamber.

Although the Advisory Chamber only met once in its full composition during the reporting year, the activities of the Chamber have been substantive and useful. The Chancellor's Office closely cooperates with several members of the Advisory Chamber. Thanks to this, information about the concerns of people with disabilities quickly reaches the Chancellor and resolving problems can begin swiftly. For instance, a problem occurring during the vaccination of visually impaired people was resolved when it was found that visually impaired people could not use the IT solution provided by the state through which it was possible to register in the vaccination queue. Such close cooperation makes the work of the Chancellor's Office in promoting the rights of people with disabilities more productive. The Chancellor also enjoys a good working relationship with associations representing the rights of people with disabilities, in particular with the Estonian Chamber of Disabled People and its member organisations.

It is good to note that some initiatives from past years have now developed into good practice. While, for example, at the concert held to celebrate Estonia's Independence Day in 2020 audio description was provided for the first time with project-based funding in cooperation with several organisations, then in 2021 adding audio description to the event had already become good practice.

The state one-stop shops project (i.e. local centres to provide public services, *riigimaja* in Estonian) organised by Riigi Kinnisvara AS, the state real estate company, reached an important milestone in January 2021 when a fully accessible Tartu one-stop-shop opened its doors. The project serves as a model for contracting entities as well as builders. Although for many years already norms regulating both labour relations as well as the civil service have prohibited discrimination on the ground of disability, existing buildings did not enable observation of those norms. Riigi Kinnisvara AS owns a large amount of real estate and now the company can also be considered a promoter of equal treatment.

Over a two-year period, the Accessibility Task Force (together with its discussion groups), led by the Government Office, has helped to introduce and explain accessibility-related topics to companies and organisations in different sectors. A report drawn up by the Task Force is submitted to the Government of the Republic, which can implement proposals made. The Chancellor's task is to monitor that proposals do not remain only on paper.

The Chancellor's advisers continue active awareness-raising and training, because the better

the awareness of the needs of people with disabilities, the more open society becomes. The advisers express opinions in the media and deliver lectures to students. The Head of Disability Rights of the Chancellor's Office gave lectures at the University of Tartu (in the frame of training for special educators and the curriculum on "Development of communities and social well-being") and the Estonian Academy of Arts (the subject "Human rights and design: an introduction"). She also participated as an expert and member of the jury at a hackathon in Narva where the community, experts and city management sought solutions as to how to improve life in Narva.

Reporting on implementation of the Convention

Under Article 35 of the Convention on the Rights of Persons with Disabilities, States Parties submit to the Committee on the Rights of Persons with Disabilities reports on implementing the obligations under the Convention. Estonia already submitted its first state report in 2015. In spring 2021, online meetings for Estonia's review by the UN Committee on the Rights of Persons with Disabilities finally took place, in which the Head of Disability Rights of the Chancellor's Office also participated as a representative of an independent monitoring body.

Accessibility in general

Under Article 9 of the Convention on the Rights of Persons with Disabilities, the state must ensure access by persons with disabilities to all aspects of life on an equal basis with others. The Convention views accessibility as a prerequisite for people with disabilities to benefit from public goods and services on an equal basis with others and to be able to find work.

Although the situation in this area (including physical accessibility, access to information or use of IT solutions) is improving, much still remains to be done. The Accessibility Task Force that has been operational under the Government Office for two years has identified the main problems and offered solutions that enable public space and services accessible for all to be achieved by 2035.

A practical example from life: if a resident with reduced mobility living in an apartment building wishes to adjust access to their apartment, for example by installing a lift or a ramp, then other members of the apartment association can prevent them from doing so even if this work does not involve additional cost for the apartment association. If the association is against the plan, the person needing the adjustment must seek assistance from the court.

Although the Public Transport Act (§ 10(1) clause 1) stipulates that public transport vehicles are intended for use by everyone, and organising public transport must also take into account the mobility needs of persons with disabilities, unfortunately the situation as to compliance with the law is still not good everywhere.

As far back as 2019 the Chancellor proposed to the Riigikogu to amend the Public Transport Act, but to date it remains unamended. By now, Estonia has received a similar guideline from the UN.

As a favourable development, it should be highlighted that the interests of people with reduced mobility have begun to be taken into account in new public tenders for buses.

The Chancellor still has to communicate with the company Elron whose replacement buses for trains are not accessible to passengers in a wheelchair. This means that while a section of railway is under repair a disabled person who usually travels by train has to use their personal car or social transport, or cancel their journey altogether. However, a passenger who plans their need to travel longer in advance can notify Elron of their wish to travel. According to information published on the Elron website, accessible replacement transport is guaranteed to everyone who submits a request three working days in advance. Unfortunately, such a scheme does not function if the passenger is late, for example. In the worst case, a passenger with a need for assistance may find themselves as if trapped in the bus – for instance if they are unable to exit the bus in a wheelchair. However, such a possible course of events may discourage many people, make them abandon their travel plans altogether or depend on social transport.

The terminals and stops of the future Rail Baltic are planned to be accessible for everyone. Such cooperation already at the planning stage helps to avoid extremely expensive reconstruction.

Sign language interpreting, speech-to-text reporting, audio description, and subtitles

Under Articles 9 and 21 of the Convention, to enable persons with disabilities to participate in all aspects of life, they must be ensured access, on an equal basis with others, to information and communications, including information and communications systems.

On 24 February 2021, the President's speech was interpreted into Estonian sign language and for the second consecutive year audio description was provided at the concert celebrating the

anniversary of the Republic of Estonia. The translations were made as a natural part of the event; organising them no longer required a project-based approach or additional funding. This is proof that increasingly the cost of making an event accessible for all is included in the budgets of events of public importance.

During the corona crisis, Estonian sign language interpreting began to be added to television broadcasts of press conferences of the Government of the Republic and different Boards. Unfortunately, the majority of those who are hard of hearing do not know sign language. Speech-to-text reporting or subtitles, or the possibility of lip reading would be useful for them. Due to the obligation to wear a mask established during the crisis, many people gave interviews while wearing a mask. Without speech-to-text reporting or subtitles, their speech is unintelligible to the hard-of-hearing. For this reason, subtitles were added to those segments of the public broadcasting news programme “Aktuaalne kaamera” where the speaker’s mouth was covered by a mask.

During the reporting year, Tallinn University of Technology essentially completed a technical solution enabling real-time subtitling of oral speech. This helps the hard-of-hearing, for example, to follow live television broadcasts and also use the webstreaming service. Once the solution is ready, automatic subtitling software may also be of use at press conferences of different government agencies.

At the Black Nights Film Festival (PÖFF) in November last year, the film “Goodbye, Soviet Union” (Hüvasti, NSVL) by Lauri Randla was premièred. This is the first Estonian film whose audio description can be viewed with the help of the Movie Reading app. Until then, audio descriptions prepared for Estonian films were available on request from the Estonian Library for the Blind or they could be found on the DVD of a film. In cinemas, the use of audio description was essentially impossible.

In other spheres of art, this year audio description was also added to the famous painting “Danse Macabre” by Bernt Notke in the Niguliste church in Tallinn.

Participation by parents with sign language in the work of educational institutions is still awaiting a resolution. The problem is the sign language interpreter’s fee, or more specifically whether interpretation should be paid for by the parent needing assistance, the educational institution, or the local authority. This issue is currently under consideration by the court.

A parent’s substantive participation in the activities of a childcare institution is self-evident

nowadays. Unfortunately, due to local authority rules it may happen that a person in need of sign language interpreting themselves involves an interpreter and partially also pays for it themselves. The Convention on the Rights of Persons with Disabilities, however, treats such interpretation as a public service which must be accessible to those in need of assistance. The local authority involved in the court dispute compensates the cost of sign language interpreting according to a family's financial situation – if the family has no coping difficulties, part of the interpreting cost will be left for the family to bear. Thus, a parent (in need of sign language interpreting) must pay for participation at a kindergarten meeting while another parent (who does not need interpreting) does not.

Special welfare services

On several occasions, the Chancellor was asked about services intended for people with special needs. One problem concerns new places for provision of services which has led to resistance from local inhabitants. During the last reporting year, such cases occurred in Märjamaa and Narva, this year in Tartu.

The community living service is intended for those who mostly cope with their life but may need some assistance and guidance. The Chancellor has explained that in Estonia everyone is entitled to choose their place of residence and a disability may not be a ground for discrimination. Those in need really need the assistance; no community service is provided to people who pose a risk to themselves and others.

In Estonia not enough services are available for people with autism spectre disorders whose need for special welfare services is constantly increasing. The minister's regulation prescribes that an adult person with an autism spectre disorder and suffering severe or profound disability may receive the 24-hour special care service for up to 4252 euros a month.

Unfortunately, the service described in the ministerial regulation is not provided because no necessary specialists are available. Assistance should also be provided in medically less serious cases. Assistance necessary for those people requires more staff than is planned in the price calculation of the standard special welfare service. Therefore, the necessary service cannot be provided to them in the frame of existing state funding, and consequently no undertaking also wants to provide that necessary service under current conditions.

The Ministry of Social Affairs has also conceded this.

The central problem in organising special welfare services is that it is difficult to obtain

professional assistance. Often, assistance is also not available at a place suitable for a person in need or their next of kin, and professional staff are in short supply while special welfare requires special knowledge and sufficient staff numbers. The Riigikogu debated this issue during the proceedings of a Draft Act (SE146) on which the Chancellor also formed her opinion. As a result of debates, the Ministry of Social Affairs has promised to supplement the qualification requirements for staff and lay down the basic training requirement. This should rule out the possibility that a person without the necessary basic knowledge is employed by a special care home.

Section 89 of the Social Welfare Act requires a local authority to cover the cost of premises used for provision of social welfare services while allowing the local authority to do it to the extent established by itself. This provision has caused disputes between social welfare institutions both about the amount of costs and cost components. Already several years ago the Chancellor drew the attention of the Riigikogu to the fact that the wording of the provision needs to be clarified since availability of assistance depends on this. The Ministry of Social Affairs has promised to prepare the necessary amendment in 2021.

Sale of medicines

On 30 November 2020, the Data Protection Inspectorate issued a precept with a warning of a 100 000 euro coercive penalty payment to three pharmacy chains which in their e-pharmacies enabled viewing prescriptions issued to another person if the viewer knew the personal identification code of the other person but did not have their consent. More precisely, the Inspectorate obliged the pharmacies to terminate displaying information in the current form.

The e-pharmacies did stop displaying prescriptions on the basis of another person's personal identification code as well as the sale of medicines to a person to whom the prescription had not been issued. Inter alia, the sale of medicines in an e-pharmacy was stopped to children and persons under guardianship.

In a physical pharmacy, the possibility to buy prescription medicines for another person was maintained.

In this case, there was a clash between two interests: on the one hand, the need to protect sensitive health data and, on the other hand, the need to ensure free movement of necessary medicines. Since the possibility to buy and obtain medicines from an e-pharmacy is particularly important for people with disabilities, the Chancellor asked for clarification from

agencies about the possibility of reopening sales.

When issuing the precept, the Data Protection Inspectorate relied on the premise that the law was being violated in processing personal data. Investigation of the circumstances also revealed that the problem of digital prescriptions was wider: shortcomings existed both in the habits of those issuing prescriptions as well as in the interoperability of IT systems. By the time of submission of this annual report, the sale of medicines to other persons had been partially restored in e-pharmacies.

Single-use drinking straws

Under the so-called Plastics Directive 2019/904, the European Commission banned single-use plastic drinking straws. As of 3 July 2021, these may no longer be placed on the market in Estonia. However, single-use plastic drinking straws with a flexible bend are unavoidably necessary for many people with disabilities − they actually cannot drink without using these straws.

Straws with a flexible bend also cannot be replaced by anything else. No other single-use material ensures the same functionality because all of them have their faults: some material dissolves in warm liquid while another causes allergy, etc. And, for example, a person with a muscular disease is unable to independently clean a multiple-use straw. Consequently, the established ban has deteriorated the quality of life of disabled people because in the future they need external assistance with drinking.

When passing the Directive, the effect of restrictions on people with disabilities was not analysed, the focus was only on the environmental impact.

The Chancellor has asked the authorities to find a possibility for disabled people to continue using single-use plastic straws in the future. The information system of draft legislation contains a Draft Act on amending the Waste Act, the Packaging Act and the Tobacco Act, which is currently undergoing a process of approval from different ministries, and the explanatory memorandum to which explains the problem of people with disabilities, but no solution has yet been found.

According to available information, some other EU member states have raised the same problem in the European Commission. At the time of drawing up the annual report, it was still possible to purchase and import single-use plastic straws in Estonia. This means the Directive is not being complied with in this respect.

Children and young people with special needs

The Chancellor was contacted by a parent who had applied for an exception in buying orthopaedic footwear compensable by the state for their child for two years consecutively. The parent found that the limit of three pairs of footwear every calendar year was not sufficient for a schoolchild. The Chancellor asked the Minister of Social Protection to thoroughly consider increasing the limit for orthopaedic footwear compensable by the state for those children for whom evidence based on practice shows that the current limit − three pairs of footwear a calendar year − does not meet children's actual needs. Increasing the footwear limit compensable by the state would facilitate dealings with the authorities by the parents of a child with a disability and would reduce the workload of the Social Insurance Board. The Chancellor also asked that the possibility to increase the limit for all orthopaedic children's footwear compensable by the state be considered. The Ministry of Social Affairs promised to consider changing the system more generally.

Unfortunately, the statutory right (under the Preschool Childcare Institutions Act and the Basic Schools and Upper Secondary Schools Act) to obtain assistance to the necessary extent and from a competent support specialist and immediately when a child's need for assistance appears is still not guaranteed in reality in Estonia.

The Chancellor received a letter from a parent whose child cannot go to school without a support person but their local authority does not offer a support person. The specific child nevertheless obtained assistance but every year there are cases where, due to absence of a support person, a child cannot actually go to school or kindergarten. The cause of the problem is shortage of competent support persons but also the fact that local authorities are not prepared to bear the inevitable cost involved in having a support person.

The Chancellor was also asked to assess whether a school may restrict a pupil's participation in a camp. A school allowed a third-year pupil to participate in a language immersion camp organised by the school only together with a support person. The condition of a support person was imposed immediately before the camp was to take place. Prior to this, the school

had advised the family that they should abandon the wish to attend the camp. According to the information available to the Chancellor, the school did not offer any adjustments to the child for participation in the camp, and justified its decision by the fact that the child was in need of special support during studies. In doing so, the school violated the child's rights both while preparing the camp and when deciding on the child's participation.

Organising a camp presumes offering equal opportunities. That is, a camp must be organised for as many children as possible; in case of necessity an individual approach must be considered and, at the request of the parent, also reasonable adjustments. The child is also entitled to express their opinion as to what should be done so as to enable them to attend the camp. However, if the school still finds that the school's own adjustments would be too burdensome or would compromise the well-being of other children, the justifications by the school must be based on objective criteria. Since the school is responsible for the well-being of all the children in a camp, in that case it is entitled to refuse to allow a child to attend the camp.

The Chancellor also dealt with problems of children needing special food for health reasons. The Chancellor explained that cities, towns and rural municipalities must also organise an appropriate and varied school lunch for pupils needing different food for health reasons. If a local authority has decided to distribute a free school lunch to everyone, the greater expense related to providing special food must be borne by the local authority.

During the 'second wave' of the coronavirus, children with special educational needs received more support than previously. Exceptions concerning restrictions on movement were made to people with special needs and disability; for instance, children with special needs maintained access to school buildings closed for other pupils, and to other buildings providing public services. So face-to-face tuition in the classroom for children with special needs as well as provision of services requiring physical contact could continue.

Access to e-government

By acceding to the Convention on the Rights of Persons with Disabilities, Estonia undertook an obligation to ensure to persons with disabilities access to information and communication on an equal basis with others, including access to information and communications systems and public services.

It is characteristic of Estonia that to a large extent communication with the state takes place

through electronic channels. Inter alia, this means that some new services are from the start developed only as e-services and the service is not available by any other means at all. If IT development fails to pay sufficient attention to the needs of all users, including users with special needs, then it is inevitable that new solutions are introduced that cannot be used by everyone. This excludes some people, thereby violating their rights. For example, the Chancellor was contacted with a concern that without using electronic environments it was not possible to obtain a certificate of vaccination against Covid-19. People who did not have either the possibility or skills to use a computer or a smartpone, or whose ID card passwords had expired, had no possibility to easily obtain the certificate, so that they were forced to give up part of their habitual life. Some people received assistance from their next of kin and some from libraries, but because a Covid certificate can be generated in the electronic Patient Portal only by a person themselves, in the absence of passwords a person could not be helped even by their habitual assistant: a support person, social worker, next of kin, or librarian.

It is true that a person's health status can also be proved by other certificates, such as a vaccination passport – the so-called yellow paper booklet in which the vaccinator records vaccine information. However, if on the day of vaccination a person failed to have an entry recorded in the booklet, obtaining it retrospectively required special errands which, depending on a person's residence or the vaccinator, may have proved complicated and time-consuming, or sometimes even impossible.

The Health and Welfare Information Systems Centre (TEHIK), which initially had to assist aliens in generating the certificate, also assisted other people having problems with the e-service. However, assistance was provided only to those who went to the Centre's office in Tallinn. The Government of the Republic amended the statutes of the health information system and by doing so provided a possibility to receive the certificate at customer service desks of the Social Insurance Board with assistance from its officials.

We can be happy that the problem was resolved but in the future unequal treatment should be prevented and, when creating a service, the fact that people's access to public (digital) services differs significantly should be taken into account right from the start.

It is very important that all websites and mobile applications which people use to communicate with the state and local authorities − essentially to consume public services − should meet the requirements of accessibility. Compliance with the requirements is currently checked by the Data Protection Inspectorate and, based on an inter-agency agreement, also

the Consumer Protection and Technical Regulatory Authority. After amending the law, the task will be performed by the Consumer Protection and Technical Regulatory Authority.

In cooperation with the representative organisation of people with disabilities and the Chancellor of Justice, the Consumer Protection and Technical Regulatory Authority has drawn up a list of websites and mobile applications to be checked.

A systemic error was discovered in connection with vaccination against the coronavirus. It was found that the blind could not use the relevant registration facility created by the state.

At the initiative of the Estonian Association for the Blind, the Chancellor already drew attention to shortcomings in the eBooking System (to book, cancel or change a doctor's appointment) during the last reporting period. The Health and Welfare Information Systems Centre then replied with a promise that all errors would be rectified and that accessibility requirements would be observed in future developments. However, it has now appeared that things are really not so.

The Centre explained to the Chancellor that the queueing system introduced to avoid overload did not meet the needs of the blind. At the same time, haste was necessary because the shortcomings of the system impeded the whole vaccination process.

The fact that the blind could not use the hastily implemented system was revealed accidentally. No other ways to register in the vaccination queue (e.g. by phone or through other solutions) were introduced to these people. If emergency solutions are introduced in a rapidly changing situation, then people should at least be informed of alternative options.

A member of the Advisory Chamber of People with Disabilities raised the issue of accessibility of museum homepages. Investigation of the circumstances revealed several problems, including disunity between the persons commissioning a website, those developing it, and the auditor. Accessibility of a homepage presumes a demanding approach from the customer and certainly knowledge on the part of the company developing it. Additional expenses should also be accounted for. Good practice is still developing in Estonia.

Establishing a disability

Unfortunately, confusion still reigns concerning establishing children's degree of disability and providing services to children. The Social Insurance Board has prepared a document published on its homepage "The underlying principles for establishing the degree of disability in children

“, but this alone is not sufficient to tidy up the system and resolve problems. It must be unequivocally clear from a law or a regulation as to in what circumstances what degree of disability will be established in a child, or when will no disability be established. Thus, legislation also needs to be revised.

The Chancellor was contacted by a blind pensioner who did not understand why they have to repeatedly apply to have the degree of their disability established while it should be clear that their health will no longer improve. Loss of sight is irreversible. The Ministry of Social Affairs explained that people with a permanent or progressive disability should not have to repeatedly apply every five years to establish their disability. The Ministry has promised to initiate amendment of the Social Benefits for People with Disabilities Act and the new procedure should enter into force in 2022.

Accessibility of social benefits and services

Several parents contacted the Chancellor with the concern that the local authority did not pay them a disabled child carer’s allowance because their child was not yet three years old.

By relying on random examination of local authority legislation, it may be said that a large number of local authorities have imposed a restriction according to which no carer’s allowance is paid to the carer of a child under three years old. The reason given for imposing the age limit is childcare allowance, which the state paid to a carer of a child under three years old after they were no longer entitled to parental benefit. However, the state no longer pays childcare allowance for children born on or after 1 September 2019.

The Chancellor asked local authorities to revise the underlying legislation for payment of social benefits and, if necessary, amend the legislation so that parents of children with disabilities are not deprived of the necessary social protection. The cities of Narva and Tallinn informed the Chancellor that they considered it justified to revise their regulations on paying carer’s allowance and amend them by taking account of parents of children with disabilities under three years old.

The Chancellor was also contacted by a student to whom the Estonian Unemployment Insurance Fund had stopped paying work ability allowance without having investigated whether the recipient was continuing studies and thus still met the conditions for receiving allowance. The petitioner was also dissatisfied that every three months a recipient of allowance must submit a certificate to the Estonian Unemployment Insurance Fund proving

that they are continuing studies abroad.

The Chancellor found that before deciding to terminate work ability allowance to a person excluded from the list of an educational institution, the Estonian Unemployment Insurance Fund must hear arguments from the recipient of the allowance. A school certificate can only be requested in proceedings by which grant or termination of work ability allowance is decided. As a rule, studying at a university does not stop before the end of a semester. Therefore, it is onerous for a person if the agency initiates proceedings every three months for annulment of the decision to grant work ability allowance in order to decide whether the person is entitled to the allowance in the future.

In its reply, the Estonian Unemployment Insurance Fund explained that it had changed its practice in view of the Chancellor's proposal. The Unemployment Insurance Fund no longer automatically stops paying work ability allowance to a student who has left an educational institution if no information is available about continuation of their studies.

Instead, prior to the beginning of a new academic year it sends a letter to the allowance recipient notifying them of potential termination of payment of work ability allowance and requests additional information to decide on paying the allowance. The Estonian Unemployment Insurance Fund also made proposals to the Ministry of Social Affairs to amend legislation as recommended by the Chancellor.

The Chancellor was contacted by people with a problem concerning work-related rehabilitation who had been found to have no capacity for work. According to information from the Estonian Unemployment Insurance Fund, 26% of these people have found work within their abilities but applicable legislation does not enable the Unemployment Insurance Fund to provide work-related rehabilitation to these people. The Chancellor found that such a restriction is not justified and the relevant legislation should be amended.

A person with a disability asked for assistance from the city to obtain a quiet dwelling appropriate for their condition. Such an entitlement is provided for under § 42 of the Social Welfare Act. The person asked for a dwelling from the city because they could not find an apartment on the rental market that would not be exposed to domestic noise incompatible with their health condition. The city offered several dwellings one after another to the person but unfortunately these did not meet the person's needs because the city did not offer dwellings that would have been really without any noise.

This case affirms how the system is unable to provide assistance to a disabled person because assistance is first provided without assessing the person's real need. In that case time is wasted on dealing with unsuitable solutions. Such proceedings without any result could be reduced if a local authority were to approach a person's problem in substance from the very beginning and would abandon the attitude "let's offer them some apartment, perhaps it's acceptable". It would be useful to precisely document the whole process, which would enable cooperating agencies to exchange correct information.

The Chancellor asked the city to analyse the specific case of provision of assistance from the aspect of documentation, expertise in providing assistance, as well as cooperation between different structural units.

The Chancellor was contacted by a general care service provider who found that a rural municipality was not sufficiently ensuring the rights of an elderly person with a disability living in a care home. It was revealed that the municipality had found out about the elderly person's possible need for assistance in spring 2017. Then the rural municipal government found that the person was no longer able to cope at home, after which the person went to live in a care home. In the summer of the same year, the court also appointed a guardian for the elderly person. In spring 2020, the care home informed the municipality that the person's next of kin had not paid the invoices for the person's stay in the care home in time. The municipality's social work specialist tried contacting the guardian but unsuccessfully. At the beginning of summer, the county court began proceedings for release of the guardian and appointment of a new guardian.

The Chancellor found that after the municipal government received notice of indebtedness it should have ascertained whether the person needed the municipality's assistance in paying for the service. For this, the municipality should have contacted the person in need or their guardian and explained to them that the municipality has the duty to pay for the service if the person themselves cannot do so. If it had been found that the municipality's assistance was needed to pay for the service, the municipality should also have assessed the elderly person's need for assistance and decided which social service they were entitled to. After that, the municipality could have assessed the person's ability to pay. If the municipality had found that the service provider needed to be replaced because the service or the price were not suitable, it should have considered how that decision affects the situation of the elderly person. The Chancellor explained that if a municipality is unable to contact the guardian within a reasonable time but a justified suspicion has developed that the rights of the person

under guardianship are not ensured then the court must be notified of this.

The Chancellor also resolved a petition expressing dissatisfaction with the organisation of social services (home adaptations and social transport). A rural municipality had failed to arrange transport of the petitioner's bedridden father to hospital and back home as required by the law. Nor had the municipality arranged social transport for the petitioner's mother to go to a cemetery.

The Chancellor reached the opinion that the Social Welfare Act should be interpreted in the spirit of the UN Convention on the Rights of Persons with Disabilities (CRPD) in order to ensure compatibility of national law with Estonia's internationally assumed obligations. Thus, the duty of a local authority to organise social transport should be seen as one of the measures for ensuring disabled people an opportunity for an independent life and involvement in the community as well as independent ability of movement as much as possible (see e.g. Article 19 CRPD and its general comment, and Article 20).

The possibility to go to one's spouse's grave is an issue of private life, a person's mental health, as well as human dignity. Therefore, it is not compatible with the law to deprive a person of the opportunity to go to their spouse's grave.

The municipal government also failed to take into account the statutory requirements or the principle of good administration when resolving the applications for home adaptations submitted by the petitioner's parents. No norm restricts a person's right to home adaptations because a person's dwelling has already been adapted once. The municipality's erroneous practice probably started from misinterpretation of the Minister of Social Protection Regulation No 4 of 26 February 2018 on "The physical adaptation of dwellings of disabled people". The Chancellor explained that the Minister's Regulation does not regulate the relationship between a person in need of adaptations and the local authority. Under this Regulation, the state provides additional funding to a local authority so that a rural municipality would be able to assist people in carrying out home adaptations and in this way fulfil the duty to adapt dwellings of disabled people laid down by the Social Welfare Act.

The Chancellor drew the municipality's attention to the need to proceed from the substance and not the form of people's applications, and to provide assistance corresponding to the person's need in compliance with laws and regulations. Since the municipality had so far not established a constitutionally compliant procedure for adapting dwellings of disabled people, the Chancellor asked that the rural municipal government in cooperation with the municipal

council should resolve this situation. The municipality conceded that a new procedure for physical adaptation of dwellings of disabled people needed to be prepared. The municipal council is expected to establish the procedure in the second half of 2021.